

1 I. RELEVANT LAW

2 A. 28 U.S.C. § 1915(g): Three Strikes Rule

3 Section 1915(g) states:

4 In no event shall a prisoner bring a civil action or appeal a judgment in a civil
5 action or proceeding under this section if the prisoner has, on 3 or more prior
6 occasions, while incarcerated or detained in any facility, brought an action or
7 appeal in a court of the United States that was dismissed on the grounds that it is
8 frivolous, malicious, or fails to state a claim upon which relief may be granted,
9 unless the prisoner is under imminent danger of serious physical injury.

10 28 U.S.C. § 1915(g).

11 “It is well-settled that, in determining a [Section] 1915(g) ‘strike,’ the reviewing court
12 looks to the dismissing court’s action and the reasons underlying it.” Knapp v. Hogan, 738 F.3d
13 1106, 1109 (9th Cir. 2013) (brackets added) (citation omitted). “[Section] 1915(g) should be used
14 to deny a prisoner’s in forma pauperis status only when, after careful evaluation of the order
15 dismissing an action, and other relevant information, the district court determines that the action
16 was dismissed because it was frivolous, malicious or failed to state a claim.” Andrews v. King,
17 398 F.3d 1113, 1121 (9th Cir. 2006) (brackets added).

18 B. Judicial Notice

19 A court may take judicial notice of its own records in other cases. See United States v.
20 Wilson, 631 F.2d 118, 119 (9th Cir. 1980). “A judicially noticed fact must be one not subject to
21 reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the
22 trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy
23 cannot reasonably be questioned.” Fed. R. Evid. 201(b)(1)-(2).

24 II. DISMISSAL HISTORY OF ALLEGED “STRIKE” CASES

25 A review of plaintiff’s filing history in federal court indicates that the following cases
26 were dismissed for reasons identified in Section 1915(g) and were adjudicated prior to the filing
27 of the instant action:

- 28 • Ford v. California Health Care Facility (“CHCF”), No. 2:15-cv-2590 CKD P (E.D.
Cal. Apr. 12, 2016) (dismissal for failure to state a claim);

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- 1 • Ford v. Lewis (“Lewis”), No. 3:16-cv-1126 LAB BLM (S.D. Cal. Jan. 11, 2017)
2 (dismissal for failure to state a claim), and
- 3 • Ford v. King (“King”), No. 1:17-cv-0960 SKO P (E.D. Cal. Aug. 17, 2017) (dismissal
4 as barred by res judicata and the statute of limitations).

5 The court takes judicial notice of each of these cases and reviews them in relevant detail herein.

6 In CHCF, on February 1, 2016, after screening the original complaint, the court found that
7 plaintiff had failed to state a claim upon which relief could be granted. (See CHCF, ECF No. 6 at
8 2-4). As a result, plaintiff was given the opportunity to file an amended complaint within thirty
9 days. (See id. at 5-6). Plaintiff failed to do so, and thereafter, on April 12, 2016, the matter was
10 dismissed. (See CHCF, ECF Nos. 13, 14). A case that is dismissed for failure to file an amended
11 complaint when the underlying need for an amended complaint is that the initial complaint had
12 failed to state a claim upon which relief could be granted constitutes a strike under Section
13 1915(g). See Harris v. Mangum, 863 F.3d 1133, 1143 (9th Cir. 2017). Therefore, the dismissal
14 of CHCF is a strike under Section 1915(g).

15 In Lewis, on August 17, 2016, defendants moved for dismissal of plaintiff’s complaint on
16 the grounds that it failed to state a claim upon which relief could be granted. (See Lewis, ECF
17 No. 27). On December 5, 2016, a grant of the motion to dismiss was recommended by the
18 magistrate judge. (See Lewis, ECF No. 44). Thereafter, on January 11, 2017, the district court
19 judge adopted the recommendation and granted defendants’ motion to dismiss. (See Lewis, ECF
20 Nos. 50, 51). Thus, the dismissal of Lewis is also a strike under Section 1915(g).

21 In King, on August 17, 2017, the court found that the matter was barred by res judicata as
22 well as by the statute of limitations. (See King, ECF No. 15). As a result, the case was
23 dismissed. (See King, ECF Nos. 15, 16). Dismissal for these reasons effectively constitutes
24 dismissal for failure to state a claim. See Belanus v. Clark, 796 F.3d 1021, 1027-29 (9th Cir.
25 2015) (finding court’s dismissal without leave to amend for inability to overcome statute of
26 limitations bar as well as its finding that said dismissal constituted a strike was proper); see also
27 Chatman v. Frazier, No. 2:13-cv-1605 KJM KJN P, 2016 WL 1267834, at *1 (E.D. Cal. Mar. 31,
28 2016) (citing to Belanus); see, e.g., Cramer v. Dickinson, No. 1:08-cv-0375 AWI GSA PC, 2013


1 WL 1192402, at *1 (E.D. Cal. Mar. 21, 2013) (dismissing matter for failure to state a claim based
2 upon the doctrine of res judicata). Because the style of the dismissal and/or its procedural posture
3 is immaterial, the dismissal of King is also a strike under Section 1915(g). See El-Shaddai v.
4 Zamora, 833 F.3d 1036, 1042 (9th Cir. 2016) (stating central question when considering strike
5 status is whether dismissal “rang the PLRA bells of frivolous, malicious, or failure to state a
6 claim”).

7 **III. CONCLUSION**

8 In light of the above, plaintiff is therefore precluded from proceeding in forma pauperis in
9 this action unless plaintiff can show that he was “under imminent danger of serious physical
10 injury” at the time that he filed the initial complaint. See 28 U.S.C. § 1915(g). Plaintiff has not
11 alleged any facts which suggest that this was the case at that time. (See generally ECF Nos. 1,
12 17). Therefore, unless plaintiff can show cause why his in forma pauperis status should not be
13 revoked, plaintiff will be ordered to submit the appropriate filing fee in order to proceed with this
14 action.

15 In accordance with the above, IT IS HEREBY ORDERED that within thirty days from the
16 date of this order, plaintiff shall show cause regarding why he should not be declared a three-
17 strikes litigant pursuant to 28 U.S.C. § 1915(g). Plaintiff’s failure to comply with this order will
18 result in a recommendation that this action be dismissed.

19 Dated: November 6, 2018

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22 DEBORAH BARNES
23 UNITED STATES MAGISTRATE JUDGE
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25 DLB:13
26 DB/ORDERS/ORDERS.PRISONER.CIVIL RIGHTS/ford1928.1915g.ifp
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