

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

9 28 U.S.C. § 1915(g). The plain language of the statute makes clear that a prisoner is precluded
10 from bringing a civil action or an appeal in forma pauperis if the prisoner has brought three
11 frivolous actions and/or appeals (or any combination thereof totaling three). Rodriguez v. Cook,
12 169 F.3d 1176, 1178 (9th Cir. 1999). “[Section] 1915(g) should be used to deny a prisoner’s [in
13 forma pauperis] status only when, after careful evaluation of the order dismissing an action, and
14 other relevant information, the district court determines that the action was dismissed because it
15 was frivolous, malicious or failed to state a claim.” Andrews v. King, 398 F.3d 1113, 1121 (9th
16 Cir. 2005). “[W]hen a district court disposes of an in forma pauperis complaint ‘on the grounds
17 that [the claim] is frivolous, malicious, or fails to state a claim upon which relief may be granted,’
18 such a complaint is ‘dismissed’ for purposes of § 1915(g) even if the district court styles such
19 dismissal as denial of the prisoner’s application to file the action without prepayment of the full
20 filing fee.” O’Neal v. Price, 531 F.3d 1146, 1153 (9th Cir. 2008) (second alteration in original).
21 Dismissal also counts as a strike under § 1915(g) “when (1) a district court dismisses a complaint
22 on the ground that it fails to state a claim, (2) the court grants leave to amend, and (3) the plaintiff
23 then fails to file an amended complaint” regardless of whether the case was dismissed with or
24 without prejudice. Harris v. Mangum, 863 F.3d 1133, 1142-43 (9th Cir. 2017).

25 Inspection of other cases filed by plaintiff in this court has led to the identification of at
26 least five cases brought by plaintiff that qualify as strikes. The court takes judicial notice of the
27 following lawsuits filed by plaintiff:¹

- 28 1. Brown v. Brown, 2:11-cv-3053 KJM KJN (complaint dismissed with leave to amend for
failure to state a claim, case dismissed on December 11, 2012, after plaintiff failed to file

¹ “[A] court may take judicial notice of its own records in other cases.” United States v. Wilson,
631 F.2d 118, 119 (9th Cir. 1980) (citing Fed. R. Evid. 201(b)(2)).

- 1 an amended complaint);
- 2 2. Brown v. Hume, 2:11-cv-3441 GEB EFB (complaint dismissed with leave to amend for
- 3 failure to state a claim, case dismissed on August 7, 2012, for failure to state a claim and
- 4 failure to file an amended complaint);
- 5 3. Brown v. Mueller, 2:12-cv-2321 KJM DAD (dismissed on September 24, 2013, as
- 6 frivolous and for failure to state a claim);
- 7 4. Brown v. Gastello, 2:15-cv-1156 MCE EFB (complaint dismissed with leave to amend for
- 8 failure to state a claim, case dismissed on March 20, 2017, for failure to state a claim and
- 9 failure to file an amended complaint);
- 10 5. Brown v. Miller, 2:15-cv-1687 GEB CMK (dismissed on September 21, 2016, for failure
- 11 to state a claim).

12 All of the preceding cases were dismissed well in advance of the September 27, 2017

13 filing² of the instant action and none of the strikes have been overturned. Therefore, this court

14 finds that plaintiff is precluded from proceeding in forma pauperis unless he is “under imminent

15 danger of serious physical injury.” 28 U.S.C. § 1915(g). To satisfy the exception, plaintiff must

16 have alleged facts that demonstrate that he was “under imminent danger of serious physical

17 injury” at the time of filing the complaint. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir.

18 2007) (“[I]t is the circumstances at the time of the filing of the complaint that matters for

19 purposes of the ‘imminent danger’ exception to § 1915(g).”); see also, Abdul-Akbar v. McKelvie,

20 239 F.3d 307, 312-14 (3rd Cir. 2001); Medberry v. Butler, 185 F.3d 1189, 1192-93 (11th Cir.

21 1999); Ashley v. Dilworth, 147 F.3d 715, 717 (8th Cir. 1998); Banos v. O’Guin, 144 F.3d 883,

22 885 (5th Cir. 1998).

23 The complaint alleges that in October 2013, defendant Sagireddy reduced the frequency of

24 plaintiff’s hemodialysis treatment knowing it would cause him harm. ECF No. 1 at 3. Since the

25 alleged conduct took place nearly four years prior to the filing of the complaint, plaintiff is unable

26 to demonstrate that he was in imminent danger at the time he filed the complaint. The

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28 ² Since plaintiff is a prisoner proceeding pro se, he is afforded the benefit of the prison mailbox rule. Houston v. Lack, 487 U.S. 266, 276 (1988).

1 undersigned will therefore recommend that plaintiff be required to pay the filing fee in full or
2 have the complaint dismissed.

3 II. Plain Language Summary of this Order for a Pro Se Litigant

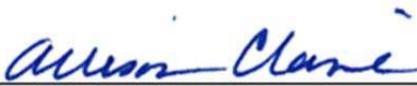
4 You have three strikes under § 1915(g) and cannot be granted in forma pauperis status
5 unless you show the court that you were in imminent danger of serious physical injury at the time
6 you filed the complaint. Because your claims are about things that happened almost four years
7 ago, you cannot show imminent danger. It is therefore being recommended that you be required
8 to pay the entire filing fee in full before you can go forward with your complaint.

9 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court randomly assign a
10 United States District Judge to this action.

11 IT IS FURTHER RECOMMENDED that plaintiff be ordered to pay the entire \$400.00 in
12 required fees within thirty days or face dismissal of the case.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
15 after being served with these findings and recommendations, plaintiff may file written objections
16 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings
17 and Recommendations." Plaintiff is advised that failure to file objections within the specified
18 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
19 (9th Cir. 1991).

20 DATED: October 13, 2017

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22 ALLISON CLAIRE
23 UNITED STATES MAGISTRATE JUDGE
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