



1 28 U.S.C. § 1915(g). The plain language of the statute makes clear that a prisoner is precluded  
2 from bringing a civil action or an appeal in forma pauperis if the prisoner has brought three  
3 frivolous actions and/or appeals (or any combination thereof totaling three). Rodriguez v. Cook,  
4 169 F.3d 1176, 1178 (9th Cir. 1999). “[Section] 1915(g) should be used to deny a prisoner’s [in  
5 forma pauperis] status only when, after careful evaluation of the order dismissing an action, and  
6 other relevant information, the district court determines that the action was dismissed because it  
7 was frivolous, malicious or failed to state a claim.” Andrews v. King, 398 F.3d 1113, 1121 (9th  
8 Cir. 2005). “[W]hen a district court disposes of an in forma pauperis complaint ‘on the grounds  
9 that [the claim] is frivolous, malicious, or fails to state a claim upon which relief may be granted,’  
10 such a complaint is ‘dismissed’ for purposes of § 1915(g) even if the district court styles such  
11 dismissal as denial of the prisoner’s application to file the action without prepayment of the full  
12 filing fee.” O’Neal v. Price, 531 F.3d 1146, 1153 (9th Cir. 2008) (second alteration in original).  
13 Dismissal also counts as a strike under § 1915(g) “when (1) a district court dismisses a complaint  
14 on the ground that it fails to state a claim, (2) the court grants leave to amend, and (3) the plaintiff  
15 then fails to file an amended complaint” regardless of whether the case was dismissed with or  
16 without prejudice. Harris v. Mangum, 863 F.3d 1133, 1142-43 (9th Cir. 2017).

17 Inspection of other cases filed by plaintiff has led to the identification of at least three  
18 cases brought by plaintiff that qualify as strikes. The court takes judicial notice of the following  
19 lawsuits filed by plaintiff:<sup>1</sup>

- 20 1. Ruiz v. McGuire, S.D. Cal. No. 3:16-cv-0388 AJB BLM (complaint dismissed with  
21 leave to amend for failure to state a claim, case dismissed on May 9, 2016, for failure  
22 to file an amended complaint);
- 23 2. Ruiz v. Curry, E.D. Cal. No. 1:17-cv-1454 DAD SAB (case dismissed for failure to  
24 state a claim on May 30, 2018);

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25 <sup>1</sup> The court “may take notice of proceedings in other courts, both within and without the federal  
26 judicial system, if those proceedings have a direct relation to matters at issue.” United States ex  
27 rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992)  
(citation and internal quotation marks omitted) (collecting cases); Fed. R. Evid. 201(b)(2) (court  
28 may take judicial notice of facts that are capable of accurate determination by sources whose  
accuracy cannot reasonably be questioned).



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IT IS FURTHER RECOMMENDED that plaintiff’s motion to proceed in forma pauperis, ECF No. 2, be denied and plaintiff be ordered to pay the entire \$400.00 in required fees within thirty days or face dismissal of the case.

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

DATED: January 31, 2020

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE