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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES LYNN HINES,
CDC #K-86989; AZ Inmate No. 197067

Plaintiff,

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

Civil No. 07-0622 WQH (NLS)

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AS BARRED BY 28 U.S.C. § 1915(g)
AND DISMISSING CIVIL ACTION
WITHOUT PREJUDICE FOR
FAILURE TO PAY CIVIL FILING
FEES MANDATED BY
28 U.S.C. § 1914(a)**

Plaintiff, a former California state inmate currently incarcerated at the Arizona State Prison Complex in Florence, Arizona, and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff’s Complaint is over sixty pages long and includes a variety of rambling, incoherent sentences which the Court is simply unable to decipher. Plaintiff has also submitted a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc. No. 3].

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1 **I. Motion to Proceed IFP**

2 Section 1915 of Title 28 of the United States Code allows certain litigants to pursue civil
3 litigation IFP, that is, without the full prepayment of fees or costs. 28 U.S.C. § 1915(a)(2).
4 However, the Prison Litigation Reform Act (“PLRA”) amended section 1915 to preclude the
5 privilege to proceed IFP:

6 . . . if the prisoner has, on 3 or more prior occasions, while
7 incarcerated or detained in any facility, brought an action or appeal
8 in a court of the United States that was dismissed on the grounds
9 that it is frivolous, malicious, or fails to state a claim upon which
relief can be granted, unless the prisoner is under imminent danger
of serious physical injury.

10 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’ provision.”
11 *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005). “Pursuant to § 1915(g), a prisoner
12 with three strikes or more cannot proceed IFP.” *Id.* The objective of the PLRA is to further “the
13 congressional goal of reducing frivolous prisoner litigation in federal court.” *Tierney v. Kupers*,
14 128 F.3d 1310, 1312 (9th Cir. 1997).

15 “‘Strikes’ are prior cases or appeals, brought while the plaintiff was a prisoner, which
16 were dismissed ‘on the ground that [they were] frivolous, malicious, or fail[ed] to state a claim.’”
17 *Andrews*, 398 F.3d at 1116 n.1. Thus, once a prisoner has accumulated three strikes, he is
18 prohibited by section 1915(g) from pursuing any other action IFP in federal court unless he is
19 in “imminent danger of serious physical injury.” *See* 28 U.S.C. § 1915(g).¹

20 While the PLRA does not require a prisoner to declare that § 1915(g) does not bar his
21 request to proceed IFP, *Andrews*, 398 F.3d at 1119, “[i]n some instances, the district court docket
22 records may be sufficient to show that a prior dismissal satisfies at least one of the criteria under
23 § 1915(g) and therefore counts as a strike.” *Id.* at 1120. When applying 28 U.S.C. § 1915(g),
24 however, the court must “conduct a careful evaluation of the order dismissing an action, and
25

26 ¹ The Ninth Circuit has held that section 1915(g) does not violate a prisoner’s right to access
27 to the courts, due process or equal protection; nor does it violate separation of powers principles or
28 operate as an ex post facto law. *Rodriguez v. Cook*, 169 F.3d 1176, 1179-82 (9th Cir. 1999); *see also*
Andrews, 398 F.3d at 1123 (noting constitutionality of § 1915(g), but recognizing that “serious
constitutional concerns would arise if § 1915(g) were applied to preclude those prisoners who had filed
actions who were not ‘frivolous, malicious, or fail[ing] to state a claim’ from proceeding IFP.”).

1 other relevant information,” before determining that the action “was dismissed because it was
2 frivolous, malicious or failed to state a claim,” since “not all unsuccessful cases qualify as a
3 strike under § 1915(g).” *Id.* at 1121.

4 The Ninth Circuit has held that “the phrase ‘fails to state a claim on which relief may be
5 granted,’ as used elsewhere in § 1915, ‘parallels the language of Federal Rule of Civil Procedure
6 12(b)(6).’” *Id.* at 1121 (quoting *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)).
7 *Andrews* further holds that a case is “frivolous” for purposes of § 1915(g) “if it is of little weight
8 or importance” or “ha[s] no basis in law or fact.” 398 F.3d at 1121 (citations omitted); *see also*
9 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (“[A] complaint, containing as it does both factual
10 allegations and legal conclusions, is frivolous [under 28 U.S.C. § 1915] where it lacks an
11 arguable basis in either law or in fact [The] term ‘frivolous,’ when applied to a complaint,
12 embraces not only the inarguable legal conclusion, but also the fanciful factual allegation.”). “A
13 case is malicious if it was filed with the intention or desire to harm another.” *Andrews*, 398 F.3d
14 at 1121 (quotation and citation omitted).

15 **B. Application of 28 U.S.C. § 1915(g)**

16 The Court notes as an initial matter that Plaintiff has alleged no facts to show that he is
17 presently in any imminent physical danger.² Thus, Plaintiff may be barred from proceeding IFP
18 in this action if he has on three prior occasions had civil actions or appeals dismissed as
19 frivolous, malicious or for failing to state a claim. *See* 28 U.S.C. § 1915(g).

20 A court “may take notice of proceedings in other courts, both within and without the
21 federal judicial system, if those proceedings have a direct relation to matters at issue.” *United*
22 *States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir.
23 1992); *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169, 1172 (10th Cir. 1979). Here, the
24 Court takes judicial notice that Plaintiff has had at least three prior prisoner civil actions
25 dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon
26 which relief may be granted pursuant to 28 U.S.C. §§ 1915(e)(2), and 1915A. *See Hines v. City*
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28 ² As Plaintiff is currently incarcerated in Arizona, the Southern District of California is not the appropriate venue for any claims of imminent danger of serious physical injury.

1 of *San Diego Police Dep't*, Civil Case No. 00cv0969 K (LAB) (S.D. Cal. June 21, 1999) (Order
2 dismissing complaint for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(b)(ii) &
3 1915A(b)(1)) (strike one); *Malloy v. Kowolski*, Civil Case No. 00cv1186 W (LAB) (S.D. Cal
4 June 30, 2000) (Order dismissing complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B))
5 (strike two); *Hines v. Hisson*, Civil Case No. 00cv1177 JM (NLS) (S.D. Cal. July 14, 2000)
6 (Order dismissing complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)) (strike three);
7 *Malloy v. Corcoran Prison*, Civil Case No. 00cv5660 REC (DLB) (E.D. Cal. Sept. 25, 2000)
8 (Order dismissing complaint as frivolous) (strike four); *Hines v. Jaffe*, Civil Case No. 00cv2078
9 W (CGA) (S.D. Cal. November 7, 2000) (Order dismissing complaint as frivolous) (strike five);
10 *Malloy v. Galaza*, Civil Case No. 00cv5647 AWI (HGB) (E.D. Cal. December 13, 2000) (Order
11 dismissing action for failing to state a claim) (strike six); and *Malloy v. Corcoran Prison*,
12 99cv6647 REC (SMS) (E.D. Cal. December 15, 2000) (Order dismissing complaint as frivolous
13 and for failing to state a claim) (strike seven).

14 Accordingly, because Plaintiff has, while incarcerated, accumulated more than three
15 “strikes” pursuant to § 1915(g), and does not claim to be under imminent danger of serious
16 physical injury, he may not proceed IFP in this action.

17 **III. Conclusion and Order**

18 For the reasons set forth above, the Court hereby **DENIES** Plaintiff’s Motion to Proceed
19 IFP pursuant to 28 U.S.C. § 1915(g) [Doc. No. 3] and **DISMISSES** the case without prejudice
20 for failure to pay the full \$350 civil filing fee required by 28 U.S.C. § 1914(a).

21 The Clerk shall close the file.

22 **IT IS SO ORDERED.**

23 DATED: June 14, 2007

24 
25 **WILLIAM Q. HAYES**
26 United States District Judge

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