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

SHAWN WOODALL,
CDCR #F-91270,

Plaintiff,

vs.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

Civil No. 10-1218 MMA (CAB)

ORDER:

**1) DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AS BARRED BY 28 U.S.C. § 1915(g)
[Doc. No. 2]**

AND

**2) DISMISSING CIVIL ACTION
FOR FAILING TO PAY CIVIL
FILING FEE REQUIRED BY
28 U.S.C. § 1914(a)**

Plaintiff, a state prisoner proceeding pro se and currently incarcerated at Richard J. Donovan Correctional Facility in San Diego, California,¹ has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff has filed a Complaint that is nearly 200 hundred pages long and attached more than 1400 pages of exhibits.

Plaintiff also has not prepaid the \$350 civil filing fee required by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

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¹ See Plaintiff’s Notice of Change of Address, filed August 3, 2010. [Doc. No. 4.]

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) (hereafter “*Andrews*”). “Pursuant to
12 § 1915(g), a prisoner with three strikes or more cannot proceed IFP.” *Id.*; *see also Andrews v.*
13 *Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter “*Cervantes*”) (under the PLRA,
14 “[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred from IFP
15 status under the three strikes rule[.]”). The objective of the PLRA is to further “the
16 congressional goal of reducing frivolous prisoner litigation in federal court.” *Tierney v. Kupers*,
17 128 F.3d 1310, 1312 (9th Cir. 1997).

18 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which were
19 dismissed on the ground that they were frivolous, malicious, or failed to state a claim,”
20 *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the district court styles
21 such dismissal as a denial of the prisoner’s application to file the action without prepayment of
22 the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008). Once a prisoner has
23 accumulated three strikes, he is prohibited by section 1915(g) from pursuing any other IFP
24 action in federal court unless he can show he is facing “imminent danger of serious physical
25 injury.” *See* 28 U.S.C. § 1915(g); *Cervantes*, 493 F.3d at 1051-52 (noting § 1915(g)’s exception
26 for IFP complaints which “make[] a plausible allegation that the prisoner faced ‘imminent
27 danger of serious physical injury’ at the time of filing.”).

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1 **II. Application of 28 U.S.C. § 1915(g)**

2 As an initial matter, the Court has carefully reviewed Plaintiff’s Complaint and has
3 ascertained that there is no “plausible allegation” to suggest Plaintiff “faced ‘imminent danger
4 of serious physical injury’ at the time of filing.” *Cervantes*, 493 F.3d at 1055 (quoting 28
5 U.S.C. § 1915(g)).

6 A court “‘may take notice of proceedings in other courts, both within and without the
7 federal judicial system, if those proceedings have a direct relation to matters at issue.’” *Bias*
8 *v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d
9 801, 803 n.2 (9th Cir. 2002)); *see also United States ex rel. Robinson Rancheria Citizens*
10 *Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). Thus, this Court takes judicial
11 notice that Plaintiff has had at least three prisoner civil actions dismissed as frivolous,
12 malicious, or for failing to state a claim in the Southern District of California.

13 They are:

- 14 1) *Woodall v. Imperial County Sheriff’s Dep’t*, Civil Case No. 00-2584 JM (LSP)
15 (S.D. Cal. Mar. 5, 2001) (Order dismissing complaint for failing to state a claim
16 pursuant to 28 U.S.C. § 1915A) (strike one);
- 17 2) *Woodall v. U.S. Marshal Service, et al.*, Civil Case No. 01-0179 BTM (LAB)
18 (S.D. Cal. Mar. 17, 2001) (Order dismissing complaint as frivolous pursuant to
19 28 U.S.C. § 1915A) (strike two);
- 20 3) *Woodall v. C. Trujillo, et al.*, Civil Case no. 01-0004 BTM (CGA) (S.D. Cal.
21 Apr. 17, 2001) (Order dismissing complaint as frivolous pursuant to 28 U.S.C.
22 § 1915A) (strike three);
- 23 4) *Woodall v. California Forensic Medical Group*, Civil Case no. 01-0180 BTM
24 (LAB) (S.D. Cal. Apr. 17 2001) (Order dismissing complaint for failing to state
25 a claim pursuant to 28 U.S.C. § 1915A) (strike four).

26 Accordingly, because Plaintiff has, while incarcerated, accumulated at least three
27 “strikes” pursuant to § 1915(g), and he fails to make a “plausible allegation” that he faced
28 imminent danger of serious physical injury at the time he filed his Complaint, he is not entitled

1 to the privilege of proceeding IFP in this action. *See Cervantes*, 493 F.3d at 1055; *Rodriguez*,
2 169 F.3d at 1180 (finding that 28 U.S.C. § 1915(g) “does not prevent all prisoners from
3 accessing the courts; it only precludes prisoners with a history of abusing the legal system from
4 continuing to abuse it while enjoying IFP status”); *see also Franklin v. Murphy*, 745 F.2d 1221,
5 1231 (9th Cir. 1984) (“[C]ourt permission to proceed IFP is itself a matter of privilege and not
6 right.”).

7 **III. Conclusion and Order**


8 For the reasons set forth above, the Court hereby:

- 9 1) **DENIES** Plaintiff’s Motion to Proceed IFP [Doc. No. 2] pursuant to 28 U.S.C.
10 § 1915(g);
11 2) **DISMISSES** this action without prejudice for failure to pay the \$350 civil filing
12 fee required by 28 U.S.C. § 1914(a); and
13 3) **CERTIFIES** that an IFP appeal from this Order would be frivolous and therefore,
14 would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United*
15 *States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977)
16 (indigent appellant is permitted to proceed IFP on appeal only if appeal would not be frivolous).

17 The Clerk shall close the file.

18 **IT IS SO ORDERED.**

19
20 DATED: August 16, 2010

21 

22 Hon. Michael M. Anello
23 United States District Judge