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

CHARLES MILLER,
Booking #13761632,
Former CDCR #F-88264, #T-186631,

Plaintiff,

Civil No. 13cv2785 JAH (JLB)

vs.

WILLIAM D. GORE, Sheriff;
DANIEL PENA, Deputy Sheriff (Captain);
CARL BREWER, Deputy Sheriff; JOHN
DOE, Deputy Sheriff,

Defendants.

ORDER:

**(1) DENYING PLAINTIFF’S
MOTIONS TO PROCEED
IN FORMA PAUPERIS AND
FOR APPOINTMENT OF
COUNSEL AS BARRED
BY 28 U.S.C. § 1915(g)
(ECF Doc. Nos. 2, 6)**

**(2) GRANTING PLAINTIFF’S
MOTION TO CORRECT
SPELLING BUT DENYING HIS
REQUEST FOR LOCAL
RULES AS MOOT
(ECF Doc. No. 4)**

AND

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

Charles Miller (“Plaintiff”), who is currently detained at Los Angeles Men’s Central Jail, and proceeding pro se, has filed this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a);

1 instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28
2 U.S.C. § 1915(a) (ECF Doc. No. 2).¹

3 In addition, Plaintiff has submitted a Motion requesting that the Clerk correct the
4 spelling of Defendant Pena’s name and a copy of the Court’s Local Rules (ECF Doc. No.
5 4), as well as a Motion for Appointment of Counsel (ECF Doc. No. 6) pursuant to 28
6 U.S.C. § 1915(e)(1).

7 **I.**

8 **Motion to Proceed IFP**

9 Section 1915 of Title 28 of the United States Code allows certain litigants to
10 pursue civil litigation IFP, that is, without the full prepayment of fees or costs. 28 U.S.C.
11 § 1915(a)(2). However, the Prison Litigation Reform Act (“PLRA”) amended section
12 1915 to preclude the privilege to proceed IFP:

13 . . . if [a] prisoner has, on 3 or more prior occasions, while
14 incarcerated or detained in any facility, brought an action or
15 appeal in a court of the United States that was dismissed on the
16 grounds 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.

17 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’
18 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005) (hereafter
19 “*Andrews*”). “Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed
20 IFP.” *Id.*; see also *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter
21 “*Cervantes*”) (under the PLRA, “[p]risoners who have repeatedly brought unsuccessful
22 suits may entirely be barred from IFP status under the three strikes rule[.]”). The
23 objective of the PLRA is to further “the congressional goal of reducing frivolous prisoner
24 litigation in federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).

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28 ¹ On January 30, 2014, Plaintiff filed a Notice of Change of Address indicating his
transfer from the San Diego Central Jail to the LA Central Jail (ECF Doc. No. 7).

1 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner,
2 which were dismissed on the ground that they were frivolous, malicious, or failed to state
3 a claim,” *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the
4 district court styles such dismissal as a denial of the prisoner’s application to file the
5 action without prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153
6 (9th Cir. 2008). Once a prisoner has accumulated three strikes, he is prohibited by
7 section 1915(g) from pursuing any other IFP action in federal court unless he can show
8 he is facing “imminent danger of serious physical injury.” *See* 28 U.S.C. § 1915(g);
9 *Cervantes*, 493 F.3d at 1051-52 (noting § 1915(g)’s exception for IFP complaints which
10 “make[] a plausible allegation that the prisoner faced ‘imminent danger of serious
11 physical injury’ at the time of filing.”).

12 II.

13 Application of 28 U.S.C. § 1915(g)

14 As an initial matter, the Court has carefully reviewed Plaintiff’s Complaint and
15 has ascertained that there is no “plausible allegation” to suggest Plaintiff “faced
16 ‘imminent danger of serious physical injury’ at the time of filing.” *Cervantes*, 493 F.3d
17 at 1055 (quoting 28 U.S.C. § 1915(g)). Plaintiff alleges that Defendants, all San Diego
18 County Jail officials, limited his access to a law library, found him guilty of a rules
19 violation because he is “an inmate who is a grievance writer,” and denied his requests
20 for a pillow, an extra mattress, blanket, and shoes with arch supports. *See* Compl. at 3-5.
21 Nothing in Plaintiff’s Complaint suggests he faced any “‘ongoing danger’ of serious
22 physical injury sufficient to “meet the imminence prong of the three-strikes exception”
23 at the time he filed his Complaint. *Cervantes*, 493 F.3d at 1057. Therefore, Plaintiff
24 may be barred from proceeding IFP in this action if he has on three prior occasions had
25 civil actions or appeals dismissed as frivolous, malicious or for failing to state a claim.
26 *See* 28 U.S.C. § 1915(g).

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1 A court ““may take notice of proceedings in other courts, both within and without
2 the federal judicial system, if those proceedings have a direct relation to matters at
3 issue.”” *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v.*
4 *Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)); *see also United States ex rel.*
5 *Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

6 Thus, this Court takes judicial notice that Plaintiff Charles Miller, currently
7 identified under Booking No. 13761632, aka Charles Lamont Miller, former CDCR #T-
8 18663 and #F-88264,² has had at least five prior prisoner civil actions dismissed on the
9 grounds that they were frivolous, malicious, or failed to state a claim upon which relief
10 may be granted. *See* 28 U.S.C. § 1915(g).

11 They are:

12 1) *Miller v. Kolender, et al.*, Civil Case No. 01-cv-1061 JM (NLS) (S.D. Cal.
13 Aug. 29, 2001) (Order dismissing complaint for failing to state a claim pursuant to 28
14 U.S.C. §§ 1915(e)(2)(b)(ii) & 1915A(b)(1)) (ECF Doc. No. 7) & (S.D. Cal. Aug. 5,
15 2008) (Order Denying Motion for Reconsideration) (ECF Doc. No. 22) (strike one);

16 2) *Miller v. Hudgins, et al.*, Civil Case No. 01-cv-1615 BTM (JFS) (S.D. Cal.
17 Nov. 26, 2001) (Order dismissing complaint for failing to state a claim pursuant to 28
18 U.S.C. §§ 1915(e)(2)(b)(ii) & 1915A(b)(1)) (ECF Doc. No. 4) (strike two);

19 3) *Miller v. Vandyke, et al.*, Civil Case No. 02-cv-1490 BTM (JFS) (S.D. Cal.
20 Oct. 2, 2002) (Order denying motion to proceed IFP and dismissing action for failing to
21 state a claim pursuant to 28 U.S.C. § 1915A(b)) (ECF Doc. No. 5) (strike three);

22 4) *Miller v. Hernandez, et al.*, Civil Case No. 02-cv-1653 JAH (NLS) (S.D.
23 Cal. Aug. 29, 2002) (Order dismissing complaint for failing to state a claim pursuant to
24 28 U.S.C. §§ 1915(e)(2)(b)(ii) & 1915A(b)(1)) (ECF Doc. No. 5) & (S.D. Cal. Nov. 21,

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26 ² The Court has verified with the California Department of Corrections and
27 Rehabilitation’s ID Warrants Unit that Plaintiff, Charles Lamont Miller, former designated
28 CDCR Inmate #F-88264, is the same prisoner who was previously designated as Inmate #T-
18663. According to the ID Warrants Unit, Inmate #T-18663 was “discharged” on December
18, 2003, and Plaintiff was designated with new CDCR Inmate #F-88264 upon a later re-
commitment.

1 2003) (Judgment of Dismissal for failure to prosecute) (ECF Doc. No. 21) (strike four);
2 and

3 5) *Miller v. Brooks, et al.*, Civil Case No. 03-cv-0155 GHK (FFM) (C.D. Cal.,
4 West. Div., June 15, 2007) (Order granting Motion to Dismiss for failure to state a claim
5 pursuant to FED.R.CIV.P. 12(b)(6)) (ECF Doc. No. 98); (C.D. Cal. West. Div., Aug. 16,
6 2007) (Report and Recommendation to Dismiss for failure to comply with Court Order
7 requiring amendment) (ECF Doc. No. 100); (C.D. Cal. West. Div., Oct. 16, 2007) (Order
8 adopting findings, conclusions and recommendations and dismissing action) (ECF Doc.
9 No. 103) (strike five).³

10 Accordingly, because Plaintiff has, while incarcerated, accumulated far more than
11 the three “strikes” permitted pursuant to § 1915(g), and he fails to make a “plausible
12 allegation” that he faced imminent danger of serious physical injury at the time he filed
13 his Complaint, he is not entitled to the privilege of proceeding IFP in this action. *See*
14 *Cervantes*, 493 F.3d at 1055; *Rodriguez*, 169 F.3d at 1180 (finding that 28 U.S.C.
15 § 1915(g) “does not prevent all prisoners from accessing the courts; it only precludes
16 prisoners with a history of abusing the legal system from continuing to abuse it while
17 enjoying IFP status”); *see also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984)
18 (“[C]ourt permission to proceed IFP is itself a matter of privilege and not right.”).

19 III.

20 Conclusion and Order

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

22 1) DENIES Plaintiff’s Motions to Proceed IFP (ECF Doc. No. 2) and for
23 Appointment of Counsel (ECF Doc. No. 6) pursuant to 28 U.S.C. § 1915(g);

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27 ³ The Court notes Plaintiff was previously denied IFP pursuant to 28 U.S.C. § 1915(g)
28 in *Miller v. Kolender, et al.*, S.D. Cal. Civil Case No. 09-cv-2803 W (NLS) (Dec. 31, 2009 Order
Denying Motion to Proceed IFP as barred by 28 U.S.C. § 1915(g) and Dismissing Civil Action
for Failure to Pay Filing Fees [ECF Doc. No. 5]).

