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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 TONY BLACKMAN,
12 CDCR #V-22349,

13 Plaintiff,

14 vs.

15 P. BRACAMONTE, C Yard Captain,
16 et al.,

17 Defendants.
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Case No.: 3:17-cv-00059-LAB-JLB

ORDER:

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

AND

**(2) DISMISSING CIVIL ACTION
WITHOUT PREJUDICE FOR
FAILURE TO PAY FILING FEE
REQUIRED BY 28 U.S.C. § 1914(a)**

22 TONY BLACKMAN (Plaintiff), currently incarcerated at Richard J. Donovan
23 Correctional Facility (RJD) in San Diego, California, and proceeding pro se, has filed a
24 civil rights complaint pursuant to 42 U.S.C. § 1993 (ECF No. 1).

25 While far from clear, Plaintiff's Complaint alleges several RJD officials, including
26 the Warden, have "refuse[d] to stop other prison employees from subjecting [him] to
27 unjustified deprivation[s]." (*Id.* at 2.) Specifically, Plaintiff contends RJD inmate appeals
28 officials have "wrongfully rejecte[ed]" his grievances, (*id.* at 5, 7), and have refused to

1 “double-cell” him, a “star witness ... not under scientific nuclear power electronic
2 surveillance watch 24/7,” with white, black, or Mexican inmates “in his weight division,”
3 based on their “extreme fear of losing there [sic] power.” (*Id.* at 6, 8, 10-13.) In other
4 portions of his pleading, Plaintiff invokes “Ferguson,” the “September 11, 2001 terrorist
5 attack,” the “Sandy Hook Elementary School shooting,” and a “Folsom prison riot,”
6 claims he has been denied the right to “appeal” or “appear” in court to answer “criminal
7 charges filed against [him] on 5-24-04 and 8-27-07 and 3-19-10 and 7-8-03,” and
8 attributes all of this to the “former San Joaquin County Deputy District Attorney using
9 scientific nuclear power radio ultra[-]low frequency radio waves radiation pressure to
10 stop [him] from writing good [sic].” (*Id.* at 11.)

11 Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a);
12 instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28
13 U.S.C. § 1915(a) (ECF No. 2).

14 **I. Motion to Proceed IFP**

15 “All persons, not just prisoners, may seek IFP status.” *Moore v. Maricopa County*
16 *Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). Prisoners like Plaintiff, however,
17 “face an additional hurdle.” *Id.* In addition to requiring prisoners to “pay the full amount
18 of a filing fee,” in “monthly installments” or “increments” as provided by 28 U.S.C.
19 § 1915(a)(3)(b), *Bruce v. Samuels*, ___ U.S. ___, 136 S. Ct. 627, 629 (2016); *Williams v.*
20 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), the Prison Litigation Reform Act
21 (“PLRA”) amended section 1915 to preclude the privilege to proceed IFP:

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

27 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’
28 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005).

1 “Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed IFP.”
2 *Id.*; *see also Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter
3 “*Cervantes*”) (under the PLRA, “[p]risoners who have repeatedly brought unsuccessful
4 suits may entirely be barred from IFP status under the three strikes rule[.]”). The
5 objective of the PLRA is to further “the congressional goal of reducing frivolous prisoner
6 litigation in federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).
7 “[S]ection 1915(g)’s cap on prior dismissed claims applies to claims dismissed both
8 before and after the statute’s effective date.” *Id.* at 1311.

9 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner,
10 which were dismissed on the ground that they were frivolous, malicious, or failed to state
11 a claim,” *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the
12 district court styles such dismissal as a denial of the prisoner’s application to file the
13 action without prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153
14 (9th Cir. 2008); *see also El-Shaddai v. Zamora*, 833 F.3d 1036, 1042 (9th Cir. 2016)
15 (noting that when court “review[s] a dismissal to determine whether it counts as a strike,
16 the style of the dismissal or the procedural posture is immaterial. Instead, the central
17 question is whether the dismissal ‘rang the PLRA bells of frivolous, malicious, or failure
18 to state a claim.’”) (quoting *Blakely v. Wards*, 738 F.3d 607, 615 (4th Cir. 2013)).

19 Once a prisoner has accumulated three strikes, he is simply prohibited by section
20 1915(g) from pursuing any other IFP civil action or appeal in federal court unless he
21 alleges he is facing “imminent danger of serious physical injury.” *See* 28 U.S.C.
22 § 1915(g); *Cervantes*, 493 F.3d at 1051-52 (noting § 1915(g)’s exception for IFP
23 complaints which “make[] a plausible allegation that the prisoner faced ‘imminent danger
24 of serious physical injury’ at the time of filing.”).

25 **II. Application to Plaintiff**

26 As an initial matter, the Court has carefully reviewed Plaintiff’s Complaint and has
27 ascertained that it does not contain any “plausible allegations” to suggest he “faced
28 ‘imminent danger of serious physical injury’ at the time of filing.” *Cervantes*, 493 F.3d at

1 1055 (quoting 28 U.S.C. § 1915(g)). Instead, as noted above, Plaintiff’s Complaint seeks
2 to sue RJD officials as a group for failing to prevent “unjustified deprivations” which
3 involve delusional claims of “tower control officers[’] T.V. cameras,” “electronic
4 surveillance,” “nuclear power,” and “ultra-low frequency radio waves” which “control
5 people [sic] conscious mind and impulse[s].” (ECF No. 1 at 2-11.) *See e.g., In re*
6 *Gonzalez*, 2008 WL 666465 at *2-3 (N.D. Cal. March 6, 2008) (finding prisoner with a
7 “delusional tale” of having a “special genetic structure,” and being “irradiated ... by
8 radioactive smoke” by “government scientists,” did not plausibly allege “imminent
9 danger of serious physical injury.”); *Holz v. McFadden*, 2010 WL 3069745 at *3 (C.D.
10 Cal. May 21, 2010) (finding “imminent danger” exception to § 1915(g) inapplicable
11 where prisoner implausibly claimed the FBI and BOP were “going to kill him.”); *Sierra*
12 *v. Woodford*, 2010 WL 1657493 at *3 (E.D. Cal. April 23, 2010) (finding “long,
13 narrative, rambling statements regarding a cycle of violence, and vague references to
14 motives to harm” insufficient to show Plaintiff faced an “on going danger” as required by
15 *Cervantes*).

16 And while Defendants typically carry the burden to show that a prisoner is not
17 entitled to proceed IFP, *Andrews*, 398 F.3d at 1119, “in some instances, the district court
18 docket may be sufficient to show that a prior dismissal satisfies at least one on the criteria
19 under § 1915(g) and therefore counts as a strike.” *Id.* at 1120. That is the case here.

20 A court may take judicial notice of its own records, *see Molus v. Swan*, Civil Case
21 No. 3:05-cv-00452–MMA-WMc, 2009 WL 160937, *2 (S.D. Cal. Jan. 22, 2009) (citing
22 *United States v. Author Services*, 804 F.2d 1520, 1523 (9th Cir. 1986)); *Gerritsen v.*
23 *Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015), and ““may take
24 notice of proceedings in other courts, both within and without the federal judicial system,
25 if those proceedings have a direct relation to matters at issue.”” *Bias v. Moynihan*, 508
26 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803
27 n.2 (9th Cir. 2002)); *see also United States ex rel. Robinson Rancheria Citizens Council*
28 *v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

1 Thus, this Court takes judicial notice that Plaintiff, Tony Blackman, identified as
2 CDCR Inmate #V-22349, has had at least six prior prisoner civil actions dismissed on the
3 grounds that they were frivolous, malicious, or failed to state a claim upon which relief
4 may be granted.

5 They are:

6 1) *Blackman v. Hartwell, et al.*, Civil Case No. 1:99-cv-05822-
7 REC-HGB (E.D. Cal. Jan. 19, 2001) (Findings and Recommendations
8 [“F&R”] re Dismissal of Action) (ECF No. 9 at 2) (“[T]he court recommends
9 dismissal of the claims made in the original complaint with prejudice for
10 failure to state a federal claim upon which the court could grant relief.”); (E.D.
11 Cal. March 12, 2001) (Order Adopting F&R “in full” and dismissing action
12 “for failure to state a claim upon which relief can be granted.”) (ECF No. 10
13 at 2) (strike one);

14 2) *Blackman v. Medina*, Civil Case No. 3:05-cv-05390-SI (N.D.
15 Cal. March 13, 2006) (Order of Dismissal without leave to amend pursuant to
16 28 U.S.C. § 1915A) (ECF No. 5 at 5) (“[N]either the complaint nor the
17 amended complaint state a claim upon which relief may be granted.”) (strike
18 two);

19 3) *Blackman v. Variz*, Civil Case No. 3:06-cv-06398-SI (N.D. Cal.
20 Dec. 18, 2006) (Order of Dismissal per 28 U.S.C. § 1915A) (ECF No. 5 at 5)
21 (“[N]either the complaint nor the amended complaint state a claim upon which
22 relief may be granted.”) (strike three);

23 4) *Blackman v. Taxdahl, et al.*, Civil Case No. 1:04-cv-06389-AWI-
24 LJO (E.D. Cal. Feb. 27, 2007) (F&R to Dismiss Action without leave to
25 amend for “fail[ure] to state a claim for relief under section 1983.”) (ECF No.
26 8 at 5); (E.D. Cal. May 18, 2007) (Order Adopting F&R “in full” and
27 “Dismissing Entire Action.”) (ECF No. 9) (strike four);

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1 5) *Blackman v. Mantel, et al.*, Civil Case No. 3:07-cv-02609-SI
2 (N.D. Cal. Sept. 5, 2007) (Order of Dismissal per 28 U.S.C. § 1915A) (ECF
3 No. 4 at 4) (“[T]his action is dismissed without leave to amend because the
4 complaint fails to state a claim upon which relief may be granted.”) (strike
5 five); and

6 6) *Blackman v. Evans, et al.*, Civil Case No. 1:06-cv-00081-GSA
7 (E.D. Cal. Feb. 3, 2009) (Order Dismissing Action, with prejudice, “based on
8 plaintiff’s failure to state any claims upon which relief may be granted under
9 section 1983.”) (ECF No. 18 at 2) (strike six).

10 Accordingly, because Plaintiff has, while incarcerated, accumulated more than
11 three “strikes” pursuant to § 1915(g), and he fails to make a “plausible allegation” that he
12 faced imminent danger of serious physical injury at the time he filed his Complaint, he is
13 not entitled to the privilege of proceeding IFP in this action. *See Cervantes*, 493 F.3d at
14 1055; *Rodriguez v. Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999) (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. Conclusion and Order**

20 For the reasons set forth above, the Court:

- 21 1) **DENIES** Plaintiff’s Motion to Proceed IFP (ECF No. 2) as barred by 28
22 U.S.C. § 1915(g);
- 23 2) **DISMISSES** this action without prejudice for failure to pay the full statutory
24 and administrative \$400 civil filing fee required by 28 U.S.C. § 1914(a);
- 25 3) **CERTIFIES** that an IFP appeal from this Order would be frivolous and
26 therefore, would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See*
27 *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548,

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1 550 (9th Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if
2 appeal would not be frivolous); and

3 4) **DIRECTS** the Clerk of Court to close the file.

4 **IT IS SO ORDERED.**

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6 Dated: June 14, 2017

7 
8 HON. LARRY ALAN BURNS
9 United States District Judge

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