

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

EARNEST CASSELL WOODS, II,  
Booking #14745493,

Plaintiff,

V.

R. MADDEN, ET AL.,

## Defendants.

Case No.: 3:17-cv-00164-JAH-KSC

## ORDER:

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

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

**(3) DENYING MOTION FOR  
APPOINTMENT OF COUNSEL AS  
MOOT**

Plaintiff, Earnest Cassell Woods, currently housed at San Quentin State Prison, has filed a civil rights Complaint (“Compl.”) pursuant to 42 U.S.C. § 1983. (ECF Doc. No. 1.) Plaintiff alleges that his constitutional rights were violated at Centinela State Prison during an unspecified time period. See Compl. at 5.

1 Plaintiff has not prepaid the full civil filing fee required by 28 U.S.C. § 1914(a);  
2 instead, he has filed a Motion to Proceed In Forma Pauperis (“IFP”) (ECF Doc. No. 2).  
3 In addition, Plaintiff has filed a Motion for Appointment of Counsel (ECF Doc. No. 3).

4 **I. Motion to Proceed IFP**

5 “All persons, not just prisoners, may seek IFP status.” *Moore v. Maricopa County*  
6 *Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). “Prisoners” like Plaintiff, however,  
7 “face an additional hurdle.” *Id.* In addition to requiring prisoners to “pay the full amount  
8 of a filing fee,” in “increments” as provided by 28 U.S.C. § 1915(a)(3)(b), *Williams v.*  
9 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), the Prison Litigation Reform Act  
10 (“PLRA”) amended section 1915 to preclude the privilege to proceed IFP:

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

15 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’  
16 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005) (hereafter  
17 “Andrews”).

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

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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 section  
7 1915(g) from pursuing any other IFP action in federal court unless he can show he is  
8 facing “imminent danger of serious physical injury.” See 28 U.S.C. § 1915(g); Cervantes,  
9 493 F.3d at 1051-52 (noting § 1915(g)’s exception for IFP complaints which “make[] a  
10 plausible allegation that the prisoner faced ‘imminent danger of serious physical injury’  
11 at the time of filing.”).

## 12 || II. Application to Plaintiff

13 As an initial matter, the Court has carefully reviewed Plaintiff's Complaint and has  
14 ascertained that it does not contain "plausible allegations" which suggest he "faced  
15 'imminent danger of serious physical injury' at the time of filing." Cervantes, 493 F.3d at  
16 1055 (quoting 28 U.S.C. § 1915(g)).

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

22 Thus, this Court takes judicial notice that Plaintiff, while incarcerated, has brought  
23 at least three prior civil actions which have been dismissed on the grounds that they were  
24 frivolous, malicious, or failed to state a claim upon which relief may be granted. See 28  
25 U.S.C. § 1915(g).

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1 They are:

- 2 1) Woods v. Carey, et al., Civil Case No. 3:05-cv-01157-MJJ (N.D. Cal. May  
3 31, 2005) (Order Dismissing Complaint for failing to state a claim) (ECF  
4 Doc. No. 8) (strike one);  
5 2) Woods v. Carey, et al., Civil Case No. 3:05-cv-00049-MCE-DAD (E.D. Cal.  
6 Jan. 26, 2006) (Order adopting Findings and Recommendations and  
7 dismissing action for failure to state a claim upon which relief may be  
8 granted) (ECF Doc. No. 14) (strike two);  
9 3) Woods v. Marshall, et al., Civil Case No. 3:11-cv-08551-UA-OP (C.D. Cal.  
10 Jan. 19, 2012) (Order Denying Motion to Proceed IFP and dismissing action  
11 as frivolous (ECF Doc. No. 3) (strike three).

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

21 **III. Conclusion and Order**

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

- 23 (1) DENIES Plaintiff’s Motion to Proceed IFP (ECF Doc. No. 2) as barred by  
24 28 U.S.C. § 1915(g);  
25 (2) DISMISSES this civil action sua sponte without prejudice for failing to  
26 prepay the \$400 civil and administrative filing fees required by 28 U.S.C. § 1914(a).

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1 (3) DENIES Plaintiff's Motion to Appoint Counsel (ECF Doc. No. 3) as moot.  
2 The Clerk shall close the file.  
3 IT IS SO ORDERED.  
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5 Dated: March 21, 2017

John A. Houston  
Hon. John A. Houston  
United States District Judge

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