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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY **MKN** DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HOANG MINH TRAN,
Booking #17104099,

Plaintiff,

vs.

BARONA CASINO, et al.,

Defendants.

Case No.: 3:17-cv-00685-BEN-BLM

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)**

HOANG MINH TRAN (Plaintiff), a pretrial detainee and/or convicted prisoner serving his sentence in local custody at the San Diego County Sheriff Department’s George Bailey Detention Facility, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff claims Barona Casino, several unidentified security guards, and California State Department of Justice officials wrongfully arrested, imprisoned, and interrogated him against his will in December 2016, for “passing bogus money,” attempted burglary, and attempted robbery. (*Id.* at 3.)

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

4 **I. Motion to Proceed IFP**

5 “All persons, not just prisoners, may seek IFP status.” *Moore v. Maricopa Cnty.*
6 *Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). Prisoners like Plaintiff, however,
7 “face ... additional hurdle[s].” *Id.*

8 Specifically, in addition to requiring prisoners to “pay the full amount of a filing
9 fee,” in “monthly installments” or “increments” as provided by 28 U.S.C.
10 § 1915(a)(3)(b), *Bruce v. Samuels*, __ U.S. __, 136 S. Ct. 627, 629 (2016); *Williams v.*
11 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), the Prison Litigation Reform Act
12 (“PLRA”) amended section 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
17 upon which relief can be granted, unless the prisoner is under
imminent danger of serious physical injury.

18 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’
19 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005).

20 “Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed IFP.”
21 *Id.*; *see also Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereinafter
22 “*Cervantes*”) (under the PLRA, “[p]risoners who have repeatedly brought unsuccessful
23 suits may entirely be barred from IFP status under the three strikes rule[.]”). The
24 objective of the PLRA is to further “the congressional goal of reducing frivolous prisoner
25 litigation in federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).
26 “[S]ection 1915(g)’s cap on prior dismissed claims applies to claims dismissed both
27 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); *see also El-Shaddai v. Zamora*, 833 F.3d 1036, 1042 (9th Cir. 2016)
7 (noting that when court “review[s] a dismissal to determine whether it counts as a strike,
8 the style of the dismissal or the procedural posture is immaterial. Instead, the central
9 question is whether the dismissal ‘rang the PLRA bells of frivolous, malicious, or failure
10 to state a claim.’” (quoting *Blakely v. Wards*, 738 F.3d 607, 615 (4th Cir. 2013))).

11 Once a prisoner has accumulated three strikes, he is simply prohibited by section
12 1915(g) from pursuing any other IFP civil action or appeal in federal court unless he
13 alleges he is facing “imminent danger of serious physical injury.” *See* 28 U.S.C.
14 § 1915(g); *Cervantes*, 493 F.3d at 1051-52 (noting § 1915(g)’s exception for IFP
15 complaints which “make[] a plausible allegation that the prisoner faced ‘imminent danger
16 of serious physical injury’ at the time of filing.”).

17 **II. Application to Plaintiff**

18 As an initial matter, the Court has carefully reviewed Plaintiff’s Complaint and has
19 ascertained that it does not contain any “plausible allegations” to suggest he “faced
20 ‘imminent danger of serious physical injury’ at the time of filing.” *Cervantes*, 493 F.3d at
21 1055 (quoting 28 U.S.C. § 1915(g)). Instead, as noted above, Plaintiff’s Complaint seeks
22 money damages against mostly unidentified private security and law enforcement
23 personnel for “wrongfully” arresting and holding him “hostage” in a casino in December
24 2016. (ECF No. 1 at 3.) He also objects to the confiscation of \$2,000 in chips, seeks the
25 restoration of his “Diamond Membership status,” and claims someone towed his father’s
26 Toyota Corolla “without valid reason.” (*Id.*)

27 And while Defendants typically carry the burden to show that a prisoner is not
28 entitled to proceed IFP, *Andrews*, 398 F.3d at 1119, “in some instances, the district court

1 docket may be sufficient to show that a prior dismissal satisfies at least one of the criteria
2 under § 1915(g) and therefore counts as a strike.” *Id.* at 1120. That is the case here.

3 A court may take judicial notice of its own records, *see Molus v. Swan*, No. 3:05-
4 cv-00452–MMA-WMc, 2009 WL 160937, *2 (S.D. Cal. Jan. 22, 2009) (citing *United*
5 *States v. Author Servs.*, 804 F.2d 1520, 1523 (9th Cir. 1986), and ““may take notice of
6 proceedings in other courts, both within and without the federal judicial system, if those
7 proceedings have a direct relation to matters at issue.”” *Bias v. Moynihan*, 508 F.3d 1212,
8 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir.
9 2002)); *see also United States ex rel. Robinson Rancheria Citizens Council v. Borneo,*
10 *Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

11 Plaintiff Hoang Minh Tran, currently identified as San Diego Sheriff’s Department
12 Inmate Booking #17104099, and previously identified as CDCR Inmate #AA-5944, has
13 had four prior prisoner civil actions dismissed on the grounds that they were frivolous,
14 malicious, or failed to state a claim upon which relief may be granted. They are:

- 15 1) *Tran v. Gore, et al.*, No. 3:10-cv-1323-BTM-WMc (S.D. Cal. Aug.
16 23, 2010) (Order Granting Motion to Proceed IFP and Dismissing Action
17 For Failing to State a Claim upon which relief may be granted pursuant to 28
18 U.S.C. § 1915(e)(2) & § 1915A(b)) (ECF No. 4) (strike one);
- 19 2) *Tran v. Gore, et al.*, No. 3:10-cv-1751-JAH-WVG (S.D. Cal. Feb. 14,
20 2011) (Order Dismissing First Amended Complaint for Failing to State a
21 Claim and as Frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b))
22 (ECF No. 5) (strike two);
- 23 3) *Tran v. Gore, et al.*, No. 3:10-cv-2036-JAH-WVG (S.D. Cal. Feb. 15,
24 2011) (Order Dismissing First Amended Complaint as Frivolous pursuant to
25 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b)) (ECF No. 8) (strike three); and
- 26 4) *Tran v. Gore, et al.*, No. 3:10-cv-1880-MMA-BLM (S.D. Cal. Feb.
27 14, 2011) (Order Dismissing First Amended Complaint for Failing to State a
28 Claim and as Frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b))

1 (ECF No. 8) (strike four).

2 Accordingly, because Plaintiff has, while incarcerated, accumulated more than
3 three “strikes” pursuant to § 1915(g), and he fails to make a “plausible allegation” that he
4 faced imminent danger of serious physical injury at the time he filed his Complaint, he is
5 not entitled to the privilege of proceeding IFP in this action. *See Cervantes*, 493 F.3d at
6 1055; *Rodriguez v. Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999) (finding that 28 U.S.C.
7 § 1915(g) “does not prevent all prisoners from accessing the courts; it only precludes
8 prisoners with a history of abusing the legal system from continuing to abuse it while
9 enjoying IFP status”); *see also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984)
10 (“[C]ourt permission to proceed IFP is itself a matter of privilege and not right.”).

11 **III. Conclusion and Order**

12 For the reasons set forth above, the Court **DENIES** Plaintiff’s Motion to Proceed
13 IFP (ECF No. 2) as barred by 28 U.S.C. § 1915(g); **DISMISSES** this action without
14 prejudice for failure to pay the full statutory and administrative \$400 civil filing fee
15 required by 28 U.S.C. § 1914(a); **CERTIFIES** that an IFP appeal from this Order would
16 be frivolous and therefore, would not be taken in good faith pursuant to 28 U.S.C.
17 § 1915(a)(3); and **DIRECTS** the Clerk of Court to close the file.

18 **IT IS SO ORDERED.**

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20 Dated: July 10, 2017

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22 HON. ROGER T. BENITEZ
23 United States District Judge
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