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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KOHEN DIALLO UHURU,  
aka DIALLO E. UHURU,  
CDCR #P-73824,  
  
Plaintiff,  
  
vs.  
  
DANIEL PARAMO, et al.,  
  
Defendants.

Case No.: 3:17-cv-0960-GPC-BGS

**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)  
AND FOR FAILURE TO STATE A  
CLAIM PURSUANT TO  
28 U.S.C. § 1915A(b)(1)**

KOHEN DIALLO UHURU (“Plaintiff”), also known as Diallo E. Uhuru, currently incarcerated at the California Men’s Colony (“CMC”) located in San Luis Obispo, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1993 (ECF No. 1).

1 While Plaintiff was housed at CMC at the time he filed this action, the named  
2 Defendants are prison officials at the Richard J. Donovan Correctional Facility (“RJD”).  
3 (See Compl. at 1-2.) Plaintiff’s Complaint contains very few factual allegations. He  
4 alleges that “prison officials knew about the Plaintiff’s serious medical/mental health  
5 needs” and “willfully failed to respond to it.” (Id. at 5.) In addition, he alleges  
6 Defendants denied him the “right to practice my Nubian Hebrew Israelite religion.” (Id.)  
7 There are no other allegations in his Complaint, instead he directs the Court to “see  
8 attachments and exhibits.” (Id.) All the exhibits appear to relate to his religious claims  
9 and he does not attach any exhibits relating to medical or mental health issues. (Id. at 1-  
10 1, 1-15; 2-1, 1-7; 3-1, 1-8). Plaintiff seeks “monetary and punitive compensation for  
11 damages inclusive with declarative and injunctive relief.” (Id. at 6.)

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

15 **I. Motion to Proceed IFP**

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

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

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

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

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

22 Once a prisoner has accumulated three strikes, he is simply prohibited by section  
23 1915(g) from pursuing any other IFP civil action or appeal in federal court unless he  
24 alleges he is facing “imminent danger of serious physical injury.” See 28 U.S.C.  
25 § 1915(g); *Cervantes*, 493 F.3d at 1051-52 (noting § 1915(g)’s exception for IFP  
26 complaints which “make[] a plausible allegation that the prisoner faced ‘imminent danger  
27 of serious physical injury’ at the time of filing.”).

28

1 **II. Application to Plaintiff**

2 As an initial matter, the Court has carefully reviewed Plaintiff’s Complaint and has  
3 ascertained that it does not contain any “plausible allegations” to suggest he “faced  
4 ‘imminent danger of serious physical injury’ at the time of filing.” Cervantes, 493 F.3d at  
5 1055 (quoting 28 U.S.C. § 1915(g)). While Plaintiff names RJD prison officials as  
6 Defendants, and thus the Court presumes that his allegations arise from the time he was  
7 housed there, Plaintiff was housed at CMC at the time he filed this action. (See Compl. at  
8 1.)

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

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

22 Thus, this Court takes judicial notice that Plaintiff, Kohen Diallo Uhuru, also  
23 known as Diallo E. Uhuru, and identified as CDCR Inmate #P-73824, has had three prior  
24 prisoner civil actions dismissed on the grounds that they were frivolous, malicious, or  
25 failed to state a claim upon which relief may be granted.

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1 They are:

2 1) Diallo v. Yarborough, et al., Civil Case No. 2:03-cv-05401-JVS-VBK  
3 (C.D. Cal. February 5, 2004) (Report and Recommendation [“R&R”] to Grant  
4 Defendants’ Motion to Dismiss Complaint for failure to state a claim pursuant  
5 (ECF No. 28 at 11) (“The allegation of the Complaint are insufficient to state a  
6 claim against each individual defendant upon which relief can be granted.”); (C.D.  
7 Cal. April 16, 2004) (Order Accepting R&R Granting Defendants’ Motion to  
8 Dismiss, and Directing that Judgment be entered dismissing action without  
9 prejudice) (ECF No. 34 at 1-2) (strike one);

10 2) Diallo v. Moskowitz, et al., Civil Case No. 2:07-cv-07109-JVS-VBK  
11 (C.D. Cal. June 1, 2009) (Amended R&R Granting Defendants’ Motion to  
12 Dismiss Complaint (ECF No. 48); (C.D. Cal. July 6, 2009) (Order Accepting and  
13 Adopting Amended R&R and dismissing the Complaint, “and the action, with  
14 prejudice.”) (ECF No. 50 at 1-2) (strike two); and

15 3) Diallo v. Greenman, et al., Civil Case No. 2:07-cv-02937-JVS-VBK  
16 (C.D. Cal. Sept. 21, 2009) (R&R Granting Defendants’ Motion to Dismiss First  
17 Amended Complaint) (ECF No. 44 at 8, 25 (“[T]he allegations of the First  
18 Amended Complaint are insufficient to state a federal civil rights claim against  
19 Defendants.”)); (C.D. Cal. Oct. 27, 2009) (Order Accepting & Adopting R&R and  
20 Dismissing First Amended Complaint, “and the action, with prejudice.”) (ECF No.  
21 47) (strike three).

22 Accordingly, because Plaintiff has, while incarcerated, accumulated three “strikes”  
23 pursuant to § 1915(g), and he fails to make a “plausible allegation” that he faced  
24 imminent danger of serious physical injury at the time he filed his Complaint, he is not  
25 entitled to the privilege of proceeding IFP in this action. See Cervantes, 493 F.3d at 1055;  
26 Rodriguez v. Cook, 169 F.3d 1176, 1180 (9th Cir. 1999) (finding that 28 U.S.C.  
27 § 1915(g) “does not prevent all prisoners from accessing the courts; it only precludes  
28 prisoners with a history of abusing the legal system from continuing to abuse it while

1 enjoying IFP status”); see also *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984)  
2 (“[C]ourt permission to proceed IFP is itself a matter of privilege and not right.”).

### 3 **III. Screening of Complaint pursuant to § 1915A**

4 While Plaintiff has been denied leave to commence this civil action without  
5 prepayment of the \$400 civil filing fee required by 28 U.S.C. § 1914(a), and his case  
6 requires dismissal for that reason alone, the Court also elects to conduct a sua sponte  
7 review of Plaintiff’s pleading because he was “incarcerated or detained in any facility  
8 [and] is accused of, sentenced for, or adjudicated delinquent for, violations of criminal  
9 law or the terms or conditions of parole, probation, pretrial release, or diversionary  
10 program” at the time he filed this action. See 28 U.S.C. § 1915A(a), (c).

11 Section 1915A, also enacted as part of PLRA, requires sua sponte dismissal of  
12 prisoner complaints, or any portions thereof, which are frivolous, malicious, or fail to  
13 state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b); *Coleman v.*  
14 *Tollefson*, 135 S. Ct. 1759, 1764 (2015); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir.  
15 2000). “The purpose of § 1915A is to ‘ensure that the targets of frivolous or malicious  
16 suits need not bear the expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920  
17 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681  
18 (7th Cir. 2012)).

19 Plaintiff’s Complaint fails to state a claim upon which § 1983 relief may be  
20 granted against any of the named Defendants. See *id.*; 28 U.S.C. § 1915A(b)(1). In order  
21 to state a claim against an official in his personal capacity, Plaintiff must allege facts  
22 which demonstrate that each named defendant personally participated in the deprivation  
23 of his rights. *Ashcroft v. Iqbal*, 556 U.S. 662, 676-77 (2009); *Simmons v. Navaho Cnty*,  
24 609 F.3d 1011, 1020-21 (9th Cir. 2010); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir.  
25 2002). Plaintiff may not attribute liability to a group of defendants, but instead, must “set  
26 forth specific facts as to each individual defendant’s” deprivation of his rights. *Leer v.*  
27 *Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); see also *Taylor v. List*, 880 F.2d 1040, 1045  
28 (9th Cir. 1989). Liability may not be imposed on supervisory personnel under the theory

1 of respondeat superior, as each defendant is only liable for his or her own misconduct.  
2 Iqbal, 556 U.S. at 676-77. Supervisors may only be held liable if they “participated in or  
3 directed the violations, or knew of the violations and failed to act to prevent them.”  
4 Lemire v. Cal. Dept. of Corrections & Rehabilitation, 726 F.3d 1062, 1074-75 (9th Cir.  
5 2013) (“A prison official in a supervisory position may be held liable under § 1983 ... ‘if  
6 he or she was personally involved in the constitutional deprivation or a sufficient causal  
7 connection exists between the supervisor’s unlawful conduct and the constitutional  
8 violation.’”) (quoting Lolli v. Cty. of Orange, 351 F.3d 410, 418 (9th Cir. 2003)); Starr v.  
9 Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

10 Plaintiff offers no specific factual allegations as to any of the Defendants. Instead,  
11 he informs the Court to “see attachments” which also fail to identify any specific factual  
12 allegation as to any of the named Defendants. These types of “unadorned, the-  
13 defendant[s]-unlawfully-harmed-me accusation[s],” “stop[] short of the line between  
14 possibility and plausibility,” and fail[] to “show” Plaintiff is “entitled to relief.” Iqbal,  
15 556 U.S. at 678-79.

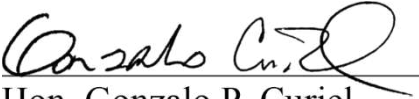
#### 16 **IV. Conclusion and Order**

17 For the reasons set forth above, the Court:

- 18 1) **DENIES** Plaintiff’s Motion to Proceed IFP (ECF No. 2) as barred by 28  
19 U.S.C. § 1915(g);
- 20 2) **DISMISSES** this action without prejudice for failure to pay the full statutory  
21 and administrative \$400 civil filing fee required by 28 U.S.C. § 1914(a), and for failing to  
22 state a claim upon which § 1983 relief can be granted pursuant to 28 U.S.C.  
23 § 1915A(b)(1);
- 24 3) **DIRECTS** the Clerk of Court to close the file.

25 **IT IS SO ORDERED.**

26 Dated: May 25, 2017

27   
28 Hon. Gonzalo P. Curiel  
United States District Judge