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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ERIC CHATMAN, CDCR #BD-5474,	Plaintiff,
vs.	
CHEVRON STATION, Oceanside, et al.,	Defendants.

Case No.: 3:18-cv00551-LAB-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)**

ERIC CHATMAN (“Plaintiff”), currently incarcerated at Salinas Valley State Prison in Soledad, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. *See* Compl., ECF No. 1.

While far from clear, Plaintiff’s Complaint alleges “tons” of “Black, Arab, [and] Russian” “enemy soldiers” at the Chevron Station in Oceanside, California “off [the] 78” “kicked [him] off the premises” sometime in late 2016 while he was “recycling cans” there. *Id.* at 1-5. He seeks to sue the Chevron Station, Chevron Corporation, the Nikki

1 Corporation, Sabra Company, and Lee’s Auto Shop, “off Mission in Oceanside,” where
2 there are also “lots of enemies,” for negligence and “do[ing] nothing” to protect him and
3 Chevron’s customers. *Id.* at 4.

4 Plaintiff did not pay the civil filing fee required by 28 U.S.C. § 1914(a) at the time
5 he submitted his Complaint; instead, he has filed a Motion to Proceed *In Forma Pauperis*
6 (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2). He has since submitted two letters
7 addressed to the Court that appear to supplement the allegations in his Complaint, seek
8 assistance in subpoenaing “enemy evidence interviews,” and requesting a referral to the
9 FBI. *See* ECF Nos. 4, 7. Those letters have been accepted for filing in light of Plaintiff’s
10 pro se status, and despite Local Civil Rule 83.9, which clearly prohibits such ex parte
11 communications. *See* ECF Nos. 3, 6.

12 **I. Motion to Proceed IFP**

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

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

25 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’
26 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005).

27 “Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed IFP.”
28 *Id.*; *see also Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter

1 “*Cervantes*”) (under the PLRA, “[p]risoners who have repeatedly brought unsuccessful
2 suits may entirely be barred from IFP status under the three strikes rule[.]”). The
3 objective of the PLRA is to further “the congressional goal of reducing frivolous prisoner
4 litigation in federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).
5 “[S]ection 1915(g)’s cap on prior dismissed claims applies to claims dismissed both
6 before and after the statute’s effective date.” *Id.* at 1311.

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

17 Once a prisoner has accumulated three strikes, he is simply prohibited by section
18 1915(g) from pursuing any other IFP civil action or appeal in federal court unless he
19 alleges he is facing “imminent danger of serious physical injury.” *See* 28 U.S.C.
20 § 1915(g); *Cervantes*, 493 F.3d at 1051-52 (noting § 1915(g)’s exception for IFP
21 complaints which “make[] a plausible allegation that the prisoner faced ‘imminent danger
22 of serious physical injury’ at the time of filing.”).

23 **II. Application to Plaintiff**

24 The Court has reviewed Plaintiff’s Complaint and his letters, and concludes none
25 of these pleadings contain any “plausible allegations” to suggest he “faced ‘imminent
26 danger of serious physical injury’ at the time of filing.” *Cervantes*, 493 F.3d at 1055
27 (quoting 28 U.S.C. § 1915(g)). Instead, as described above, Plaintiff’s claims are plainly
28 frivolous. *See e.g., In re Gonzalez*, 2008 WL 666465 at *2-3 (N.D. Cal. March 6, 2008)

1 (finding prisoner with a “delusional tale” of having a “special genetic structure,” and
2 being “irradiated ... by radioactive smoke” by “government scientists,” did not plausibly
3 allege “imminent danger of serious physical injury.”); *Holz v. McFadden*, 2010 WL
4 3069745 at *3 (C.D. Cal. May 21, 2010) (finding “imminent danger” exception to
5 § 1915(g) inapplicable where prisoner implausibly claimed the FBI and BOP were “going
6 to kill him.”); *Sierra v. Woodford*, 2010 WL 1657493 at *3 (E.D. Cal. April 23, 2010)
7 (finding “long, narrative, rambling statements regarding a cycle of violence, and vague
8 references to motives to harm” insufficient to show Plaintiff faced an “ongoing danger”
9 as required by *Cervantes*).

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

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

23 Thus, this Court takes judicial notice that Plaintiff, Eric Chatman, identified as
24 CDCR Inmate #BD-5474, has had four prior prisoner civil actions dismissed in this
25 district alone on the grounds that they were frivolous, malicious, or failed to state a claim
26 upon which relief may be granted. They are:

27 1) *Chatman v. Toyota of Escondido, et al.*, Civil Case No. 3:17-cv-01853-BAS-
28 JLB (S.D. Cal. Nov. 8, 2017) (Order Granting Motion to Proceed IFP and Dismissing

1 Civil Action for Failing to State a Claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and
2 without leave to amend) (ECF No. 18) (“strike one”);

3 2) *Chatman v. Cush Acura, et al.*, Civil Case No. 3:17-cv-01852-WQH-JLB
4 (S.D. Cal. Nov. 21, 2017) (Order Granting Motion to Proceed IFP and Dismissing Civil
5 Action for Failing to State a Claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and without
6 leave to amend) (ECF No. 20) (“strike two”);

7 3) *Chatman v. Super 8 Motel, et al.*, Civil Case No. 3:17-cv-02517-DMS-JMA
8 (S.D. Cal. Feb. 15, 2018) (Order Denying Motion to Proceed IFP and Dismissing Civil
9 Action for Failing to State a Claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and without
10 leave to amend) (ECF No. 6) (“strike three”); and

11 4) *Chatman v. Super 8 Motel Co., et al.*, Civil Case No. 3:18-cv-00213-BAS-
12 NLS (S.D. Cal. Feb. 20, 2018) (Order Granting Motion to Proceed IFP and Dismissing
13 Civil Action for Failing to State a Claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and
14 without leave to amend) (ECF No. 6) (“strike four”).

15 Accordingly, because Plaintiff has, while incarcerated, accumulated more than
16 three “strikes” pursuant to § 1915(g), and he fails to make a plausible allegation that he
17 faced imminent danger of serious physical injury at the time he filed his Complaint, he is
18 not entitled to the privilege of proceeding IFP in this action. *See Cervantes*, 493 F.3d at
19 1055; *Rodriguez v. Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999) (finding that 28 U.S.C.
20 § 1915(g) “does not prevent all prisoners from accessing the courts; it only precludes
21 prisoners with a history of abusing the legal system from continuing to abuse it while
22 enjoying IFP status”); *see also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984)
23 (“[C]ourt permission to proceed IFP is itself a matter of privilege and not right.”).

24 **III. Conclusion and Order**

25 For the reasons set forth above, the Court:

26 1) **DENIES** Plaintiff’s Motion to Proceed IFP (ECF No. 2) as barred by 28
27 U.S.C. § 1915(g);

28 ///


1 2) **DISMISSES** this action without prejudice based on Plaintiff's failure to pay
2 the full statutory and administrative \$400 civil filing fee required by 28 U.S.C. § 1914(a);

3 3) **CERTIFIES** that an IFP appeal from this Order would be frivolous and
4 therefore, would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See*
5 *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548,
6 550 (9th Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if
7 appeal would not be frivolous); and

8 4) **DIRECTS** the Clerk of Court to close the file.¹

9 **IT IS SO ORDERED.**

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11 Dated: June 8, 2018


HON. LARRY ALAN BURNS
United States District Judge

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25 ¹ While the Court has previously accepted Plaintiff's letters for filing despite his failure to
26 comply with the Court's Local Rules, he is hereby cautioned that S.D. Cal. Local Civil
27 Rule 83.9 provides that "attorneys or parties to any action must refrain from writing letters
28 to the judge," and that "[p]ro se litigants must follow the same rules of procedure that
govern other litigants." *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, any
additional letters he attempts to file in this matter will be summarily rejected based on
Local Rule 83.9, and because this Order terminates his case.