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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LARRY WHITE,
CDCR #G-37720,

Plaintiff,

v.

W.L. MONTGOMERY,

Defendant.

Case No.: 18-cv-00576-BAS-BGS

ORDER:

(1) DENYING RENEWED MOTION TO PROCEED IN FORMA PAUPERIS AS BARRED BY 28 U.S.C. § 1915(g);

(2) DISMISSING ACTION; AND

(3) DENYING MOTION TO APPOINT COUNSEL AS MOOT

I. PROCEDURAL HISTORY

On March 19, 2018, Larry White, currently housed at Calipatria State Prison, filed a civil rights Complaint (“Compl.”) pursuant to 42 U.S.C. §1983. (ECF No. 1.) Plaintiff did not prepay the full civil filing fee required by 28 U.S.C. §1914(a); instead, he filed a Motion to Proceed *In Forma Pauperis* (“IFP”) (ECF No. 2), along with a Motion to Appoint Counsel (ECF No. 3). On March 27, 2018, this Court denied Plaintiff’s Motion to Proceed IFP as barred by 28 U.S.C. §1915(g). (ECF No. 4 at 4.) In addition, the Court found that Plaintiff’s Complaint did not contain plausible allegations that Plaintiff “faced

1 ‘imminent danger of serious physical injury’ at the time of filing.” (*Id.* at 4 (citing *Andrews*
2 *v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter “*Cervantes*”)).) The Court
3 directed the Clerk of Court to close the file. (*Id.*)

4 Despite the Court’s denial of Plaintiff’s prior IFP motion as statutorily and its
5 dismissal of the entire action, Plaintiff has filed an Amended Complaint (“FAC”), a
6 renewed Motion to Proceed IFP, and a renewed Motion for Appointment of Counsel. (ECF
7 Nos. 7, 8, 10.) The Court once more denies Plaintiff’s IFP motion and dismisses the case.

8 **I. MOTION TO PROCEED IFP**

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

15 . . . if [a] prisoner has, on 3 or more prior occasions, while incarcerated
16 or detained in any facility, brought an action or appeal in a court of the
17 United States that was dismissed on the grounds that it is frivolous,
18 unless the prisoner is under imminent danger of serious physical injury.

19 28 U.S.C. §1915(g). “This subdivision is commonly known as the ‘three strikes’
20 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005) (hereafter
21 “*Andrews*”). “Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed
22 IFP.” *Id.*; *see also Cervantes*, 493 F.3d at 1052 (under the PLRA, “[p]risoners who have
23 repeatedly brought unsuccessful suits may entirely be barred from IFP status under the
24 three strikes rule[.]”). The objective of the PLRA is to further “the congressional goal of
25 reducing frivolous prisoner litigation in federal court.” *Tierney v. Kupers*, 128 F.3d 1310,
26 1312 (9th Cir. 1997). “[S]ection 1915(g)’s cap on prior dismissed claims applies to claims
27 dismissed both before and after the statute’s effective date.” *Id.* at 1311.

1 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which
2 were dismissed on the ground that they were frivolous, malicious, or failed to state a claim,”
3 *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the district court
4 styles such dismissal as a denial of the prisoner’s application to file the action without
5 prepayment of the full filing fee,” *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008).
6 Once a prisoner has accumulated three strikes, he is *prohibited* by Section 1915(g) from
7 pursuing any other IFP action in federal court unless he can show he is facing “imminent
8 danger of serious physical injury.” *See* 28 U.S.C. §1915(g); *Cervantes*, 493 F.3d at 1051-
9 52 (noting §1915(g)’s exception for IFP complaints which “make[] a plausible allegation
10 that the prisoner faced ‘imminent danger of serious physical injury’ at the time of filing”).


11 The Court first considers whether plaintiff has three strikes. A court ““may take
12 notice of proceedings in other courts, both within and without the federal judicial system,
13 if those proceedings have a direct relation to matters at issue.”” *Bias v. Moynihan*, 508 F.3d
14 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th
15 Cir. 2002)); *see also United States ex rel. Robinson Rancheria Citizens Council v. Borneo,*
16 *Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). Thus, this Court again takes judicial notice that
17 Plaintiff, while incarcerated, has brought at least three prior civil actions which have been
18 dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon
19 which relief may be granted. *See* 28 U.S.C. § 1915(g). They are:

- 20 1) *White v. Ulstad*, No. 2:13-cv-02459-UA-VBK (C.D. Cal. May 20, 2013)
21 (Order dismissing action as frivolous, malicious and fails to state a claim upon
22 which relief may be granted) (strike one);
- 23 2) *White v. Soto*, No. 2:13-cv-02751-UA-VBK (C.D. Cal. June 18, 2013) (Order
24 dismissing action as frivolous, malicious and fails to state a claim upon which
25 relief may be granted) (strike two);
- 26 3) *White v. City and County of San Francisco* No. 3:15-cv-03256-JD (N.D. Nov.
27 17, 2015) (Order dismissing action for failing to state a claim) (strike three).

- 1 (3) **DENIES** Plaintiff's Motion to Appoint Counsel (ECF Doc. No. 10) as moot.
2 (4) **DIRECTS** the Clerk of Court to close the file once more; and
3 (5) Advises Plaintiff that any documents he seeks to file in this case will be
4 rejected.

5 **IT IS SO ORDERED.**

6 **DATED: April 11, 2018**


Hon. Cynthia Bashant
United States District Judge

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