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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 ERIC CHATMAN,
12 CDCR #BD-5474,

13 Plaintiff,

14 vs.

15 LITTLE CAESARS, Oceanside;
16 LITTLE CAESARS CORPORATION,

17 Defendants.
18

Case No.: 3:18-cv-01019-MMA-KSC

ORDER:

19 **1) DENYING MOTION TO**
20 **PROCEED IN FORMA PAUPERIS**
21 **AS BARRED BY 28 U.S.C. § 1915(g)**

[Doc. No. 2]

AND

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

26 ERIC CHATMAN (“Plaintiff”), currently incarcerated at Salinas Valley State
27 Prison in Soledad, California, and proceeding *pro se*, has filed a seven-page
28 Complaint in this Court alleging personal injury, general negligence, intentional tort,
premises liability and wrongful death claims on a form provided by the Judicial Council
of California, and against his former employer, Little Caesar’s Corporation, and one of its
franchises in Oceanside, California. *See* Doc. No. 1.

1 Plaintiff claims he met his ex-wife while working at Little Caesar’s in Oceanside in
2 1993, she got pregnant, they broke up, and then “she tried to kill [him].” *Id.* at 4. Plaintiff
3 seeks \$680 million in a “lump sum” and “100%” of Little Caesar’s Corporation because
4 his ex-wife is “very crazy” and the Corporation “should [have] check[ed] her out.” *Id.* at
5 4, 5.

6 Plaintiff did not pay the civil filing fee required by 28 U.S.C. § 1914(a) at the time
7 he filed his Complaint; instead, he filed a Motion to Proceed *In Forma Pauperis* (“IFP”)
8 pursuant to 28 U.S.C. § 1915(a) (Doc. No. 2). He has since filed a letter addressed to the
9 Court that re-states his claims of spousal abuse. *See* Doc. No. 4 at 1-2. His letter was been
10 accepted for filing in light of Plaintiff’s *pro se* status, and despite Local Civil Rule 83.9,
11 which clearly prohibits such ex parte communications. *See* Doc. No. 3.

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 letter, and concludes neither
25 pleading contains any “plausible allegations” to suggest he “faced ‘imminent danger of
26 serious physical injury’ at the time of filing.” *Cervantes*, 493 F.3d at 1055 (quoting 28
27 U.S.C. § 1915(g)). Instead, as described above, Plaintiff’s seeks to sue his former
28 employer for allegedly failing to prevent his former wife from attempting to murder him

1 him 25 years ago. *See* Compl., Doc. No. 1 at 5; *see also In re Gonzalez*, 2008 WL 666465
2 at *2-3 (N.D. Cal. March 6, 2008) (finding prisoner with a “delusional tale” of having a
3 “special genetic structure,” and being “irradiated ... by radioactive smoke” by
4 “government scientists,” did not plausibly allege “imminent danger of serious physical
5 injury.”); *Holz v. McFadden*, 2010 WL 3069745 at *3 (C.D. Cal. May 21, 2010) (finding
6 “imminent danger” exception to § 1915(g) inapplicable where prisoner implausibly
7 claimed the FBI and BOP were “going to kill him.”); *Sierra v. Woodford*, 2010 WL
8 1657493 at *3 (E.D. Cal. April 23, 2010) (finding “long, narrative, rambling statements
9 regarding a cycle of violence, and vague references to motives to harm” insufficient to
10 show Plaintiff faced an “ongoing danger” as required by *Cervantes*).

11 If this were not enough, Plaintiff fails to plead any basis for federal subject matter
12 jurisdiction, and his suit is patently frivolous. *See* 28 U.S.C. § 1915A(b)(1) (requiring sua
13 sponte dismissal of prisoner complaints, or any portions of them, which are “frivolous,
14 malicious, or fail[] to state a claim upon which relief may be granted.”); *Coleman v.*
15 *Tollefson*, 135 S. Ct. 1759, 1764 (2015). “The purpose of § 1915A is to ‘ensure that the
16 targets of frivolous or malicious suits need not bear the expense of responding.’”
17 *Nordstrom v. Ryan*, 762 F.3d 903, 907 n.1 (9th Cir. 2014) (internal citation omitted).
18 *O’Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990) (a complaint “is frivolous if it has
19 no arguable basis in fact or law.”).

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

24 A court may take judicial notice of its own records, *see Molus v. Swan*, Civil Case
25 No. 3:05-cv-00452–MMA-WMc, 2009 WL 160937, *2 (S.D. Cal. Jan. 22, 2009) (citing
26 *United States v. Author Services*, 804 F.2d 1520, 1523 (9th Cir. 1986)); *Gerritsen v.*
27 *Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015), and ““may take
28 notice of proceedings in other courts, both within and without the federal judicial system,

1 if those proceedings have a direct relation to matters at issue.” *Bias v. Moynihan*, 508
2 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803
3 n.2 (9th Cir. 2002)); *see also United States ex rel. Robinson Rancheria Citizens Council*
4 *v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

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

9 1) *Chatman v. Toyota of Escondido, et al.*, Civil Case No. 3:17-cv-01853-BAS
10 JLB (S.D. Cal. Nov. 8, 2017) (Order Granting Motion to Proceed IFP and Dismissing
11 Civil Action for Failing to State a Claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and
12 without leave to amend) (Doc. No. 18) (“strike one”);

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

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

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

25 Accordingly, because Plaintiff has, while incarcerated, accumulated more than
26 three “strikes” pursuant to § 1915(g), and he fails to make a plausible allegation that he
27 faced imminent danger of serious physical injury at the time he filed his Complaint, he is
28 not entitled to the privilege of proceeding IFP in this action. *See Cervantes*, 493 F.3d at

1 1055; *Rodriguez v. Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999) (finding that 28 U.S.C.
2 § 1915(g) “does not prevent all prisoners from accessing the courts; it only precludes
3 prisoners with a history of abusing the legal system from continuing to abuse it while
4 enjoying IFP status”); *see also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984)
5 (“[C]ourt permission to proceed IFP is itself a matter of privilege and not right.”).


6 **III. Conclusion and Order**

7 For the reasons set forth above, the Court:

- 8 1) **DENIES** Plaintiff’s Motion to Proceed IFP (Doc. No. 2) as barred by 28
9 U.S.C. § 1915(g);
10 2) **DISMISSES** this action without prejudice based on Plaintiff’s failure to pay
11 the full statutory and administrative \$400 civil filing fee required by 28 U.S.C. § 1914(a);
12 3) **CERTIFIES** that an IFP appeal from this Order would be frivolous and
13 therefore, would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See*
14 *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548,
15 550 (9th Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if
16 appeal would not be frivolous); and
17 4) **DIRECTS** the Clerk of Court to close the case.¹

18 **IT IS SO ORDERED.**

19 DATE: June 26, 2018


HON. MICHAEL M. ANELLO
United States District Judge

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26 ¹ While the Court has previously accepted Plaintiff’s letter for filing despite his failure to comply with
27 the Court’s Local Rules, he is hereby cautioned that S.D. Cal. Local Civil Rule 83.9 provides that
28 “attorneys or parties to any action must refrain from writing letters 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 letter he attempts to file in this matter will be summarily rejected
based on Local Rule 83.9, and because this Order terminates his case.