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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 ERIC CHATMAN,  
12 CDCR #BD-5474,

13 Plaintiff,

14 vs.

15 BUDWEISER CORPORATION;  
16 COORS CORPORATION;  
17 MILLER LITE CORPORATION,

18 Defendants.  
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22

Case No.: 3:18-cv-01289-WQH-PCL

**ORDER:**

**1) DENYING MOTIONS TO  
PROCEED IN FORMA PAUPERIS  
AND TO APPOINT COUNSEL AS  
BARRED BY 28 U.S.C. § 1915(g)  
[ECF Nos. 2, 3]**

**AND**

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

23 Eric Chatman, a prisoner incarcerated at Salinas Valley State Prison in Soledad,  
24 California, and proceeding pro se, has filed Complaint alleging personal injury, premises  
25 liability, general negligence, and intentional tort claims against several beer companies.  
26 *See* Compl., ECF No. 1. Chatman claims he was he was robbed and kidnapped in Las  
27 Vegas sometime between 2005 and 2007 “all because of alcohol.” *Id.* at 6-7. He seeks  
28 billions in “lump sum” damages and ownership interests in each corporation. *Id.* at 5.

1 Chatman did not pay the civil filing fee required by 28 U.S.C. § 1914(a) at the time  
2 he submitted his Complaint; instead, he filed a Motion to Proceed *In Forma Pauperis*  
3 (“*IFP*”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2), together with a Motion to Appoint  
4 Counsel (ECF No. 3).<sup>1</sup>

5 **I. Motion to Proceed *IFP***

6 **A. Standard of Review**

7 “All persons, not just prisoners, may seek *IFP* status.” *Moore v. Maricopa County*  
8 *Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). Prisoners like Plaintiff, however,  
9 “face ... additional hurdle[s].” *Id.* Specifically, in addition to requiring prisoners to “pay  
10 the full amount of a filing fee,” in “monthly installments” or “increments” as provided by  
11 28 U.S.C. § 1915(a)(3)(b), *Bruce v. Samuels*, \_\_ U.S. \_\_, 136 S. Ct. 627, 629 (2016);  
12 *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), the Prison Litigation Reform  
13 Act (“*PLRA*”) precludes prisoners from proceeding *IFP*:

14 . . . if [a] prisoner has, on 3 or more prior occasions, while  
15 incarcerated or detained in any facility, brought an action or  
16 appeal in a court of the United States that was dismissed on the  
17 grounds that it is frivolous, malicious, or fails to state a claim  
18 upon which relief can be granted, 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).

21 “Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed *IFP*.”  
22 *Id.* The objective of the *PLRA* is to further “the congressional goal of reducing frivolous  
23 prisoner litigation in federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir.

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26 <sup>1</sup> Chatman includes more detailed allegations in a series of ex parte letters to the judges assigned to this  
27 matter. See ECF Nos. 5, 7, 9. Because Chatman has violated S.D. Cal. Local Civil Rule 83.9, which  
28 provides that “attorneys or parties to any action must refrain from writing letters to the judge,” he is  
cautioned 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 ex parte letters he attempts to file  
in this matter may be summarily rejected based on Local Rule 83.9.

1 1997). “[S]ection 1915(g)’s cap on prior dismissed claims applies to claims dismissed  
2 both before and after the statute’s effective date.” *Id.* at 1311. “Strikes are prior cases or  
3 appeals, brought while the plaintiff was a prisoner, which were dismissed on the ground  
4 that they were frivolous, malicious, or failed to state a claim,” *Andrews v. King*, 398 F.3d  
5 at 1116 n.1 (internal quotations omitted), “even if the district court styles such dismissal  
6 as a denial of the prisoner’s application to file the action without prepayment of the full  
7 filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008). When courts “review a  
8 dismissal to determine whether it counts as a strike, the style of the dismissal or the  
9 procedural posture is immaterial. Instead, the central question is whether the dismissal  
10 ‘rang the PLRA bells of frivolous, malicious, or failure to state a claim.’” *El-Shaddai v.*  
11 *Zamora*, 833 F.3d 1036, 1042 (9th Cir. 2016) (quoting *Blakely v. Wards*, 738 F.3d 607,  
12 615 (4th Cir. 2013)).

13       Once a prisoner has accumulated three strikes, he is prohibited by section 1915(g)  
14 from pursuing any other *IFP* civil action or appeal in federal court unless he alleges he is  
15 facing “imminent danger of serious physical injury.” *See* 28 U.S.C. § 1915(g).

#### 16       **B. Application to Chatman**

17       The Court has reviewed Chatman’s Complaint and finds that it contains no  
18 “plausible allegations” to suggest he “faced ‘imminent danger of serious physical injury’  
19 at the time of filing.” *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007)  
20 (quoting 28 U.S.C. § 1915(g)). Instead, as described above, Chatman seeks to sue  
21 Budweiser, Coors, and Miller Lite for injuries he claims to have suffered more than ten  
22 years ago at the hands of unidentified “people [who] dr[a]nk irresponsibl[y].” *See*  
23 Compl., ECF No. 1 at 5. These allegations are plainly frivolous and insufficient to  
24 plausibly show ongoing or “imminent” danger of any serious physical injury. *See In re*  
25 *Gonzalez*, 2008 WL 666465 at \*2-3 (N.D. Cal. March 6, 2008) (finding prisoner with a  
26 “delusional tale” of having a “special genetic structure,” and being “irradiated ... by  
27 radioactive smoke” by “government scientists,” did not plausibly allege “imminent  
28 danger of serious physical injury.”); *Holz v. McFadden*, 2010 WL 3069745 at \*3 (C.D.

1 Cal. May 21, 2010) (finding “imminent danger” exception to § 1915(g) inapplicable  
2 where prisoner implausibly claimed the FBI and BOP were “going to kill him.”); *Sierra*  
3 *v. Woodford*, 2010 WL 1657493 at \*3 (E.D. Cal. April 23, 2010) (finding “long,  
4 narrative, rambling statements regarding a cycle of violence, and vague references to  
5 motives to harm” insufficient to show Plaintiff faced an “ongoing danger” as required by  
6 *Andrews v. Cervantes*).

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

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

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

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

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

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

9           4)     *Chatman v. Super 8 Motel Co., et al.*, Civil Case No. 3:18-cv-00213-BAS-  
10 NLS (S.D. Cal. Feb. 20, 2018) (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) (ECF No. 6) (“strike four”).<sup>2</sup>

13           Accordingly, because Chatman has accumulated more than three “strikes” pursuant  
14 to § 1915(g) and fails to allege that he faced imminent danger of serious physical injury  
15 at the time he filed his Complaint, he is not entitled to the privilege of proceeding *IFP* in  
16 this action. *See Andrews v. Cervantes*, 493 F.3d at 1055; *Rodriguez v. Cook*, 169 F.3d  
17 1176, 1180 (9th Cir. 1999) (finding that 28 U.S.C. § 1915(g) “does not prevent all  
18 prisoners from accessing the courts; it only precludes prisoners with a history of abusing  
19 the legal system from continuing to abuse it while enjoying IFP status”); *see also*

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22 <sup>2</sup> Chatman has also been denied leave to proceed IFP pursuant to 28 U.S.C. § 1915(g) in several subsequent  
23 cases: *Chatman v. Cush Honda, et al.*, S.D. Cal. Civil Case No. 3:18-cv-00414-JLS-KSC (March 26, 2018  
24 Order) (ECF No. 5); *Chatman v. Super 8 Motel Corp., et al.*, S.D. Cal. Civil Case No. 3:18-cv-00436-  
25 CAB-RBB (March 19, 2018 Order) (ECF No. 6); *Chatman v. Liquor Store, et al.*, S.D. Cal. Civil Case  
26 No. 3:18-cv-00563-GPC-JMA (May 14, 2018 Order) (ECF No. 8); *Chatman v. Ferrari Newport, et al.*,  
27 S.D. Cal. Civil Case No. 3:18-cv-00655-CAB-MDD (May 15, 2018 Order) (ECF No. 6); *Chatman v.*  
28 *Beverly Hills Lamborghini, et al.*, S.D. Cal. Civil Case No. 3:18-cv-00668-DMS-JMA (April 16, 2018  
Order) (ECF No. 3); *Chatman v. Citibank Corp., et al.*, S.D. Cal. Civil Case No. 3:18-cv-00748-LAB-  
AGS (April 23, 2018 Order) (ECF No. 3); *Chatman v. Chatman*, S.D. Cal. Civil Case No. 3:18-cv-00835-  
CAB-PCL (June 4, 2018 Order) (ECF No. 5); *Chatman v. Cush Acura, et al.*, S.D. Cal. Civil Case No.  
3:18-cv-01235-WQH-MDD (July 20, 2018 Order) (ECF No. 8), and *Chatman v. Jack in the Box, et al.*,  
S.D. Cal. Civil Case No. 3:18-cv-01253-WQH-MDD (Aug. 21, 2018 Order) (ECF No. 8).

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

### 3 **II. Motion to Appoint Counsel**

4 Chatman has also filed a Motion to Appoint Counsel pursuant to 28 U.S.C.  
5 § 1915(e)(1) (ECF No. 3). However, a motion to appoint counsel pursuant to 28 U.S.C.  
6 § 1915(e)(1) necessarily depends upon Chatman’s ability to proceed *IFP*. *See* 28 U.S.C.  
7 § 1915(e)(1) (“The court may request an attorney to represent any person unable to afford  
8 counsel.”). It requires that Chatman has been determined eligible to proceed pursuant to  
9 the *IFP* statute due to indigence, is within “the sound discretion of the trial court[,] and is  
10 granted only in exceptional circumstances.” *Agyeman v. Corr. Corp. of Am.*, 390 F.3d  
11 1101, 1103 (9th Cir. 2004). Because Chatman has failed to allege the presence of  
12 exceptional circumstances here, and is not entitled to proceed *IFP* pursuant to 28 U.S.C.  
13 § 1915(g) in this case, he is also not entitled to the appointment of counsel under  
14 § 1915(e)(1).

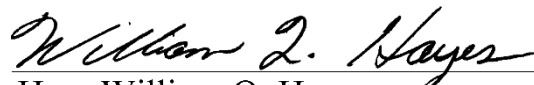
### 15 **III. Conclusion and Orders**

16 For the reasons discussed, the Court:

- 17 1) DENIES Chatman’s Motions to Proceed *IFP* (ECF No. 2) and to Appoint  
18 Counsel (ECF No. 3) as barred by 28 U.S.C. § 1915(g);
- 19 2) DISMISSES this civil action without prejudice for failure to pay the full  
20 statutory and administrative \$400 civil filing fee required by 28 U.S.C. § 1914(a);
- 21 3) CERTIFIES that an IFP appeal from this Order would be frivolous and  
22 therefore, would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3); and
- 23 4) DIRECTS the Clerk of Court to enter judgment and close the file.

24 IT IS SO ORDERED.

25 Dated: September 19, 2018

26   
27 Hon. William Q. Hayes  
28 United States District Court