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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 STATE OF CALIFORNIA; CDC,

16 Defendants.  
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Case No.: 3:18-cv-01870-BTM-KSC

**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 (“Plaintiff”), a prisoner incarcerated at Salinas Valley State  
24 Prison in Soledad, California, and proceeding pro se, has filed a Complaint (“Compl.”)  
25 alleging that he has been incarcerated for a longer duration than he agreed to in his plea  
26 agreement. *See* Compl., ECF No. 1. Plaintiff has also filed a Motion to Proceed *In*  
27 *Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2), together with a  
28 Motion to Appoint Counsel (ECF No. 3).

1 **I. Motion to Proceed IFP**

2 A. Standard of Review

3 “All persons, not just prisoners, may seek IFP status.” *Moore v. Maricopa County*  
4 *Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). Prisoners like Plaintiff, however,  
5 “face ... additional hurdle[s].” *Id.*

6 Specifically, in addition to requiring prisoners to “pay the full amount of a filing  
7 fee,” in “monthly installments” or “increments” as provided by 28 U.S.C.

8 § 1915(a)(3)(b), *Bruce v. Samuels*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 627, 629 (2016); *Williams v.*  
9 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), the Prison Litigation Reform Act  
10 (“PLRA”) amended section 1915 to preclude the privilege to proceed IFP:

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

16 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’  
17 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005).

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

26 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner,  
27 which were dismissed on the ground that they were frivolous, malicious, or failed to state  
28 a claim,” *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the

1 district court styles such dismissal as a denial of the prisoner’s application to file the  
2 action without prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153  
3 (9th Cir. 2008). When courts “review a dismissal to determine whether it counts as a  
4 strike, the style of the dismissal or the procedural posture is immaterial. Instead, the  
5 central question is whether the dismissal ‘rang the PLRA bells of frivolous, malicious, or  
6 failure to state a claim.’” *El-Shaddai v. Zamora*, 833 F.3d 1036, 1042 (9th Cir. 2016)  
7 (quoting *Blakely v. Wards*, 738 F.3d 607, 615 (4th Cir. 2013)).

8       Once a prisoner has accumulated three strikes, he is prohibited by section 1915(g)  
9 from pursuing any other IFP civil action or appeal in federal court unless he alleges he is  
10 facing “imminent danger of serious physical injury.” See 28 U.S.C. § 1915(g); *Cervantes*,  
11 493 F.3d at 1051-52 (noting § 1915(g)’s exception for IFP complaints which “make[] a  
12 plausible allegation that the prisoner faced ‘imminent danger of serious physical injury’  
13 at the time of filing.”).

14       B.     Application to Plaintiff

15       The Court has reviewed Plaintiff’s Complaint and finds that it contains no  
16 “plausible allegations” to suggest he “faced ‘imminent danger of serious physical injury’  
17 at the time of filing.” *Cervantes*, 493 F.3d at 1055 (quoting 28 U.S.C. § 1915(g)).  
18 Plaintiff’s claims are insufficient to plausibly show ongoing or “imminent” danger of any  
19 serious physical injury, they also fail as a matter of law to support any viable federal  
20 claim for relief and are plainly frivolous. See *Ouzts v. Maryland Nat’l Ins. Co.*, 505 F.2d  
21 547, 550 (9th Cir. 1974) (“[P]urely private conduct, no matter how wrongful, is not  
22 within the protective orbit of section 1983.”); *Vey v. Clinton*, 520 U.S. 937, 937 (1997)  
23 (denying pro se litigant IFP status based on alleged civil rights and RICO violations by  
24 U.S. President and private citizens as “patently frivolous.”).

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

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

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

14 They are:

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

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

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

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1           4)     *Chatman v. Super 8 Motel Co., et al.*, Civil Case No. 3:18-cv-00213-BAS-  
2 NLS (S.D. Cal. Feb. 20, 2018) (Order Granting Motion to Proceed IFP and Dismissing  
3 Civil Action for Failing to State a Claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and  
4 without leave to amend) (ECF No. 6) (“strike four”).<sup>1</sup>

5           Accordingly, because Plaintiff has, while incarcerated, accumulated more than  
6 three “strikes” pursuant to § 1915(g), and he fails to make a plausible allegation that he  
7 faced imminent danger of serious physical injury at the time he filed his Complaint, he is  
8 not entitled to the privilege of proceeding IFP in this action. *See Cervantes*, 493 F.3d at  
9 1055; *Rodriguez v. Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999) (finding that 28 U.S.C.  
10 § 1915(g) “does not prevent all prisoners from accessing the courts; it only precludes  
11 prisoners with a history of abusing the legal system from continuing to abuse it while  
12 enjoying IFP status”); *see also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984)  
13 (“[C]ourt permission to proceed IFP is itself a matter of privilege and not right.”).

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

15           In addition, Plaintiff has filed a Motion to Appoint Counsel pursuant to 28 U.S.C.  
16 § 1915(e)(1) (ECF No. 3).

17           However, a motion to appoint counsel pursuant to 28 U.S.C. § 1915(e)(1)  
18 necessarily depends upon Plaintiff’s ability to proceed IFP. *See* 28 U.S.C. § 1915(e)(1)

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21 <sup>1</sup> Plaintiff has also been denied leave to proceed IFP pursuant to 28 U.S.C. § 1915(g) in  
22 several subsequent cases: *Chatman v. Cush Honda, et al.*, S.D. Cal. Civil Case No. 3:18-  
23 cv-00414-JLS-KSC (March 26, 2018 Order) (ECF No. 5); *Chatman v. Super 8 Motel*  
24 *Corp., et al.*, S.D. Cal. Civil Case No. 3:18-cv-00436-CAB-RBB (March 19, 2018 Order)  
25 (ECF No. 6); *Chatman v. Liquor Store, et al.*, S.D. Cal. Civil Case No. 3:18-cv-00563-  
26 GPC-JMA (May 14, 2018 Order) (ECF No. 8); *Chatman v. Ferrari Newport, et al.*, S.D.  
27 Cal. Civil Case No. 3:18-cv-00655-CAB-MDD (May 15, 2018 Order) (ECF No. 6);  
28 *Chatman v. 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); and  
*Chatman v. Chatman*, S.D. Cal. Civil Case No. 3:18-cv-00835-CAB-PCL (June 4, 2018  
Order) (ECF No. 5).

1 (“The court may request an attorney to represent any person unable to afford counsel.”).  
2 It requires that Plaintiff has been determined eligible to proceed pursuant to the IFP  
3 statute due to indigence, is within “the sound discretion of the trial court[,] and is granted  
4 only in exceptional circumstances.” *Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103  
5 (9th Cir. 2004). Because Plaintiff has failed to allege the presence of exceptional  
6 circumstances here, and is not entitled to proceed IFP pursuant to 28 U.S.C. § 1915(g) in  
7 this case, he is also not entitled to the appointment of counsel under § 1915(e)(1).

8 **III. Conclusion and Orders**

9 For the reasons discussed, the Court:

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

17 **IT IS SO ORDERED.**

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19 Dated: September 20, 2018

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21 Hon. Barry Ted Moskowitz, Chief Judge  
22 United States District Court  
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