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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JAMES LYNN HINES,  
Booking No. 18157967,  
  
Plaintiff,  
  
vs.  
  
GOVERNOR JERRY BROWN, et al.,  
  
Defendants.

Case No.: 3:18-cv-02310-JAH-MDD

**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)**

James Lynn Hines (Plaintiff), currently incarcerated at the George Bailey Detention Facility (“GBDF”) located in San Diego, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983.

Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a); instead, he filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

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1 **I. Motion to Proceed IFP**

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

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

7 § 1915(a)(3)(b), *Bruce v. Samuels*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 627, 629 (2016); *Williams v.*  
8 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), the Prison Litigation Reform Act  
9 (“PLRA”) amended section 1915 to preclude the privilege to proceed IFP:

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

15 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’  
16 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005).

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

25 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner,  
26 which were dismissed on the ground that they were frivolous, malicious, or failed to state  
27 a claim,” *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the  
28 district court styles such dismissal as a denial of the prisoner’s application to file the

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

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

## 13 **II. Application to Plaintiff**

14       As an initial matter, the Court has carefully reviewed Plaintiff’s Complaint and has  
15 ascertained that it does not contain any “plausible allegations” to suggest he “faced  
16 ‘imminent danger of serious physical injury’ at the time of filing.” *Cervantes*, 493 F.3d at  
17 1055 (quoting 28 U.S.C. § 1915(g)).

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

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

1 n.2 (9th Cir. 2002)); *see also United States ex rel. Robinson Rancheria Citizens Council*  
2 *v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

3 Thus, this Court takes judicial notice that Plaintiff James Lynn Hines, aka Jackson  
4 Malloy, aka James Lynn O’Hines, currently identified as GBDF Booking No. 18157967,  
5 but formerly also identified as CDCR Inmate #BD-9688, CDCR Inmate #K-86989, and  
6 Arizona Department of Corrections Inmate ADC #197067, has had at least seven prior  
7 civil actions or appeals dismissed on the grounds that they were frivolous, malicious, or  
8 failed to state a claim upon which relief may be granted.

9 They are:

10 1) *Hines v. City of San Diego Police Dep’t, et al.*, Civil Case No. 3:00-cv-  
11 00969-K-LAB (S.D. Cal. June 21, 1999) (Order dismissing complaint for failure to state  
12 a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) & 1915A(b)(1)) (ECF No. 3) (strike  
13 one);<sup>1</sup>

14 2) *Malloy v. Kowolski, et al.*, Civil Case No. 3:00-cv-01186-W-LAB (S.D. Cal.  
15 June 30, 2000) (Order dismissing complaint as frivolous pursuant to 28 U.S.C.  
16 § 1915(e)(2)(B)) (ECF No. 4) (strike two);

17 3) *Hines v. Hissong, et al.*, Civil Case No. 3:00-cv-01177-JM-NLS (S.D. Cal.  
18 July 14, 2000) (Order dismissing complaint as frivolous pursuant to 28 U.S.C.  
19 § 1915(e)(2)(B)) (ECF No. 3) (strike three);

20 4) *Malloy v. Corcoran Prison, et al.*, Civil Case No. 1:00-cv-05660-REC-DLB  
21 (E.D. Cal. July 11, 2000) (Findings and Recommendations [“F&Rs”] re Dismissal of  
22 Action as Frivolous pursuant to 28 U.S.C. § 1915A and § 1915(e)(2)) (ECF No. 11);  
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26 <sup>1</sup> *See Harris v. Mangum*, 863 F.3d 1133, 1143 (9th Cir. 2017) (“[W]hen (1) a district court  
27 dismisses a complaint on the ground that it fails to state a claim, and (2) the court grants  
28 leave to amend, and (3) the plaintiff then fails to file an amended complaint, the dismissal  
counts as a strike under § 1915(g).”).

1 (E.D. Cal. Sept. 25, 2000) (Order Adopting F&Rs re Dismissal of Action as Frivolous)  
2 (ECF No. 12) (strike four);

3 5) *Hines v. Jaffe, Inc., et al.*, Civil Case No. 3:00-cv-02078-W-CGA (S.D. Cal.  
4 Nov. 7, 2000) (Order dismissing complaint as frivolous pursuant to 28 U.S.C.  
5 § 1915(e)(2)(B)) (ECF No. 2) (strike five);

6 6) *Malloy v. Galaza, et al.*, Civil Case No. 1:00-cv-05647-AWI-HGB (E.D.  
7 Cal. Nov. 8, 2000) (Memorandum Opinion and Order re Dismissal of Complaint for  
8 failing to state a claim pursuant to 28 U.S.C. § 1915A and § 1915(e)(2)) (ECF No. 7);  
9 (E.D. Cal. Dec. 13, 2000) (Order dismissing action for failing to state a claim) (ECF No.  
10 10) (strike six); and

11 7) *Malloy v. Corcoran Prison, et al.*, Civil Case No. 1:99-cv-06647-REC-SMS  
12 (E.D. Cal. June 6, 2000) (F&Rs re Dismissal of Action as frivolous and for failure to state  
13 a claim pursuant to 28 U.S.C. § 1915(e)(2) & 28 U.S.C. § 1915A(b)) (ECF No. 15); (E.D.  
14 Cal. Dec. 15, 2000) (Order Adopting F&Rs in full and Dismissing Action with prejudice  
15 as frivolous and for failing to state a claim) (ECF No. 18) (strike seven).

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

### 25 **III. Conclusion and Order**

26 For the reasons set forth above, the Court:

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

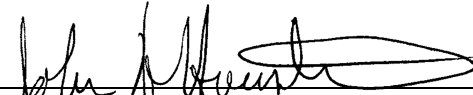
1           2)     **DISMISSES** this action without prejudice for failure to pay the full statutory  
2 and administrative \$400 civil filing fee required by 28 U.S.C. § 1914(a);

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.

9           **IT IS SO ORDERED.**

10  
11 Dated: October 16, 2018

  
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HON. JOHN A. HOUSTON  
United States District Judge