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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ERICA D. HAYWOOD,
12 Booking #19750859,

13 Plaintiff,

14 vs.

15 U.C. SAN DIEGO, et al.,

16 Defendants.
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Case No.: 3:19-cv-01955-MMA-BGS

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

[Doc. No. 2]

**DISMISSING CIVIL ACTION FOR
FAILURE TO PAY FILING FEE
REQUIRED BY 28 U.S.C. § 1914(a)**

20 Plaintiff, Erica D. Haywood, while in custody at the San Diego County Sheriff
21 Department's Las Colinas Detention & Reentry Facility, has a civil rights Complaint
22 ("Compl.") pursuant to 42 U.S.C. § 1983. *See* Compl., Doc. No. 1. Haywood seeks \$18
23 million in general and punitive damages from several municipalities, a non-profit agency,
24 the University of California Medical Center in San Diego, the U.S. Postal Service,
25 JCPenney, and the Fashion Valley Mall, based on what appear to be unrelated incidents
26 of alleged harassment, entrapment, stalking, mail theft, false reporting, and negligent
27 medical and mental health care treatment. *Id.* at 3–8, 16–19, 21. Haywood did not pay
28 the civil filing fee required by 28 U.S.C. § 1914(a) at the time she filed her Complaint;

1 instead, she filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. §
2 1915(a). *See* Doc. No. 2.

3 **I. Motion to Proceed IFP**

4 A. Standard of Review

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

8 In addition to requiring prisoners to “pay the full amount of a filing fee,” in
9 “monthly installments” or “increments” as provided by 28 U.S.C. § 1915(a)(3)(b), the
10 Prison Litigation Reform Act (“PLRA”) amended section 1915 to preclude the privilege
11 to proceed IFP in cases where the prisoner:

12 . . . has, on 3 or more prior occasions, while incarcerated or detained in any
13 facility, brought an action or appeal in a court of the United States that was
14 dismissed on the 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). “Pursuant to
18 § 1915(g), a prisoner with three strikes or more cannot proceed IFP.” *Id.*; *see also*
19 *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter “*Cervantes*”)
20 (under the PLRA, “[p]risoners who have repeatedly brought unsuccessful suits may
21 entirely be barred from IFP status under the three strikes rule[.]”). The objective of the
22 PLRA is to further “the congressional goal of reducing frivolous prisoner litigation in
23 federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).

24 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner,
25 which were dismissed on the ground that they were frivolous, malicious, or failed to state
26 a claim,” *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the
27 district court styles such dismissal as a denial of the prisoner’s application to file the
28 action without prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153

1 (9th Cir. 2008). When courts “review a dismissal to determine whether it counts as a
2 strike, the style of the dismissal or the procedural posture is immaterial. Instead, the
3 central question is whether the dismissal ‘rang the PLRA bells of frivolous, malicious, or
4 failure to state a claim.’” *El-Shaddai v. Zamora*, 833 F.3d 1036, 1042 (9th Cir. 2016)
5 (quoting *Blakely v. Wards*, 738 F.3d 607, 615 (4th Cir. 2013)).

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

12 B. Discussion

13 Haywood does not clearly allege any basis for § 1983 liability, let alone assert
14 “plausible allegations” to suggest she “faced ‘imminent danger of serious physical injury’
15 at the time of filing.” *Cervantes*, 493 F.3d at 1055 (quoting 28 U.S.C. § 1915(g)).
16 Instead, as best the Court can decipher, Haywood seeks to sue various governmental and
17 private entities for having stalked, harassed, entrapped, “banned,” defrauded, and
18 “exasperated” her, both before and during her current term of detention. *See* Compl. at
19 3–4, 16–19; *Sierra v. Woodford*, 2010 WL 1657493, at *3 (E.D. Cal. April 23, 2010)
20 (finding “long, narrative, rambling stat[e]ments regarding a cycle of violence, and vague
21 references to motives to harm” insufficient to show “ongoing danger” as required by 28
22 U.S.C. § 1915(g) and *Cervantes.*), *aff’d sub nom. Sierra v. Woodford, Dir. of Corr.*, 505
23 F. App’x 641 (9th Cir. 2013).

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

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 Therefore, this Court takes judicial notice of its own records, together with the
11 docket proceedings of other federal courts available on PACER, and finds that Plaintiff
12 Erica D. Haywood, currently identified as San Diego County Sheriff Department’s
13 Inmate Booking #19750859,¹ while incarcerated, has had at least seven prior prisoner
14 civil actions or appeals dismissed on the grounds that they were frivolous, malicious, or
15 failed to state a claim upon which relief may be granted. They are:

16 1) *Haywood v. Fifth U.S. Circuit Court of Appeals, et al.*, Civil Case No.
17 4:09-cv-00202 (S.D. Texas, March 12, 2009) (Memorandum Opinion and
18 Order granting application to proceed IFP and dismissing civil action with
prejudice as “legally baseless”) (Doc. Nos. 8, 9) (strike one);

19 2) *Haywood v. State of Georgia*, Civil Case No. 1:10-cv-00039-TWT
20 (N.D. Georgia, Feb. 2, 2010) (Order and Opinion granting request to proceed
21 IFP and dismissing case as frivolous pursuant to 28 U.S.C. § 1915A) (ECF
22 No. 3); (Feb. 3, 2010) (Judgment) (Doc. No. 4) (strike two);

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24 ¹ Haywood has been previously identified as San Diego County Inmate Booking
25 #18123564, as Inmate #804107 in San Antonio Texas’s Bexar County Adult Detention
26 Center, and as Inmate #933519, while she was detained in Atlanta Georgia’s Fulton County
27 Jail. She has previously admitted to having filed, and to have had dismissed, at least one
28 other civil action while she was incarcerated in the Western District of Texas sometime in
2012. *See Haywood v. San Diego, CA County, et al.*, S.D. Cal. Civil Case No. 3:18-cv-
01315-BTM-AGS, Compl., Doc. No. 1 at 1, 10.

1 3) *Haywood v. Bexar County Sheriff, et al.*, Civil Case No. 5:11-cv-00448-
2 XR (W.D. Texas) (Aug. 1, 2011) (Order & Judgment Dismissing Complaint
3 as frivolous, for failure to state a claim, and for seeking relief from immune
4 defendants pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(iii) and § 1915A(b)(1)-
(2)) (Doc. Nos. 14, 15) (strike three);

5 4) *Haywood v. Bexar County Sheriff, et al.*, Civil Case No. 5:11-cv-00467-
6 XR (W.D. Texas) (Aug. 1, 2011) (Order & Judgment Dismissing Complaint
7 as frivolous, for failure to state a claim, and for seeking relief from immune
8 defendants pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(iii) and § 1915A(b)(1)-
(2)) (Doc. Nos. 8, 9) (strike four);

9 5) *Haywood v. Bexar County, Texas, et al.*, Civil Case No. 5:11-cv-01115-
10 FB (W.D. Texas) (Feb. 1, 2012) (Report & Recommendation [“R&R”] to
11 Dismiss § 1983 Complaint for failure to state a claim pursuant to 28 U.S.C.
12 § 1915A) (Doc. No. 3); (Feb. 28, 2012) (Order Adopting R&R and Judgment)
(Doc. Nos. 7, 8) (strike five);

13 6) *Haywood v. San Diego CA Public Defender, et al.*, Civil Case No. 3:18-
14 cv-01761-MMA-BGS (S.D. Cal.) (Aug. 30, 2018) (Order Dismissing Civil
15 Action for Failure to Pay Filing Fees Required by 28 U.S.C. § 1914(a) and as
16 Frivolous pursuant to 28 U.S.C. § 1915A(b)(1)) (Doc. No. 2) (strike six); and

17 7) *Haywood v. San Diego County, et al.*, Civil Appeal No. 18-56333 (9th
18 Cir., April 22, 2019) (Order denying appellant’s motion to proceed in forma
19 pauperis and “dismissing this appeal as frivolous, pursuant to 28 U.S.C.
20 § 1915(e)(2).”) (DktEntry 10) (strike seven).

21 Accordingly, because Haywood has accumulated more than three “strikes”
22 pursuant to § 1915(g), and fails to make a “plausible allegation” of imminent danger of
23 serious physical injury at the time of filing, she is not entitled to proceed IFP in this case.
24 *See Cervantes*, 493 F.3d at 1055; *Rodriguez v. Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999)
25 (finding that 28 U.S.C. § 1915(g) “does not prevent all prisoners from accessing the
26 courts; it only precludes prisoners with a history of abusing the legal system from
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1 continuing to abuse it while enjoying IFP status).²

2 **II. Conclusion and Orders**

3 For the reasons explained, the Court:

4 (1) **DENIES** Haywood’s Motion to Proceed IFP (Doc. No. 2) as barred by 28
5 U.S.C. § 1915(g);

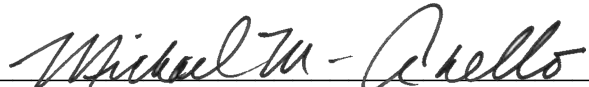
6 (2) **DISMISSES** this civil action sua sponte for failing to prepay the \$400 civil
7 and administrative filing fees required by 28 U.S.C. § 1914(a);

8 (3) **CERTIFIES** that an IFP appeal would not be taken in good faith pursuant
9 to 28 U.S.C. § 1915(a)(3); and

10 (4) **DIRECTS** the Clerk of Court to enter a judgment of dismissal and close the
11 file.

12 **IT IS SO ORDERED.**

13 DATE: December 10, 2019


HON. MICHAEL M. ANELLO
United States District Judge

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23 ² As a consequence of her litigation history, Haywood has previously been denied leave to
24 proceed IFP pursuant to 28 U.S.C. § 1915(g) both in this Court as well as in the Western
25 District of Texas. *See Haywood v. Haywood v. Director Brad Livingston, et al.*, Civil Case
26 No. 6:16-cv-00320-RP (Sept. 2, 2016) (Order Denying leave to proceed IFP and
27 Dismissing Complaint without prejudice “pursuant to the three-dismissal rule of 28 U.S.C.
28 § 1915(g).”) (Doc. No. 4); *Haywood v. San Diego, CA County, et al.*, S.D. Cal. Civil Case
No. 3:18-cv-01315-BTM-AGS (Order Denying Motion for Leave to Proceed In Forma
Pauperis as Barred by 28 U.S.C. § 1915(g) and Denying Motion for Immediate Injunction
and Release) (Sept. 24, 2018) (Doc. No. 6).