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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ERIC CHATMAN,  
CDCR #BI-6355,

Plaintiff,

v.

TOYOTA OF ESCONDIDO, et al.,

Defendants.

Case No.: 3:20-cv-00041-CAB-LL

**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)**

Eric Chatman (“Plaintiff”), currently incarcerated at San Quentin State Prison (“SQSP”) located in San Quentin, California, and proceeding pro se, has filed a civil action in which he claims to have been raped at work at Toyota of Escondido in 1997 or 1998. (ECF No. 1, Compl.)

Plaintiff did not pay the civil filing fee required by 28 U.S.C. § 1914(a) at the time he filed his Complaint; instead he filed a Motion to Proceed In Forma Pauperis (“IFP”)

1 pursuant to 28 U.S.C. § 1915(a) (ECF No. 2.)

2 **I. Motion to Proceed IFP**

3 **A. Standard of Review**

4 “All persons, not just prisoners, may seek IFP status.” *Moore v. Maricopa Cnty.*  
5 *Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). Prisoners, like Plaintiff, however,  
6 “face an additional hurdle.” *Id.* In addition to requiring prisoners to “pay the full  
7 amount of a filing fee,” in “increments” as provided by 28 U.S.C. § 1915(a)(3)(b),  
8 *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), the Prison Litigation Reform  
9 Act (“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  
15 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*”) (stating that under the PLRA, “[p]risoners who have repeatedly brought  
21 unsuccessful suits may entirely be barred from IFP status under the three strikes  
22 rule . . .”). The objective of the PLRA is to further “the congressional goal of reducing  
23 frivolous prisoner litigation in federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312  
24 (9th Cir. 1997). “[S]ection 1915(g)’s cap on prior dismissed claims applies to claims  
25 dismissed both 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). Once a prisoner has accumulated three strikes, he is prohibited by  
4 section 1915(g) from pursuing any other IFP action in federal court unless he can show  
5 he is facing “imminent danger of serious physical injury.” See 28 U.S.C. § 1915(g);  
6 Cervantes, 493 F.3d at 1051-52 (noting § 1915(g)’s exception for IFP complaints which  
7 “make[] a plausible allegation that the prisoner faced ‘imminent danger of serious  
8 physical injury’ at the time of filing.”).

9 B. Application to Plaintiff

10 As an initial matter, the Court has carefully reviewed Plaintiff’s Complaint and has  
11 ascertained that it does not contain “plausible allegations” which suggest he “faced  
12 ‘imminent danger of serious physical injury’ at the time of filing.” Cervantes, 493 F.3d  
13 at 1055 (quoting 28 U.S.C. § 1915(g)). Instead, Plaintiff alleges that more than twenty  
14 years ago he was raped by his supervisor at the car dealership at which he worked. (See  
15 Compl. at 13.)

16 A court “‘may take notice of proceedings in other courts, both within and without  
17 the federal judicial system, if those proceedings have a direct relation to matters at  
18 issue.’” *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v.*  
19 *Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)); see also *United States ex rel.*  
20 *Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

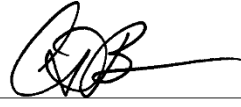
21 The Court takes judicial notice that Plaintiff, while incarcerated, has had at least  
22 three prior civil actions in this district alone dismissed on the grounds that they were  
23 frivolous, malicious, or failed to state a claim upon which relief may be granted. See 28  
24 U.S.C. § 1915(g). They are:

- 25 1) *Chatman v. Toyota of Escondido, et al.*, No. 3:17-cv-01853-BAS-JLB, ECF  
26 No. 18 (S.D. Cal. Nov. 8, 2017) (dismissing action for failing to state a  
27 claim and without leave to amend) (strike one);



**IT IS SO ORDERED.**

Dated: January 10, 2020



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Hon. Cathy Ann Bencivengo  
United States District Judge

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