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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAYMOND ALFORD BRADFORD,
CDCR #H-16258,

Plaintiff,

v.

P. BRACAMONTE, et al.,

Defendants.

Case No.: 3:20-cv-00213-WQH-WVG

**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
AS BARRED BY 28 U.S.C. § 1915(g)
(ECF No. 9)**

Raymond Alford Bradford (“Plaintiff”), currently incarcerated at Salinas Valley State Prison in Soledad, California, and proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 seeking to sue several correctional officials employed at Richard J. Donovan Correctional Facility (“RJD”) in San Diego, California; California State Prison, Los Angeles County (“CSP-LAC”); California State Prison, Corcoran (“CSP-Corcoran”); California Medical Facility (“CMF”) in Vacaville, California; and California State Prison, Sacramento (“CSP-Sacramento”). (See Compl., ECF No. 1 at 3.)

Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) at the time he submitted his Complaint, but instead has filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). (See ECF No. 9.)

1 **I. Motion to Proceed IFP**

2 **A. Standard of Review**

3 “All persons, not just prisoners, may seek IFP status.” *Moore v. Maricopa Cty.*
4 *Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011) (citation omitted). Prisoners, like
5 Plaintiff, however, “face[] an additional hurdle.” *Id.* In addition to requiring prisoners
6 to “pay the full amount of a filing fee,” in “increments” as provided by 28 U.S.C. §
7 1915(b), *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), the Prison Litigation
8 Reform Act (“PLRA”) amended § 1915 to preclude the privilege to proceed IFP

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

14 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’
15 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005), as amended.

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

25 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which
26 were dismissed on the ground that [they were] frivolous, malicious, or fail[ed] to state a
27 claim,” *Andrews*, 398 F.3d at 1116 n.1 (first alteration in original), “even if the district
28 court styles such dismissal as a denial of the prisoner’s application to file the action without

1 prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008).
2 When courts “review a dismissal to determine whether it counts as a strike, the style of the
3 dismissal or the procedural posture is immaterial. Instead, the central question is whether
4 the dismissal ‘rang the PLRA bells of frivolous, malicious, or failure to state a claim.’” *El-*
5 *Shaddai v. Zamora*, 833 F.3d 1036, 1042 (9th Cir. 2016) (quoting *Blakely v. Wards*, 738
6 F.3d 607, 615 (4th Cir. 2013)), as amended. “When . . . presented with multiple claims
7 within a single action,” courts “assess a PLRA strike only when the case as a whole is
8 dismissed for a qualifying reason under the Act.” *Hoffman v. Pulido*, 928 F.3d. 1147, 1152
9 (9th Cir. 2019) (quoting *Washington v. L.A. Cty. Sheriff’s Dep’t*, 833 F.3d 1048, 1057 (9th
10 Cir. 2016)).

11 Once a prisoner has accumulated three strikes, he is prohibited by § 1915(g) from
12 pursuing any other IFP action in federal court unless he can show he is facing “imminent
13 danger of serious physical injury.” See 28 U.S.C. § 1915(g); *Cervantes*, 493 F.3d at 1051,
14 1055 (noting § 1915(g)’s exception for IFP complaints that “make[] a plausible allegation
15 that the prisoner faced ‘imminent danger of serious physical injury’ at the time of filing”).

16 **B. Discussion**

17 **1. Strikes**

18 While Defendants typically carry the initial burden to produce evidence
19 demonstrating a prisoner is not entitled to proceed IFP, “[i]n some instances, the district
20 court docket records may be sufficient to show that a prior dismissal satisfies at least one
21 on the criteria under § 1915(g) and therefore counts as a strike.” See *Andrews*, 398 F.3d at
22 1120. That is the case here.

23 Based on the dockets of many court proceedings available on PACER,¹ the Court
24

25 ¹ A court may take judicial notice of its own records, see *Molus v. Swan*, No. 3:05-cv-00452-MMA-
26 WMc, 2009 WL 160937, at *2 (S.D. Cal. Jan. 22, 2009) (citing *United States v. Author Servs.*, 804 F.2d
27 1520, 1523 (9th Cir. 1986)); *Gerritsen v. Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D.
28 Cal. 2015), and “may take notice of proceedings in other courts, both within and without the federal
judicial system, if those proceedings have a direct relation to matters at issue.” *Bias v. Moynihan*, 508
F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir.

1 finds that Plaintiff Raymond Alford Bradford, currently identified as CDCR Inmate #H-
2 16258, has had at least four prior prisoner civil actions dismissed on the grounds that they
3 were frivolous, malicious, or failed to state a claim upon which relief may be granted. They
4 are:

5 (1) Bradford v. White, No. 2:98-cv-00180-FCD-JFM PC (E.D. Cal. May 4,
6 1999), ECF No. 12, at 3 (recommending dismissal of case as time-barred);
7 see also id. (E.D. Cal. June 3, 1999), ECF No. 14, at 1-2 (adopting
8 recommendation) (strike one);

9 (2) Bradford v. Terhune, No. 2:04-cv-05496-AWI-DLB PC (E.D. Cal. Sept.
10 15, 2004), ECF No. 17, at 3 (recommending dismissal of case for failure to
11 state a claim and failure to comply with court order requiring amendment);
12 see also id. (E.D. Cal. Oct. 21, 2004), ECF No. 18, at 1-2 (adopting
13 recommendation) (strike two);

14 (3) Bradford v. Grannis, No. 2:05-cv-00862-FCD-DAD PC (E.D. Cal. Sept.
15 15, 2005), ECF No. 12, at 3-4 (recommending dismissal of case for failure to
16 state a claim and as frivolous); see also id. (E.D. Cal. Sept. 30, 2005), ECF
17 No. 14, at 1-2 (adopting recommendation) (strike three); and

18 (4) Bradford v. Superior Court, No. 1:07-cv-01031-OWW-LJO (E.D. Cal.
19 Aug. 3, 2007), ECF No. 3, at 2 (recommending dismissal of case as
20 frivolous); see also id. (E.D. Cal. Aug. 21, 2007), ECF No. 5, at 1-2
21 (adopting recommendation) (strike four).

22 Plaintiff is prohibited by § 1915(g) from pursuing any other IFP action in federal court
23 unless he can show he is facing “imminent danger of serious physical injury.” 28 U.S.C.
24 § 1915(g).

25 **2. Imminent Danger Exception**

26 Plaintiff’s Complaint does not contain “plausible allegation[s]” to suggest that he
27 “faced ‘imminent danger of serious physical injury’ at the time of filing.” Cervantes, 493
28 F.3d at 1055 (quoting 28 U.S.C. § 1915(g)). Plaintiff alleges that since August 2017,

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

1 Defendants have “lie[d] to the court claiming that [Plaintiff] []stabbed[] officer F. Aviles
2 to justify their attack on [P]laintiff who was seriously injur[ed]”² (Compl. at 2.)
3 According to Plaintiff, he was attacked by guards, and during the attack a correctional
4 officer stabbed himself with Plaintiff’s weapon. (See id. at 3.) According to Plaintiff, this
5 incident led to false attempted murder charges being filed against him and “used for false
6 imprisonment [and] placing [P]laintiff in administrative segregation.” (See id.)
7 Subsequently Plaintiff filed administrative grievances alleging that correctional officers
8 used excessive force and stole Plaintiff’s personal property. (See id.)

9 Plaintiff alleges that he “was attacked several times by the prison guards at (RJD)
10 Donovan Correctional Facility” and other prisons, “in retaliation for filing a lawsuit.” (See
11 id.) During these attacks, which were precipitated by a correctional officer making “several
12 telephonic calls to the [Defendants] G. Pickett, P. Bracamonte, W. Smith and L. Steel . . . ,”
13 Plaintiff suffered serious injuries. (See id.) According to Plaintiff, Defendants’ “sole goal
14 was to []frame[] plaintiff and/or put a hit out on him by having another inmate ambush
15 Plaintiff because he would not comply with order and dismiss his lawsuit.” (See id. at 3-
16 4.) Defendant Pickett allegedly told Plaintiff that he would “find trouble if he did not drop
17 the lawsuit.” (See id. at 4.) Plaintiff alleges that on May 17, 2018, he was confronted by
18 Defendant Steel, who told another inmate to attack Plaintiff. (See id.) When the other
19 inmate attacked Plaintiff, Plaintiff stabbed him several times “in self defen[s]e”
20 Defendants allegedly then recovered Plaintiff’s weapon, “sprayed [P]laintiff with copious
21 amounts of pepper gas and started beating [P]laintiff over his head with the baton,
22 punching, kicking him in the face.” (See id.) “The guard F. Aviles confiscated the weapon
23 used to stab the inmate [and] F. Aviles used it to stab []himself[]” (See id.) “The
24 [D]efendants, prison officials would go on to charge [P]laintiff with (2) bogus attempted
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27 ² Plaintiff later alleges that the incident during which he allegedly stabbed officer F. Aviles occurred in
28 May 2018. (See Compl. at 4.) Whether the incidents in the Complaint began in August 2017 or May
2018, the Court’s conclusion is the same: Plaintiff does not satisfy the imminent danger exception to §
1915(g).

1 murders.” (See *id.*)

2 Plaintiff alleges that during these incidents Defendants violated Plaintiff’s Eighth
3 Amendment rights, retaliated against him for filing a lawsuit, and acted fraudulently by
4 writing false reports that Plaintiff committed two attempted murders. (See *id.* at 4-5.)

5 These claims do not plausibly allege that Plaintiff is danger of imminent physical
6 harm, is subject to any impending attack, or that he faced any viable danger at the time he
7 filed the Complaint. To qualify for § 1915(g)’s imminent danger exception, the danger
8 Plaintiff alleges that he faces must be real, proximate, and/or ongoing at the time he filed
9 his Complaint. See *Cervantes*, 493 F.3d at 1053 (“The exception’s use of the present tense,
10 combined with its concern only with the initial act of ‘bring[ing]’ the lawsuit, indicates to
11 us that the exception applies if the danger existed at the time the prisoner filed the
12 complaint.” (alteration in original)); *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003)
13 (“[T]he harm must be imminent or occurring at the time the complaint is filed.” (citation
14 omitted)). Incidents of past harm or retaliation are insufficient when they are not connected
15 to any ongoing possibility of harm at the time the complaint is filed. See *Cervantes*, 493
16 F.3d at 1053 (“[T]he availability of the exception turns on the conditions a prisoner faced
17 at the time the complaint was filed, not at some earlier or later time.”) The physical harms
18 that Plaintiff alleges, the assault by correctional officers in May 2018 and efforts to
19 encourage other inmates to attack Plaintiff, occurred well over a year prior to filing the
20 Complaint, and Plaintiff offers nothing more than conclusory allegations to show that any
21 threat of physical harm continued until the time that he filed the Complaint. See *id.* at
22 1055; see also *Moten v. Sosa*, No. 2:17-cv-0068-JAM-ACP, 2018 WL 571939, at *3 (E.D.
23 Cal. Jan. 26, 2018) (recommending dismissal under § 1915(g) and concluding that
24 allegations that a guard “lab[eled] plaintiff as a snitch-rat” thereby “expos[ing] [him] to
25 emotional, or physical harm from other prisoners” more than a year before the complaint
26 was filed did not satisfy the imminent danger exception (emphasis omitted)), report and
27 recommendation adopted, 2018 WL 5883933 (E.D. Cal. Nov. 9, 2018).

28 Plaintiff’s assertion that he is “requesting his (IFP) in forma pauperis status continue

1 under imminent danger due to the fact that the district court already ruled on it” in a
2 different case, *Bradford v. Khamooshian*, No. 17-cv-2053-BAS-MDD (S.D. Cal.), is also
3 insufficient. (See Compl. at 1.) In assessing whether a prisoner satisfies the imminent
4 danger exception, courts “maintain a singular focus on the facts alleged in the complaint in
5 deciding whether a prisoner faced the requisite harm.” See *Cervantes*, 493 F.3d at 1053
6 (collecting cases). The allegations in Plaintiff’s prior case satisfied the imminent danger
7 exception because, as the court found in that case, “Plaintiff alleges . . . ongoing inadequate
8 medical treatment claims arising at RJD at the time he filed this case” See *Bradford*,
9 No. 17-cv-2053-BAS-MDD (S.D. Cal. Mar. 5, 2018), ECF No. 21, at 4 n.2 (emphasis in
10 original). That conclusion is irrelevant in this case, which involves distinct factual and
11 legal claims stemming from incidents that predate the filing of the Complaint by more than
12 a year.

13 Accordingly, because Plaintiff has, while incarcerated, accumulated at least four
14 “strikes” as defined by § 1915(g), and he fails to make a “plausible allegation” that he
15 faced imminent danger of serious physical injury at the time he filed his Complaint, he is
16 not entitled to the privilege of proceeding IFP in this action. See *Cervantes*, 493 F.3d at
17 1055; see also *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (“[C]ourt
18 permission to proceed IFP is itself a matter of privilege and not right.”).

19 **II. Conclusion and Order**

20 For the reasons set forth above, the Court:

21 (1) **DENIES** Plaintiff’s Motion to Proceed IFP (ECF No. 9) as barred by 28
22 U.S.C. § 1915(g);

23 (2) **CERTIFIES** that an IFP appeal from this Order would be frivolous pursuant
24 to 28 U.S.C. § 1915(a)(3); and

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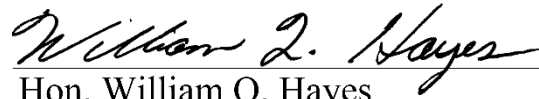
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1 (3) **DIRECTS** the Clerk of the Court to close the file.

2 **IT IS SO ORDERED.**

3 Dated: August 13, 2020



Hon. William Q. Hayes

United States District Court

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