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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 GARLAND JONES,
12 CDCR #F-47928,

13 Plaintiff,

14 vs.

15 POLLARD, Warden, et al.

16 Defendants.
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Case No.: 3:20-cv-00805-GPC-AGS

ORDER:

**1) DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
AS BARRED BY 28 U.S.C. § 1915(g)
[ECF No. 5]**

AND

**(2) DISMISSING CIVIL ACTION
WITHOUT PREJUDICE FOR
FAILURE TO PAY FILING FEE
REQUIRED BY 28 U.S.C. § 1914(a)**

22 Plaintiff, Garland Jones, currently incarcerated at Richard J. Donovan Correctional
23 Facility (“RJD”), in San Diego, California, has filed a civil rights Complaint pursuant to
24 42 U.S.C. § 1983. *See* Compl., ECF No. 1.

25 Plaintiff claims the Warden of RJD, the California Department of Corrections and
26 Rehabilitation (“CDCR”), and several other RJD correctional officials failed to either
27 prevent or properly respond after he and his “constituent,” an inmate named Mao, were
28 “suddenly” attacked by several unidentified “inmates with certain chronos” who later

1 dispersed on “approx[.] 4/15.” *Id.* at 3. Plaintiff offers no further factual detail, but he
2 contends he and Mao were later denied medical treatment, and that this is due to a CDCR-
3 wide pattern of harassment, and retaliation against him by “upper officials” due to his
4 “ongoing legal issues,” “legal mail violations,” and the “major” “legal binding complaints”
5 he has filed “at many institutions” over the course of 16 years. *Id.* at 4–5. He seeks \$1.5
6 million in general and punitive damages, and injunction preventing future “illegal
7 harassment” and RVR’s [Rules Violations Reports], and court-ordered “substantive
8 psyc[h]ological (mental) counseling with proper evaluations.” *Id.* at 7.

9 Plaintiff did not pay the full civil filing fee required by 28 U.S.C. § 1914(a) at the
10 time he filed suit, so his case was dismissed. *See* ECF No. 4. He re-opened the case
11 however, by filing a Motion to Proceed *In Forma Pauperis* (“IFP”) (ECF No. 4).

12 **I. Motion to Proceed IFP**

13 **A. Standard of Review**

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

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

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

25 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’
26 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005). “Pursuant to
27 § 1915(g), a prisoner with three strikes or more cannot proceed IFP.” *Id.*; *see also Andrews*
28 *v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter “*Cervantes*”) (under the

1 PLRA, “[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred
2 from IFP status under the three strikes rule[.]”). The objective of the PLRA is to further
3 “the congressional goal of reducing frivolous prisoner litigation in federal court.” *Tierney*
4 *v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).

5 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which
6 were dismissed on the ground that they were frivolous, malicious, or failed to state a claim,”
7 *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the district court
8 styles such dismissal as a denial of the prisoner’s application to file the action without
9 prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008).
10 When courts “review a dismissal to determine whether it counts as a strike, the style of the
11 dismissal or the procedural posture is immaterial. Instead, the central question is whether
12 the dismissal ‘rang the PLRA bells of frivolous, malicious, or failure to state a claim.’” *El-*
13 *Shaddai v. Zamora*, 833 F.3d 1036, 1042 (9th Cir. 2016) (quoting *Blakely v. Wards*, 738
14 F.3d 607, 615 (4th Cir. 2013)). “When ... presented with multiple claims within a single
15 action,” however, courts may “assess a PLRA strike only when the case as a whole is
16 dismissed for a qualifying reason under the Act.” *Hoffman v. Pulido*, 928 F.3d 1147, 1152
17 (9th Cir. 2019) (citing *Washington v. L.A. Cty. Sheriff’s Dep’t*, 833 F.3d 1048, 1057 (9th
18 Cir. 2016)).

19 Once a prisoner has accumulated three strikes, section 1915(g) prohibits his pursuit
20 of any subsequent IFP civil action or appeal in federal court unless he faces “imminent
21 danger of serious physical injury.” See 28 U.S.C. § 1915(g); *Cervantes*, 493 F.3d at 1051-
22 52 (noting § 1915(g)’s exception for IFP complaints which “make[] a plausible allegation
23 that the prisoner faced ‘imminent danger of serious physical injury’ at the time of filing.”).

24 B. Discussion

25 The Court has reviewed Plaintiff’s Complaint and finds it contains no “plausible
26 allegations” to suggest he “faced ‘imminent danger of serious physical injury’ at the time
27 of filing.” *Cervantes*, 493 F.3d at 1055 (quoting 28 U.S.C. § 1915(g)). Plaintiff does claim
28 he was “attacked by several inmates suddenly” on “approx. 4/15,” which the Court will

1 assume was 4/15/20—two weeks before he submitted his Complaint to the Clerk. *See*
2 Compl. at 1, 3. But “conclusory and nondescript” contentions of a prior altercation with
3 unknown inmates, without more, are insufficient to plausibly suggest Plaintiff faced an
4 “imminent danger of serious physical injury” for purposes of the PLRA at the time he filed
5 his Complaint. *See Cervantes*, 493 F.3d at 1055-56 (plaintiff must allege to face a real,
6 proximate and/or ongoing danger at the time of filing); *Cohea v. Davey*, No. 1:19-CV-
7 01281-LJO-SAB (PC), 2019 WL 5446490, at *1 (E.D. Cal. Oct. 24, 2019) (finding
8 prisoner’s allegations of past assaults insufficient to show “imminent danger” under
9 1915(g)), *reconsideration denied*, No. 1:19-CV-01281-NONE-SAB (PC), 2020 WL
10 5763929 (E.D. Cal. Sept. 28, 2020). Plaintiff’s further mention of having been previously
11 “subjected to confinement in cells with Ar[y]an [B]rothers in other institutions,” *see*
12 Compl. at 3, and his generalized claims of being “harassed” and “detested by many officials
13 (upper)” because he has filed many “legal complaints against CDC[R]” in the past, *id.* at
14 5, are also insufficient to plausibly show the “imminent danger of serious physical injury”
15 required to qualify for § 1915(g)’s exception. *See Cervantes*, 493 F.3d at 1056.

16 “Although prison can undoubtedly be a dangerous place, incarceration alone does
17 not satisfy the requirement of ‘imminent danger of serious physical injury’” for purposes
18 of § 1915(g). *Parker v. Montgomery Cty. Corr. Facility/Bus. Office Manager*, 870 F.3d
19 144, 154 n.12 (3d Cir. 2017). “Indeed, if it did, every prisoner would be entitled to IFP
20 status and the exception would swallow the rule.” *Id.* (citation omitted); *see also Patrick v.*
21 *Altshuler*, No. 2:17-CV-1046 AC P, 2017 WL 4539273, at *5 (E.D. Cal. Oct. 11, 2017)
22 (finding prisoner’s claims of “[f]ear with trust issues” and “painful” “[a]buse[s] of power”
23 were insufficient to demonstrate he was “under imminent danger of serious physical
24 injury” under § 1915(g)); *Prophet v. Clark*, No. CV 1-08-00982-FJM, 2009 WL 1765197,
25 at *1 (E.D. Cal. June 22, 2009) (finding prisoner’s access to the courts, interference with
26 legal mail, and retaliation claims insufficient to satisfy § 1915(g) exception in cases of
27 “imminent danger of serious physical injury”).

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1 And while Defendants typically carry the initial burden to produce evidence
2 demonstrating a prisoner is not entitled to proceed IFP, *Andrews*, 398 F.3d at 1119, “in
3 some instances, the district court docket may be sufficient to show that a prior dismissal
4 satisfies at least one on the criteria under § 1915(g) and therefore counts as a strike.” *Id.* at
5 1120. That is the case here.

6 A court may take judicial notice of its own records, *see Molus v. Swan*, Civil Case
7 No. 3:05-cv-00452-MMA-WMc, 2009 WL 160937, *2 (S.D. Cal. Jan. 22, 2009) (citing
8 *United States v. Author Services*, 804 F.2d 1520, 1523 (9th Cir. 1986)); *Gerritsen v.*
9 *Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015), and “may take
10 notice of proceedings in other courts, both within and without the federal judicial system,
11 if those proceedings have a direct relation to matters at issue.” *Bias v. Moynihan*, 508 F.3d
12 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th
13 Cir. 2002)).

14 Based on a review of its own dockets and other court proceedings available on
15 PACER, the Court finds that Plaintiff Garland Jones, identified as CDCR Inmate #F-47928,
16 while incarcerated, has had four prior civil actions dismissed on the grounds that they were
17 frivolous, malicious, or failed to state a claim upon which relief may be granted.

18 They are:

19 (1) *Jones v. Tolson, et al.*, Civil Case No. 1:15-cv-01037-JDP (E.D.
20 Cal. Sept. 14, 2015) (Order dismissing civil action for failing to state a
21 claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1),
(2)) (ECF No. 17) (strike one);

22 (2) *Jones v. Tiscornia, et al.*, Civil Case No. 3:18-cv-00544-GPC-PCL
23 (S.D. Cal. July 30, 2018) (Order dismissing second amended complaint
24 for failing to state a claims pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)
25 (ECF No. 11) (strike two);

26 (3) *Jones v. Mailroom Officials at CSATF, et al.*, Civil Case No. 1:17-
27 cv-00281-LJO-SKO (E.D. Cal. Oct. 31, 2018) (Findings and
28 Recommendations [“F&R”] to dismiss second amended complaint for
failure/inability to state a claim pursuant to 28 U.S.C. § 1915A(b)(1),

1 (2) and § 1915(e)(2)(B)(ii)) (ECF No. 22); (E.D. Cal. Jan. 9, 2019 Order
2 adopting F&R) (ECF No. 24) (strike three); and

3 (4) *Jones v. Cal. Corr. Healthcare Servs., et al.*, Civil Case No. 2:17-
4 cv-00738-WBS-DB (E.D. Cal. March 21, 2019) (Order & F&R to
5 dismiss second amended complaint for failing to state a claim pursuant
6 to 28 U.S.C. § 1915A(b)(1) & (2)) (ECF No. 30); (April 26, 2019 Order
7 adopting F&R and dismissing second amended complaint without leave
8 to amend) (ECF No. 32) (strike four).

9 Accordingly, because Plaintiff has, while incarcerated, accumulated at least three
10 “strikes” as defined by § 1915(g), and he fails to make a “plausible allegation” that he faced
11 imminent danger of serious physical injury at the time he filed his Complaint, he is not
12 entitled to the privilege of proceeding IFP in this action. *See Cervantes*, 493 F.3d at 1055;
13 *Rodriguez*, 169 F.3d at 1180 (finding that 28 U.S.C. § 1915(g) “does not prevent all
14 prisoners from accessing the courts; it only precludes prisoners with a history of abusing
15 the legal system from continuing to abuse it while enjoying IFP status”); *see also Franklin*
16 *v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (“[C]ourt permission to proceed IFP is
17 itself a matter of privilege and not right.”).¹

18 **II. Conclusion and Orders**

19 For the reasons set forth above, the Court:

20 (1) **DENIES** Plaintiff’s Motion to Proceed IFP (ECF No. 5) as barred by 28
21 U.S.C. § 1915(g);

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24 ¹ In fact, Plaintiff has been denied leave to proceed IFP pursuant to 28 U.S.C. § 1915(g) in
25 this Court on six previous occasions. *See Jones v. Blahnik, et al.*, S.D. Cal. Civil Case No.
26 3:18-cv-02262-GPC-BLM (ECF No. 11); *Jones v. Elizaldie*, S.D. Cal. Civil Case No. 3:18-
27 cv-02734-JLS-MDD (ECF No. 4); *Jones v. Elizaldie, et al.*, S.D. Cal. Civil Case No. 3:19-
28 cv-00296-BAS-AGS (ECF No. 4); *Jones v. Campos, et al.*, S.D. Cal. Civil Case No. 3:19-
cv-01340-LAB-JLB (ECF No. 4), *Jones v. Elizalde, et al.*, S.D. Cal. Civil Case No. 3:19-
cv-01521-CAB-JLB (ECF No. 4); and *Jones v. Caneda, et al.*, S.D. Cal. Civil Case No.
3:19-cv-02121-CAB-MDD (ECF No. 4).

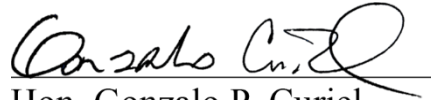
1 (2) **DISMISSES** this civil action sua sponte without prejudice for failing to
2 prepay the \$400 civil and administrative filing fees required by 28 U.S.C. § 1914(a);

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

5 (4) **DIRECTS** the Clerk of the Court to close the file.

6 **IT IS SO ORDERED.**

7 Dated: December 10, 2020


8 Hon. Gonzalo P. Curiel
9 United States District Judge

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