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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 KOHEN DIALLO UHURU,
11 CDCR #P-73824,

Plaintiff,

12 vs.
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14 RALPH DIAZ; J. CLARK KELSO;
15 CHAPLAIN FABIAN HADJAJ;
16 CHERYLINE MANCUSI; NEIL
17 SCHNEIDER,

Defendants.
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Case No.: 3:20-cv-2056-TWR-BLM

ORDER:

**1) DENYING MOTION TO
PROCEED IFP AS
BARRED BY 28 U.S.C. § 1915(g)
[ECF No. 3];**

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

**3) DENYING MOTION FOR
EXTENSION OF TIME TO FILE
MOTION TO APPOINT COUNSEL
AS MOOT [ECF No. 4]**

25 Kohen Diallo Uhuru (“Plaintiff”), currently incarcerated at California Health Care
26 Facility (“CHCF”) in Stockton, California, and proceeding pro se, has filed a civil rights
27 Complaint (“Compl.”) pursuant to 42 U.S.C. § 1983. *See* Compl., ECF No. 1.

28 Plaintiff claims prison officials at Richard J. Donovan Correctional Facility (“RJD”)

1 in San Diego, California, along with California Department of Corrections and
2 Rehabilitation (“CDCR”) officials, violated his First, Fourth, Fifth, Eighth, and Fourteenth
3 Amendment rights while he was incarcerated there in 2016 and 2017. *See* Compl., at 1–6.

4 His pleading is dense, his myriad claims are convoluted, and he fails to attribute
5 particular constitutional wrongs to any individual Defendant. Plaintiff has filed a Motion
6 to Proceed *in forma pauperis* (“IFP”), along with a Motion to Appoint Counsel. (ECF Nos.
7 3, 4.)

8 **I. 28 U.S.C. § 1915(g)’s “Three Strikes” Bar**

9 **A. Standard of Review**

10 “All persons, not just prisoners, may seek IFP status.” *Moore v. Maricopa County*
11 *Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). Prisoners like Plaintiff, however, “face
12 an additional hurdle.” *Id.* In addition to requiring prisoners to “pay the full amount of a
13 filing fee,” in “monthly installments” or “increments” as provided by 28 U.S.C.
14 § 1915(a)(3)(b), *Bruce v. Samuels*, ___ U.S. ___, 136 S. Ct. 627, 629 (2016); *Williams v.*
15 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), the Prison Litigation Reform Act (“PLRA”)
16 amended section 1915 to preclude the privilege to proceed IFP:

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

21 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’
22 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005).

23 “Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed IFP.”
24 *Id.*; *see also Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter
25 “*Cervantes*”) (under the PLRA, “[p]risoners who have repeatedly brought unsuccessful
26 suits may entirely be barred from IFP status under the three strikes rule[.]”). The objective
27 of the PLRA is to further “the congressional goal of reducing frivolous prisoner litigation
28 in federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997). “[S]ection

1 1915(g)'s cap on prior dismissed claims applies to claims dismissed both before and after
2 the statute's effective date." *Id.* at 1311.

3 "Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which
4 were dismissed on the ground that they were frivolous, malicious, or failed to state a claim,"
5 *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), "even if the district court
6 styles such dismissal as a denial of the prisoner's application to file the action without
7 prepayment of the full filing fee." *O'Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008);
8 *see also El-Shaddai v. Zamora*, 833 F.3d 1036, 1042 (9th Cir. 2016) (noting that when
9 court "review[s] a dismissal to determine whether it counts as a strike, the style of the
10 dismissal or the procedural posture is immaterial. Instead, the central question is whether
11 the dismissal 'rang the PLRA bells of frivolous, malicious, or failure to state a claim.'")
12 (quoting *Blakely v. Wards*, 738 F.3d 607, 615 (4th Cir. 2013)).

13 Once a prisoner has accumulated three strikes, he is prohibited by section 1915(g)
14 from pursuing any other IFP civil action or appeal in federal court unless he alleges that he
15 is facing "imminent danger of serious physical injury." *See* 28 U.S.C. § 1915(g);
16 *Cervantes*, 493 F.3d at 1051-52 (noting § 1915(g)'s exception for IFP complaints which
17 "make[] a plausible allegation that the prisoner faced 'imminent danger of serious physical
18 injury' at the time of filing.").

19 B. Discussion

20 The Court has reviewed Plaintiff's Complaint and finds that it does not contain any
21 "plausible allegations" that suggest he "faced 'imminent danger of serious physical injury'
22 at the time of filing." *Cervantes*, 493 F.3d at 1055 (quoting 28 U.S.C. § 1915(g)). Instead,
23 as summarized above, Plaintiff, who is now incarcerated at CHCF in Stockton, California,
24 claims RJD and CDCR officials violated his constitutional rights while he was incarcerated
25 in San Diego three or four years ago. *See* Compl., at 1. But § 1915(g)'s "imminent danger"
26 exception cannot be triggered solely by complaints of past harm. *See Cervantes*, 493 F.3d
27 at 1053 ("The exception's use of the present tense, combined with its concern only with
28 the initial act of 'bring[ing]' the lawsuit, indicates to us that the exception applies if the

1 danger existed at the time the prisoner filed the complaint.”). Nor may it be based on
2 “overly speculative,” “fanciful,” or “conclusory assertions.” *Cervantes*, 493 F.3d at 1057
3 n.11; *see also Parker v. Montgomery Cty. Corr. Facility/Bus. Office Manager*, 870 F.3d
4 144, 154 n.12 (3d Cir. 2017) (“Although prison can undoubtedly be a dangerous place,
5 incarceration alone does not satisfy the requirement of “imminent danger of serious
6 physical injury” for purposes of § 1915(g). Indeed, if it did, every prisoner would be
7 entitled to IFP status and the exception would swallow the rule.”) (citation omitted)).

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

13 Based on a review of its own dockets and other court proceedings available on
14 PACER,¹ the Court finds that Plaintiff Kohen Diallo Uhuru, also known as Diallo E.
15 Uhuru, and identified as CDCR Inmate #P-73824, has had seven prior prisoner civil actions
16 and appeals dismissed because they were frivolous, malicious, or failed to state a claim
17 upon which relief may be granted.

18 They are:

19 1) *Diallo v. Yarborough, et al.*, Civil Case No. 2:03-cv-05401-JVS-VBK
20 (C.D. Cal. February 5, 2004) (Report and Recommendation [“R&R”] to
21 Grant Defendants’ Motion to Dismiss Complaint for failure to state a claim
22 pursuant (ECF No. 28 at 11) (“The allegation of the Complaint are
23 insufficient to state a claim against each individual defendant upon which
24 relief can be granted.”); (C.D. Cal. April 16, 2004) (Order Accepting R&R

25 ¹ The Court may take judicial notice of its own records, *see Molus v. Swan*, Civil Case No. 3:05-cv-
26 00452–MMA-WMc, 2009 WL 160937, *2 (S.D. Cal. Jan. 22, 2009) (citing *United States v. Author*
27 *Services*, 804 F.2d 1520, 1523 (9th Cir. 1986)); *Gerritsen v. Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d
28 1011, 1034 (C.D. Cal. 2015), and “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.
2002)).

1 Granting Defendants’ Motion to Dismiss, and Directing that Judgment be
2 entered dismissing action without prejudice) (ECF No. 34 at 1–2) (strike
3 one);

4 2) *Diallo v. Moskowitz, et al.*, Civil Case No. 2:07-cv-07109-JVS-VBK
5 (C.D. Cal. June 1, 2009) (Amended R&R Granting Defendants’ Motion to
6 Dismiss Complaint (ECF No. 48); (C.D. Cal. July 6, 2009) (Order Accepting
7 and Adopting Amended R&R and dismissing the Complaint, “and the action,
8 with prejudice.”) (ECF No. 50 at 1–2) (strike two);

9 3) *Diallo v. Greenman, et al.*, Civil Case No. 2:07-cv-02937-JVS-VBK
10 (C.D. Cal. Sept. 21, 2009) (R&R Granting Defendants’ Motion to Dismiss
11 First Amended Complaint) (ECF No. 44 at 8, 25 (“[T]he allegations of the
12 First Amended Complaint are insufficient to state a federal civil rights claim
13 against Defendants.”)); (C.D. Cal. Oct. 27, 2009) (Order Accepting &
14 Adopting R&R and Dismissing First Amended Complaint, “and the action,
15 with prejudice.”) (ECF No. 47) (strike three);

16 4) *Uhuru v. Spagnola, et al.*, Civil Cal. Civil Case No. 2:09-cv-05582-
17 JVS-VBK (C.D. Cal. Feb. 8, 2010) (Order re Dismissal of Complaint with
18 Leave to Amend for failing to state a claim pursuant to 28 U.S.C.
19 § 1915(e)(2)(B)) (ECF No. 5); (C.D. Cal. May 5, 2010) (R&R & OSC re
20 Dismissal for Failure to Prosecute) (ECF No. 9); (C.D. Cal. June 23, 2010)
21 (Order Adopting R&R and Dismissing “the Complaint, and the action[.]”)
22 (ECF No. 10 at 1) (strike four);²

23 5) *Uhuru v. Oliveros, et al.*, Civil Case No. 3:16-cv-02973-CAB-RBB (S.
24 D. Cal. April 25, 2017) (Order Denying Motion to Proceed IFP and
25 Dismissing Civil Action for Failing to State a Claim pursuant to 28 U.S.C.
26 § 1915A(b)(1)) (ECF No. 5); (S.D. Cal. Aug. 28, 2017) (Order Denying
27 Motion for Reconsideration and Re-Certifying that IFP Appeal would not be
28 taken in Good Faith pursuant to 28 U.S.C. § 1915(a)(3)) (ECF No. 11) (strike
five);

² See *Harris v. Mangum*, 863 F.3d 1133, 1143 (9th Cir. 2017) (“[W]hen (1) a district court dismisses a complaint on the ground that it fails to state a claim, and (2) the court grants leave to amend, and (3) the plaintiff then fails to file an amended complaint, the dismissal counts as a strike under § 1915(g).”).

1 6) *Uhuru v. Paramo, et al.*, Civil Case No. 3:17-cv-00960-GPC-BGS
2 (S.D. Cal. May 26, 2017) (Order Denying Motion to Proceed IFP and
3 Dismissing Civil Action for Failing to State a Claim pursuant to 28 U.S.C.
§ 1915A(b)(1)) (ECF No. 7) (strike six); and

4 7) *Uhuru v. Paramo, et al.*, Appeal No. 17-56364 (9th Cir. Ct. App. May
5 17, 2018) (Order Denying Motion to Proceed IFP and Dismissing Appeal “as
6 frivolous, pursuant to 28 U.S.C. § 1915(e)(2).”) (Dkt. Entry 11) (strike seven).

7 Therefore, because Plaintiff has, while incarcerated, accumulated more than three
8 “strikes” under § 1915(g), and he fails to make a plausible allegation that he faced imminent
9 danger of serious physical injury at the time he filed his Complaint, he is not entitled to the
10 privilege of proceeding IFP in this action. *See Cervantes*, 493 F.3d at 1055; *Rodriguez v.*
11 *Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999) (finding that 28 U.S.C. § 1915(g) “does not
12 prevent all prisoners from accessing the courts; it only precludes prisoners with a history
13 of abusing the legal system from continuing to abuse it while enjoying IFP status”); *see*
14 *also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (“[C]ourt permission to
15 proceed IFP is itself a matter of privilege and not right.”).

16 **III. Conclusion and Orders**

17 For the reasons discussed, the Court:

18 1) **DENIES** Plaintiff’s Motion to Proceed IFP (ECF No. 3) as barred by 28
19 U.S.C. § 1915(g);

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

22 3) **DENIES** Plaintiff’s Motion for Extension of Time to File a Motion to Appoint
23 Counsel (ECF No. 4) as moot;

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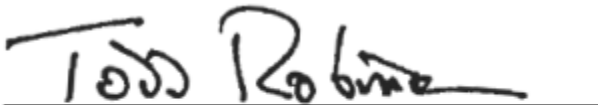
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1 4) **CERTIFIES** that an IFP appeal from this Order would be frivolous and
2 therefore, would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3); and

3 5) **DIRECTS** the Clerk of Court to enter a final judgment and close the file.
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5 **IT IS SO ORDERED.**
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7 Dated: November 30, 2020



Honorable Todd W. Robinson
United States District Court

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