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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 SUTEN BLACKGOLD, aka Mitchell  
11 Quentin Grady,  
12 CDCR #AS-8775,

Plaintiff,

13 v.

14 PATRICIA MADISON, et al.,

15 Defendants.  
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Case No. 23-CV-1740-JLS (DDL)

**ORDER: (1) DENYING MOTION TO  
PROCEED IN FORMA PAUPERIS  
AS BARRED BY 28 U.S.C. § 1915(g);  
AND (2) DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILURE TO PAY FILING  
FEE REQUIRED BY 28 U.S.C.  
§ 1914(a)**

(ECF Nos. 1, 2)

19 Plaintiff Suten Blackgold (“Blackgold” or “Plaintiff”), also known as Mitchell  
20 Quentin Grady, currently incarcerated at Kern Valley State Prison (“KVSP”), has filed a  
21 civil rights Complaint (“Compl.,” ECF No. 1) pursuant to 42 U.S.C. § 1983. Plaintiff did  
22 not prepay the full civil filing fee required by 28 U.S.C. § 1914(a); instead, he filed a  
23 Motion to Proceed *In Forma Pauperis* (“IFP Mot.,” ECF No. 2). For the reasons set forth  
24 below, the Court denies Plaintiff’s IFP Motion and directs him to pay the civil filing fee to  
25 avoid dismissal.

26 **I. IFP Motion**

27 In order to further “the congressional goal of reducing frivolous prisoner litigation  
28 in federal court,” the Prison Litigation Reform Act (“PLRA”) § 804(g), 28 U.S.C.

1 § 1915(g) (1996) provides that prisoners with three strikes or more cannot proceed *in forma*  
2 *pauperis* (“IFP”). *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997). A prisoner has  
3 three strikes if

4 “on [three] or more prior occasions, while incarcerated or  
5 detained in any facility, [the prisoner] brought an action or appeal  
6 in a court of the United States that was dismissed on the grounds  
7 that it is frivolous, malicious, or fails to state a claim upon which  
relief may be granted . . . .”

8 28 U.S.C. § 1915(g).

9 When courts “review a dismissal to determine whether it counts as a strike, the style  
10 of the dismissal or the procedural posture is immaterial. Instead, the central question is  
11 whether the dismissal ‘rang the PLRA bells of frivolous, malicious, or failure to state a  
12 claim.’” *El-Shaddai v. Zamora*, 833 F.3d 1036, 1042 (9th Cir. 2016) (quoting *Blakely v.*  
13 *Wards*, 738 F.3d 607, 615 (4th Cir. 2013)). Once a prisoner has accumulated three strikes,  
14 he is prohibited by § 1915(g) from proceeding IFP in federal court unless he can show he  
15 is facing “imminent danger of serious physical injury.” See 28 U.S.C. § 1915(g); *Andrews*  
16 *v. Cervantes*, 493 F.3d 1047, 1051–52 (9th Cir. 2007).

17 Defendants typically carry the initial burden to produce evidence demonstrating a  
18 prisoner is not entitled to proceed IFP, *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir.  
19 2005), but “[i]n some instances, the district court docket records may be sufficient to show  
20 that a prior dismissal satisfies at least one of the criteria under § 1915(g) and therefore  
21 counts as a strike,” *id.* at 1120. After reviewing its docket, the Court finds that Plaintiff,  
22 also known as Mitchell Quentin Grady and identified with CDCR #AS-8775, has three  
23 strikes that render him ineligible to proceed IFP. Fed. R. Evid. 201(b)(2); *United States v.*  
24 *Wilson*, 631 F.2d 118, 119 (9th Cir. 1980) (stating that a court may take judicial notice of  
25 its own records in other cases, as well as other courts’ records). They are:

26 (1) *Grady v. Wyatt*, Civil Case No. 3:20-cv-01631-AJB-BGS (S.D. Cal. Oct.  
27 29, 2020 and Jan. 6, 2021) (Orders dismissing action for failing to state a claim

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1 pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b) and for failure to  
2 prosecute) (ECF Nos. 5–6) (strike one);<sup>1</sup>

3 (2) *Grady v. Correa*, Civil Case No. 3:20-cv-01997-AJB-JLB (S.D. Cal. Jan  
4 12, 2021) (Orders dismissing action for failing to state a claim pursuant to 28  
5 U.S.C. §§ 1915(e)(2) and 1915A(b)) (ECF No. 8) (strike two);

6 (3) *Blackgold v. Madden, et al.*, Civil Case No. 3:22-cv-00915-MMA-WVG  
7 (S.D. Cal. Dec. 5, 2022) (Order dismissing action as duplicative of 20cv1273-  
8 MMA-WVG) (ECF No. 8) (strike three).<sup>2</sup>

9 Accordingly, because Blackgold has accumulated three “strikes” pursuant to  
10 § 1915(g) while incarcerated, he cannot proceed IFP unless he meets the “imminent  
11 danger” exception to the three strikes provision of the PLRA. To do so, his pleadings must  
12 contain a “plausible allegation that [he] faced ‘imminent danger of serious physical injury’  
13 at the time of filing.” *Cervantes*, 493 F.3d at 1055 (quoting 28 U.S.C. § 1915(g)).  
14 “Imminent danger” requires an allegation that a harm is “ready to take place,” or “hanging  
15 threateningly over one’s head,” *Cervantes*, 493 F.3d at 1056 (internal quotation marks  
16 omitted) (quoting *Merriam-Webster’s Collegiate Dictionary* 580 (10th ed. 1999)), and  
17 “cannot be triggered solely by complaints of past injury or generalized fears of possible  
18 future harm,” *Hernandez v. Williams*, No. 21cv347-MMA-KSC, 2021 WL 1317376, at \*2  
19 (S.D. Cal. Apr. 8, 2021) (citing *Cervantes*, 493 F.3d at 1053).

20 Blackgold’s Complaint and attached exhibits allege Defendants, who he alleges are  
21 Imperial County District Attorneys, “stacked false felony convictions intentionally” in the  
22 2010 San Diego superior court case no. SCD216913, and that Defendant Madison “tr[ie]d  
23 to viciously trick [him] into admitting to all these false felony convictions” in 2022.  
24 Compl. at 2–3. Based on these allegations, the Court finds Blackgold has not met the  
25 imminent danger exception to the three strikes rule because he is not facing a harm that is

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27 <sup>1</sup> See *Harris v. Mangum*, 863 F.3d 1133, 1143 (9th Cir. 2017) (“A prisoner may not avoid incurring  
28 strikes simply by declining to take advantage of [an] opportunit[y] to amend.”).

<sup>2</sup> See *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (a complaint that “merely repeats  
pending or previously litigated claims” may properly be considered frivolous).

1 “ready to take place,” or “hanging threateningly over [his] head.” *Cervantes*, 493 F.3d at  
2 1056 (internal quotation marks omitted) (quoting *Merriam-Webster’s Collegiate*  
3 *Dictionary* 580 (10th ed. 1999)); *see also, e.g., Jensen v. Knowles*, 621 F. Supp. 2d 921,  
4 927 (E.D. Cal. 2008) (finding the plaintiff’s allegation that defendants were withholding  
5 religious books insufficient to satisfy the imminent danger exception of § 1915(g)).

6 **II. Conclusion and Orders**

7 For the reasons set forth above, the Court:

8 (1) **DENIES** Plaintiff’s Motion to Proceed IFP (ECF No. 2) as barred by 28 U.S.C.  
9 § 1915(g);

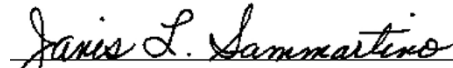
10 (2) **DISMISSES** this civil action *sua sponte* without prejudice for failing to prepay  
11 the \$400 civil and administrative filing fees required by 28 U.S.C. § 1914(a);

12 (3) **CERTIFIES** that an IFP appeal from this Order would be frivolous pursuant to  
13 28 U.S.C. § 1915(a)(3); and

14 (6) **DIRECTS** the Clerk of the Court to close the file.

15 **IT IS SO ORDERED.**

16 Dated: November 13, 2023

  
17 Hon. Janis L. Sammartino  
18 United States District Judge  
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