

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

McElroy v. Department of Corrections

No. 25-cv-00314-HSG (N.D. Cal. Mar. 3, 2025) · No. 25-cv-00314-HSG · Decided March 3, 2025

SUMMARY

The United States District Court for the Northern District of California orders Plaintiff Latwahn J. McElroy to show cause why his request to proceed in forma pauperis should not be denied under the Prison Litigation Reform Act’s three-strikes provision, 28 U.S.C. § 1915(g). The court finds that Plaintiff has at least three qualifying prior strikes and that the complaint does not plausibly allege imminent danger of serious physical injury at the time of filing. The court also denies Plaintiff’s requests for an order to show cause, judicial notice, and temporary or preliminary injunctive relief as premature or unclear.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Haywood S. Gilliam, Jr.
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 3, 2025
DOCKET	25-cv-00314-HSG
DISPOSITION	other
PROCEDURAL POSTURE	Pro se prisoner civil-rights action under 42 U.S.C. § 1983. Before screening the complaint, the court considered Plaintiff’s request to proceed in forma pauperis under 28 U.S.C. § 1915(g) and requests for an order to show cause, judicial notice, and temporary or preliminary injunctive relief.
STANDARD OF REVIEW	The court evaluated whether the complaint plausibly alleged imminent danger of serious physical injury at the time of filing under 28 U.S.C. § 1915(g), and whether the requested injunctive relief had a sufficient nexus to claims pleaded in the complaint.
PRECEDENTIAL VALUE	Unknown; district-court order addressing IFP status and preliminary relief.
PARTIES	Latwahn J. McElroy v. Department of Corrections, et al.

TOPICS

civil procedure

prisoners rights

civil rights

injunctions

motions to dismiss

PRACTICE AREAS

civil procedure

prisoner civil rights

constitutional law

remedies

QUESTIONS PRESENTED

1. Whether Plaintiff should be denied leave to proceed in forma pauperis under 28 U.S.C. § 1915(g) based on at least three qualifying prior dismissals and the absence of a plausible imminent-danger allegation.
2. Whether the court could deny Plaintiff's requests for judicial notice and temporary or preliminary injunctive relief before determining whether the action could proceed and whether the complaint stated cognizable claims.

HOLDINGS

1. A district court may raise the potential applicability of 28 U.S.C. § 1915(g) sua sponte, but must notify the prisoner of the prior dismissals relied upon and provide an opportunity to be heard before denying in forma pauperis status.
2. A prior case counts as a strike when, after evaluating the substance of the dismissal, the case was dismissed in its entirety as frivolous, malicious, or for failure to state a claim; dismissals solely based on a prior three-strikes finding do not constitute additional strikes.
3. The imminent-danger exception is assessed at the time the complaint is filed and requires a plausible allegation of imminent danger of serious physical injury with a nexus to the violations alleged in the complaint; Plaintiff's allegations did not satisfy that standard.
4. A request for temporary or preliminary injunctive relief must relate to claims pleaded in the complaint and may be denied as premature where the action has not yet been authorized to proceed and the complaint has not yet been screened.

KEY QUOTATIONS

"To be counted as a strike, a case must be dismissed in its entirety as frivolous, malicious or for failure to state a claim." (at 2)

"A dismissal under Section 1915(g) means that a prisoner cannot proceed with his action in forma pauperis under Section 1915(g). However, the prisoner may still pursue his claims if he pays the full filing fee at the outset of the action." (at 5)

"The plain language of the imminent danger clause in Section 1915(g) indicates that "imminent danger" is to be assessed at the time of filing of the complaint." (at 9)

"A plaintiff is only entitled to an injunction based on claims pled in the complaint." (at 11)

FACTUAL BACKGROUND

Plaintiff, an inmate at Pelican Bay State Prison, filed a pro se complaint alleging numerous unrelated conditions and incidents, including allegedly tainted or unavailable water, inadequate medical care, administrative segregation, lack of access to legal and religious materials, dietary issues, and an alleged slip and fall. He relied principally on alleged dehydration, lack of water, and a prior medical incident to assert imminent danger. The court found that the complaint did not plausibly connect those allegations to a defendant or establish serious physical danger existing when the complaint was filed on January 7, 2025.

PROCEDURAL HISTORY

Plaintiff filed the complaint on or about January 7, 2025, together with a request to proceed in forma pauperis. He later filed two substantially identical pleadings seeking an order to show cause, judicial notice, sanctions, preliminary judgment, and temporary or preliminary injunctive relief. The court ordered Plaintiff to show cause within twenty-eight days why IFP status should not be denied under the PLRA's three-strikes provision and denied the additional requests as premature, unclear, or unsupported.

DISPOSITION

other

CASES CITED

- Harris v. Harris, 935 F.3d 670, 673-76 (9th Cir. 2019)
- Andrews v. King, 398 F.3d 1113, 1119-21 (9th Cir. 2005)
- Harris v. Mangum, 863 F.3d 1133, 1143 (9th Cir. 2017)
- Knapp v. Hogan, 738 F.3d 1106, 1108-10 (9th Cir. 2013)
- McHenry v. Renne, 84 F.3d 1179-80 (9th Cir. 1996)
- Ray v. Lara, 31 F.4th 692, 695, 699 (9th Cir. 2022)
- El-Shaddai v. Zamora, 833 F.3d 1036, 1042 (9th Cir. 2016)
- Andrews v. Cervantes, 493 F.3d 1047, 1053-55 (9th Cir. 2007)
- Pacific Radiation Oncology, LLC v. Queen's Med. Ctr., 810 F.3d 631, 633, 636-38 (9th Cir. 2015)
- McElroy v. City of Inglewood, et al., C No. 2:02-cv-04301-MMM-MLG (C.D. Cal. Nov. 20, 2002)
- McElroy v. City of Inglewood, et al., C No. 2:03-cv-05034-UA-MLG (C.D. Cal. July 25, 2003)
- McElroy v. Gebbmedin, et al., C No. 1:08-cv-00124-LJO-GSA PC (E.D. Cal. Dec. 11, 2008)
- McElroy v. California Department of Corrections, C No. 2:08-cv-00733 HWG (E.D. Cal. June 3, 2009)
- McElroy v. Schultz, et al., C No. 1:08-cv-00179-OWW-MJS (E.D. Cal. Apr. 30, 2010)
- McElroy v. Institutional Head Ground, et al., C No. 1:13-cv-0483-MJS (E.D. Cal. Nov. 1, 2013)
- McElroy v. Gomez, et al., C No. 1:1-20-cv-00658-DAD-SAB (E.D. Cal. Dec. 10, 2020)

OPINION

McElroy v. Department of Corrections

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 LATWAHN J. MCELROY, Case No. 25-cv-00314-HSG 8 Plaintiff, ORDER TO SHOW
CAUSE WHY

LEAVE TO PROCEED IN FORMA

9 v. PAUPERIS SHOULD NOT BE DENIED

PURSUANT TO 28 U.S.C. § 1915(g);

10 DEPARTMENT OF CORRECTIONS, et DENYING REQUESTS FOR ORDER
al., TO SHOW CAUSE AND TEMPORARY

11 RESTRAINING ORDER

Defendants. 12 Re: Dkt. Nos. 2, 5, 11 13 14 Plaintiff, an inmate at Pelican Bay State Prison, filed
this pro se civil rights action pursuant 15 to 42 U.S.C. § 1983. For the reasons set forth below, the
Court ORDERS Plaintiff to show cause 16 why his request for leave to proceed in forma pauperis,
Dkt. No. 2, should not be denied pursuant 17 to the three strikes provision set forth in 28 U.S.C. §
1915; and DENIES Plaintiff's requests to 18 show cause and for a temporary restraining order,
Dkt. Nos. 5, 11.

19 DISCUSSION

20 I. Order to Show Cause Why In Forma Pauperis Status Should Not Be Denied 21 A. 28 U.S.C.
§ 1915(g) 22 This action is governed by the Prison Litigation Reform Act of 1996 ("PLRA")
which 23 became effective on April 26, 1996. The PLRA provides that a prisoner may not bring a
civil 24 action under 28 U.S.C. § 1915, i.e., may not proceed in forma pauperis, "if the prisoner
has, on 3 25 or more prior occasions, while incarcerated or detained in any facility, brought an
action . . . in a 26 court of the United States that was dismissed on the grounds that it is frivolous,
malicious, or fails 27 to state a claim upon which relief may be granted, unless the prisoner is
under imminent danger of 1 In determining whether a prior dismissal counts as a strike, the Court
"should look to the 2 substance of the dismissed lawsuit, and not to how the district court labelled
or styled the 3 dismissal." *Harris v. Harris*, 935 F.3d 670, 673 (9th Cir. 2019) ("Harris I") (internal
quotations 4 marks and citation omitted). To be counted as a strike, a case must be dismissed in its
entirety as 5 frivolous, malicious or for failure to state a claim. *Id.* at 674. For purposes of a
dismissal that 6 may be counted under Section 1915(g), the Ninth Circuit gives this guidance: The
phrase "fails to 7 state a claim on which relief may be granted" parallels the language of Federal
Rule of Civil

8 Procedure 12(b)(6) and apparently means the same thing. *Andrews v. King*, 398 F.3d 1113, 1121
9 (9th Cir. 2005) ("Andrews I"). A case "is frivolous if it is 'of little weight or importance: having
10 no basis in law or fact.'" *Id.* (citation omitted). "A case is malicious if it was filed with the 11
'intention or desire to harm another.'" *Id.* (citation omitted). 12 When the district court dismisses a
complaint for failure to state a claim and grants leave to 13 amend, and the plaintiff then fails to

file an amended complaint, the dismissal counts as a strike 14 under § 1915(g). *Harris v. Mangum*, 863 F.3d 1133, 1143 (9th Cir. 2017) (“*Harris II*”). 15 “[R]epeated and knowing violations of Federal Rule of Civil Procedure 8(a)’s ‘short and 16 plain statement’ requirement are strikes as ‘fail[ures] to state a claim,’ 28 U.S.C. § 1915(g), when 17 the opportunity to correct the pleadings has been afforded and there has been no modification 18 within a reasonable time.” *Knapp v. Hogan*, 738 F.3d 1106, 1108 (9th Cir. 2013). Complaints 19 can run afoul of Rule 8(a) by (1) saying “too little,” that is, by failing to meet the *Iqbal* pleading 20 threshold, or (2) saying “too much.” *Id.* at 1108-10. “Prolix, confusing complaints . . . impose 21 unfair burdens on litigants and judges” and therefore can be properly dismissed under Rule 8. 22 *McHenry v. Renne*, 84 F.3d 1179–80 (9th Cir. 1996). 23 A dismissal based on immunity does not constitute a strike because § 1915(g) omits the 24 immunity language as a ground for a strike. *Harris I*, 935 F.3d at 675. There are rare cases where 25 immunity may be so clear on the face of the complaint that dismissal may qualify as a strike for 26 failure to state a claim, or where immunity is so obvious that the suit is frivolous and dismissal 27 counts as a strike. *Id.* at 676. “But these are exceptional cases where the affirmative defense is 1 complaint. Such will rarely be the case with immunity-based defenses.” *Id.*; see *Ray v. Lara*, 31 2 F.4th 692, 699 (9th Cir. 2022) (dismissal on basis of prosecutorial immunity for contents of 3 government’s appellate brief constituted strike). 4 “Not all unsuccessful cases qualify as a strike under § 1915(g). Rather, § 1915(g) should 5 be used to deny a prisoner’s IFP status only when, after careful evaluation of the order dismissing 6 an action, and other relevant information, the district court determines that the action was 7 dismissed because it was frivolous, malicious or failed to state a claim.” *Andrews I*, 398 F.3d at 8 1121. A district court is not required to announce in an order that its dismissal constitutes a strike 9 under Section 1915(g) for that dismissal to later count as a strike. *Id.* at 1119 n.8. 10 A dismissal based solely on a finding that the plaintiff previously incurred at least three 11 strikes, without any additional finding that the action is itself frivolous, malicious or fails to state a 12 claim, does not count as an additional strike under § 1915(g). *El-Shaddai v. Zamora*, 833 F.3d 13 1036, 1042 (9th Cir. 2016). 14 The plain language of the imminent danger clause in Section 1915(g) indicates that 15 “imminent danger” is to be assessed at the time of filing of the complaint. See *Andrews v. 16 Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007) (“*Andrews II*”). The conditions that existed at 17 some earlier or later time are not relevant. *Id.* at 1053 & n.5 (post-filing transfer of prisoner out of 18 prison at which danger allegedly existed may have mooted request for injunctive relief against 19 alleged danger, but did not affect Section 1915(g) analysis). “[T]he imminent danger exception to 20 the PLRA three-strikes provision requires a nexus between the alleged imminent danger and the 21 violations of law alleged in the complaint.” *Ray v. Lara*, 31 F.4th 692, 695 (9th Cir. 2022). The 22 court “should not make an overly detailed inquiry into whether the allegations qualify for the 23 [imminent danger] exception.” *Andrews II*, 493 F.3d at 1055. It is sufficient if the complaint 24 “makes a plausible allegation that the prisoner faced ‘imminent danger of serious physical injury’ 25 at the time of filing.” *Id.* 26 The Ninth Circuit requires that the prisoner be given notice

of the potential applicability of

27 Section 1915(g), by either the district court or the defendants, but also requires the prisoner to bear

1 him. *Andrews I*, 398 F.3d at 1120. *Andrews I* implicitly allows the Court to sua sponte raise the
2 Section 1915(g) issue, but requires the Court to notify the prisoner of the earlier dismissals it
3 considers to support a Section 1915(g) dismissal and allow the prisoner an opportunity to be
4 heard on the matter before dismissing the action. *Id.* A dismissal under Section 1915(g) means
5 that a prisoner cannot proceed with his action in forma pauperis under Section 1915(g).
6 However, the prisoner may still pursue his claims if he pays the full filing fee at the outset of the
7 action. *B. Prior Denials of In Forma Pauperis Status* 8 Plaintiff is a frequent litigant. A February
10, 2025 search conducted of the federal court 9 electronic records database, the Public Access to
Court Electronic Records (“PACER”) system, 10 available at <https://pacer.login.uscourts.gov>,
indicates that, as of that date, Plaintiff had filed 11 seventy-two (72) cases or appeals in California
federal courts, including this case. In the last five 12 years, Plaintiff has filed nine cases in federal
district courts in California and filed seven appeals in 13 the Ninth Circuit Court of Appeals. See,
e.g., C No. 24-cv-7275, *McElroy v. Constantino, et al.* 14 (C.D. Cal.); C No. 23-cv-0559, *McElroy*
v. Castro, et al. (E.D. Cal.); C No. 20-cv-0755, *McElroy 15 v. Juarez, et al.* (S.D. Cal.); 9th Cir. C
No. 21-16444, *McElroy v. S. Gates, et al.*; 9th Cir. C No. 16 21-16410, *McElroy v. Gomez, et al.*
17 Plaintiff has previously been denied leave to proceed in forma pauperis pursuant to 28 18
U.S.C. 1915(g), by both the Ninth Circuit Court of Appeals and by a California federal district 19
court.

20 In 9th Cir. C No. 21-16444, *McElroy v. S. Gates, et al.*, the Ninth Circuit denied Plaintiff’s
21 request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g). The Ninth Circuit found
22 that Plaintiff had three or more prior actions or appeals dismissed as frivolous, malicious, or for
23 failure to state a claim upon which relief may be granted, and that Plaintiff had not alleged 24
imminent danger of serious physical injury. 9th Cir. C No. 21-16444, *McElroy v. S. Gates, et al.*,
25 Dkt. No. 9 (9th Cir. Feb. 23, 2022). The Ninth Circuit identified the following cases as strikes:
C

26 No. 1:08-cv-0179, *McElroy v. Schultz* (E.D. Cal. Apr. 30, 2010); C No. 2:08-cv-0733, *McElroy*
v.

27 CDC (E.D. Cal. June 3, 2009); C No. 1:08-cv-0124, *McElroy v. Gebbmedin* (E.D. Cal. Dec. 11,
1 In C No. 23-cv-0559, *McElroy v. Castro, et al.* (E.D. Cal.), the district court also denied 2
Plaintiff’s request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g). The district 3
court identified the following cases as strikes, with the reasoning provided in the parenthetical 4
following the case citation: (1) C No. 2:02-cv-04301-MMM-MLG, *McElroy v. City of Inglewood,*
5 et al. (C.D. Cal. Nov. 20, 2002) (failure to state claim); (2) C No. 2:03-cv-05034-UAMLG, 6
McElroy v. City of Inglewood, et al. (C.D. Cal. July 25, 2003) (frivolous); (3) C No. 1:08-cv- 7
00124-LJO-GSA PC, *McElroy v. Gebbmedin, et al.* (E.D. Cal. Dec. 11, 2008) (failure to state 8

claim); (4) C No. 2:08-cv-00733 HWG, *McElroy v. California Department of Corrections* (E.D. Cal. June 3, 2009) (failure to state claim); (5) C No. 1:08-cv-00179-OWW-MJS, *McElroy v. 10 Schultz, et al.* (E.D. Cal. Apr. 30, 2010) (failure to state claim); (6) C No. 1:13-cv-0483-MJS, *11 McElroy v. Institutional Head Ground, et al.* (E.D. Cal. Nov. 1, 2013) (failure to state claim); and 12 (7) C No. 1:1-20-cv-00658-DAD-SAB (E.D. Cal. Dec. 10, 2020), *McElroy v. Gomez, et al.* 13 (failure to state claim, failure to comply with court order, failure to prosecute). C No. 23-cv-0559, 14 *McElroy v. Castro, et al.* (E.D. Cal.), Dkt. No. 6 (Apr. 21, 2023), Dkt. No. 12 (Jun. 20, 2023). 15 C. Prior Strikes 16 The Court has reviewed Plaintiff's prior cases and finds that he has at least three cases 17 which were dismissed either as frivolous, or malicious, or for failure to state a claim: 18 (1) C No. 2:02-cv-04301-MMM-MLG, *McElroy v. City of Inglewood, et al.* (C.D. Cal. 19 Nov. 20, 2002) (failure to state a claim). In this case, Plaintiff alleged that the City of Inglewood

20 and certain Inglewood police officers stole property from him when they arrested him. Plaintiff 21 styled the action as a petition for a writ of habeas corpus, but the court construed the action as a 22 civil rights complaint. Plaintiff filed an amended complaint that superseded the initial habeas 23 petition. In the amended complaint, Plaintiff acknowledged that he was filing a 42 U.S.C. § 1983 24 action and alleged that his personal property was seized upon his January 21, 2001 arrest and 25 never returned. The court dismissed the action in its entirety with prejudice for failure to state a 26 claim because an unauthorized or negligent deprivation of property by a state official does not 27 state a federal claim.

1 July 25, 2003) (frivolous). In this action, Plaintiff raised the same claims regarding deprivation of

2 property that he had brought in C No. 2:02-cv-04301-MMM-MLG, *McElroy v. City of Inglewood, 3 et al.* The court dismissed this case in its entirety for failure to state a claim because the 4 intentional or negligent deprivation of property by a state official does not state a federal claim and 5 because the claims had been raised previously in a prior action. 6 (3) C No. 1:08-cv-00124-LJO-GSA PC, *McElroy v. Gebbmedin, et al.* (E.D. Cal. Dec. 7 11, 2008) (failure to state a claim). In this action, Plaintiff sued various Kern Valley State Prison 8 correctional officials for causing him mental and emotional pain and anguish by, inter alia, 9 picking on him, making fun of him, and verbally taunting him. The court found that the complaint 10 failed to state a claim for relief because verbal harassment or abuse alone does not state a federal 11 claim. The court granted Plaintiff leave to file an amended complaint to correct this deficiency, 12 but Plaintiff did not file an amended complaint. The court therefore dismissed the action in its 13 entirety for failure to state a claim. 14 (4) C No. 2:08-cv-00733 HWG, *McElroy v. California Department of Corrections 15* (E.D. Cal. June 3, 2009) (failure to state a claim). In this action, Plaintiff sued the California 16 Department of Corrections and three Doe defendants – two doctors and one nurse – in their 17 official capacities, alleging that they acted negligently and provided inadequate medical treatment 18 between March 20, 2008 and April 7, 2008, when they allegedly discontinued various

19 prescriptions, including dietary supplements, skin treatments, and medications; and when they
20 allegedly discontinued a prescription for a wheelchair with a leg extension. The complaint 21
indicated that Plaintiff was provided other medical treatment, albeit not the treatment he deemed
22 necessary. Plaintiff sought monetary damages and also sought injunctive relief in the form of
23 treatment, physical therapy, and surgical evaluation at an outside location. The court dismissed
24 the California Department of Corrections from the action with prejudice because the claims 25
against it were barred by the Eleventh Amendment. The court dismissed the claims seeking 26
monetary relief from the Doe defendants in their official capacities, because state employees, such
27 as the Doe defendants, are not persons within the meaning of 42 U.S.C. § 1983 when acting in
1 medical treatment because the complaint alleged negligence and a difference of opinion between
2 Plaintiff and prison medical authorities as to Plaintiff's medical treatment, neither of which
states 3 a violation of the Eighth Amendment. The court granted Plaintiff leave to file an amended
4 complaint to address this deficiency, but Plaintiff did not file an amended complaint. The court 5
therefore dismissed this action in its entirety with prejudice for failure to state a claim, and 6
specified that this dismissal constituted a "strike" under 28 U.S.C. § 1915(g). 7 (5) C No. 1:08-cv-
00179-OWW-MJS, *McElroy v. Schultz, et al.* (E.D. Cal. Apr. 30, 8 2010) (failure to state a claim).
In this action, Plaintiff sued the California Department of 9 Corrections and individual Kern Valley
State Prison correctional officials, alleging that they 10 provided him inadequate medical care. The
court dismissed the California Department of 11 Corrections from the action with prejudice
because the claims against it were barred by the 12 Eleventh Amendment. The court dismissed the
Eighth Amendment deliberate indifference to 13 serious medical needs claims because the
supporting allegations were vague and conclusory, failed 14 to charge each individual defendant
with specific conduct that indicated that they knew of and 15 disregarded a serious risk to
Plaintiff's health and safety, and failed to comply with Fed. R. Civ. P. 16 8's requirement of a short
and plain statement. The court granted Plaintiff leave to file an 17 amended complaint and
instructed that the amended complaint should allege in specific terms how 18 each individual
defendant was involved in the alleged constitutional violation. Plaintiff filed an 19 amended
complaint, which was dismissed with leave to amend because Plaintiff again failed to 20 link each
individual defendant with actionable conduct. Plaintiff did not file a second amended 21
complaint. The court therefore dismissed this action in its entirety for failure to state a claim. 22
(6) C No. 1:13-cv-0483-MJS, *McElroy v. Institutional Head Ground, et al.* (E.D. Cal.

23 Nov. 1, 2013) (failure to state a claim). In this action, Plaintiff sued the California Department
of

24 Corrections ("CDCR"), CDCR director M. Cate, individual Kern Valley State Prison ("KVSP")
25 correctional officials, individual Salinas Valley State Prison ("SVSP") officials, and the warden
at 26 High Desert State Prison, alleging that they violated his rights under the First, Eighth, and 27
Fourteenth Amendments and violated his rights under the Religious Freedom Restoration Act. 1
religious items and to prevent him from complying with religious requirements. In a detailed and 2

reasoned order, the court dismissed the complaint because it violated the joinder rules in that 3 Plaintiff had not linked the SVSP and High Desert State Prison defendants to the primary 4 underlying incident at KVSP; because Plaintiff failed to link defendants Grounds, Hedgepath, 5 Asuncion, Bonner, or Cate directly to the relevant incident at KVSP; because Plaintiff failed to 6 properly link any named defendant to his First Amendment claim regarding observing Ramadan; 7 because the allegations did not state a First Amendment violation but only alleged a simple 8 miscommunication over when to return his food tray; because defendants Staily, Harden, and 9 Mecevido's alleged actions did not rise to the level of an Eighth Amendment excessive force 10 violation because it was unclear what each defendant did to Plaintiff; because the Fourteenth 11 Amendment claim was unclear as to whether Plaintiff sought to bring an equal protection claim or 12 a due process claim, and failed because it did not identify what each defendant did or did not do 13 that violated the Fourteenth Amendment; because the complaint failed to identify any prison 14 restrictions that placed a substantial burden on the exercise of Plaintiff's religious beliefs; and 15 because the complaint failed to allege sufficient facts to support a cognizable conspiracy claim. 16 The court granted Plaintiff leave to file an amended complaint. Plaintiff filed an amended 17 complaint, which the Court dismissed for failure to state a claim because it again violated the 18 joinder requirement; again sought to sue the CDCR which is immune from suit pursuant to the 19 Eleventh Amendment; again failed to link named defendants to the First Amendment claim; 20 alleged a Fourth Amendment property claim which fails as a matter of law because the Fourth 21 Amendment does not apply to prison cells; repeated the Eighth Amendment excessive force claim 22 which the court had already dismissed with prejudice; again failed to pled sufficient facts to 23 support a cognizable conspiracy claim; and alleged violations of California state law for which 24 there is no private right of action. The court therefore dismissed the action in its entirety for 25 failure to state a claim. 26 (7) C No. 1:1-20-cv-00658-DAD-SAB (E.D. Cal. Dec. 10, 2020), McElroy v. Gomez, 27 et al. (failure to state a claim, failure to comply with court order, failure to prosecute). The 1 court reviewed the complaint's numerous allegations and dismissed the complaint with leave to 2 amend because, inter alia, it violated Fed. R. Civ. P. 8's requirement of a short and plain statement 3 of the claim; violated Fed. R. Civ. P. 18 and 20's joinder requirements; failed to adequately link 4 each individual defendant to an action or inaction that violated Plaintiff's civil rights; named 5 defendants in supervisory positions but failed to allege that these supervisory defendants 6 personally participated in the alleged constitutional violation; named defendants whose sole 7 involvement in the alleged constitutional violation was his or her participation in the grievance 8 process; the allegation that state laws were violated was insufficient, by itself, to state a federal 9 constitutional violation; there is no liberty interest in being free of false accusations of misconduct 10 and no liberty interest in a certain housing placement based upon a certain classification score; the 11 confiscation of property is not actionable under the Due Process Clause; and the facts alleged 12 failed to state claims for violation of the Eighth Amendment, the First Amendment, the Americans 13 with Disabilities Act,

or the Rehabilitation Act. The court granted Plaintiff leave to file an 14 amended complaint. Plaintiff did not file an amended complaint. The court therefore dismissed 15 the complaint for failure to state a cognizable claim; failure to obey the court's September 28, 16 2020 order ordering Plaintiff to file an amended complaint; and failure to prosecute the action. 17 The Court has carefully evaluated the above cases, and finds that these cases qualify as 18 strikes because the cases were dismissed in their entirety for either failure to state a claim or as 19 frivolous. *Andrews I*, 398 F.3d at 1121 ("§ 1915(g) should be used to deny a prisoner's IFP status 20 only when, after careful evaluation of the order dismissing an action, and other relevant 21 information, the district court determines that the action was dismissed because it was frivolous, 22 malicious or failed to state a claim"); *Harris I*, 935 F.3d at 674, 676 (to be counted as strike, case 23 must be dismissed in its entirety as frivolous, malicious or for failure to state claim; where 24 immunity is so obvious from face of complaint that suit is frivolous, dismissal for immunity 25 counts as a strike); *Harris II*, 863 F.3d at 1143 (when court dismisses complaint for failure to state 26 claim and grants leave to amend, and plaintiff fails to file amended complaint, dismissal counts as 27 Section 1915(g) strike); *Knapp*, 738 F.3d at 1108 (repeated and knowing violations of Fed. R. Civ.

1 D. Complaint 2 Plaintiff filed this complaint on or about January 7, 2025. Dkt. No. 1 at 1. The complaint 3 is rambling and incoherent. The complaint names over thirty defendants. Plaintiff identifies by 4 name the following defendants: the California Department of Corrections and Rehabilitation; CTF 5 doctor Puie; SVSP doctor Dingbo Su; correctional counselor Jackson; sergeant Shelby; appeal 6 reviewer Moeckly; warden Acre; library clerk Tomilson; correctional officers Galvan, Mella, 7 Garcia, and Ramirez; and Global TelLink. The remaining defendants are Doe defendants. The 8 complaint brings numerous claims about unrelated incidents, including but not limited to, alleging 9 that the water is tainted which has caused Plaintiff to be dehydrated; that Plaintiff's cell toilet is 10 inoperable; that Plaintiff is without hot water; that CTC doctors have denied Plaintiff proper 11 medical care by denying his request to be either transferred to New Stockton, or granted single cell 12 status, or released on medical parole; that Plaintiff's placement in administrative segregation is 13 harmful to his health; that Plaintiff is unable to access his mail, legal mail envelopes, and religious 14 items; that on some occasions Plaintiff was not provided his vegetarian religious meal when he 15 opted to have a kosher meal instead; that he has not been provided therapy to ameliorate damage 16 to his lower extremities; that Plaintiff has been exposed to hazardous infection or environmental 17 biohazard/waste; that Plaintiff is unable to access necessary legal resources; that in late November 18 2024 to early December 2024, Plaintiff was denied medical care when he experienced shortness of 19 breath; and that Plaintiff had a "mysterious slip and fall" that he believes was engineered by 20 certain correctional officials. See generally Dkt. No. 1. 21 E. Imminent Danger of Serious Physical Injury Analysis 22 The complaint's allegations do not support an inference that Plaintiff faced imminent 23 danger of serious physical injury from Defendants on January 7, 2025, the date he filed the 24 complaint.

Plaintiff makes the conclusory and unintelligible statement that he has been in 25 imminent danger and emergency due to dehydration and incapacity because “as of 1/1/25 and 26 prior there was tainted water, no hot water, and then no cell water provided caused dehydration.” 27 He has not linked the tainted water or lack of water to any defendant. Nor is it clear how the water 1 he is not transferred to New Stockton, granted single cell status, or released on medical parole, he 2 has not explained why his current housing placement puts him at risk of harm. He describes his 3 injuries as occurring from a chronic medical condition that causes him to have random 4 immobilizing body spasms. The particular spasm discussed in this complaint occurred on 5 November 25, 2024, and, according to the complaint, Plaintiff was provided with immediate 6 medical treatment and his treating physicians did not deem it medically necessary to be transferred 7 to New Stockton or have single cell status. 8 The complaint does not make a plausible allegation that Plaintiff faced imminent danger of 9 serious physical injury from Defendants at the time he filed the complaint. *Andrews II*, 493 F.3d 10 at 1055. Accordingly, within twenty-eight (28) days of the date of this order, Plaintiff shall show 11 cause why his request for leave to proceed in forma pauperis should not be denied pursuant to the 12 three strikes provision set forth in 28 U.S.C. § 1915. 13 II. Requests for Order to Show Cause and Temporary Restraining Order / Preliminary Judgment, Requesting the Court Take Judicial Notice (Dkt. Nos. 5, 11) 14 15 Plaintiff has filed two pleadings titled “Order to Show Cause and Temporary Restraining 16 Order / Preliminary Judgement, Requesting the Court Take Judicial Notice.” Dkt. Nos. 5, 11. 17 Though Dkt. No. 5 and Dkt. No. 11 were signed and filed on different days, Dkt. No. 11 is the 18 same declaration that was filed at Dkt. No. 5 at 1-4. For the reasons set forth below, the Court 19 DENIES these pleadings. 20 Like the complaint, both Dkt. No. 5 and Dkt. No. 11 are rambling lists of unrelated 21 grievances. In these pleadings, Plaintiff requests that the Court “take judicial notice that this form 22 of documents may require professional amendment;” alleges that he has no access to the law 23 library; requests that he be allowed to use his last name for GTL calling and to update access for 24 his contracts outreach; alleges that the CDCR discriminated against him by placing him in AdSeg 25 “without a medical infirmary – without proper care and without effective medical care;” alleges 26 that he must be transferred to New Stockton due to multiple threats and gang violence at SVSP; 27 alleges that officers hurl insults at him; alleges that the classification committee incorrectly denied 1 assistance; and alleges that he needs to be protected from retaliatory disciplinary detention. See 2 generally Dkt. No. 5 at 1-3; Dkt. No. 11. In his proposed order to show cause filed with Dkt. No. 3 5, Plaintiff requests that the Court order Defendants to show cause why Plaintiff should be not 4 granted a preliminary injunction, sanctions, and preliminary judgment; and then proceeds to list 5 various alleged misconduct, including but not limited to prison officials denying him access to the 6 law library when Flex Profile is not operable; denying his request that his diet be changed from 7 Religious Meal Alternative to kosher; failing to provide him with a tablet charger in working 8 condition or a sanitary reguard (sic); failing to issue him a working TV so he can participate in 9 virtual religious

services; failing to provide him kosher meals on certain days; failing to provide 10 him necessary sanitary supplies; and refusing to allow him to continue being treated by Dr. 11 Reynolds. See generally Dkt. No. 5-1. 12 The Court DENIES the requests made in these two pleadings. 13 The requests for judicial notice are DENIED because it is unclear what relief is sought. 14 Plaintiff requests judicial notice that that the form of the documents may require professional 15 amendment. It is unclear what kind of “professional amendment” is required for his pleadings. 16 Moreover, judicial notice does not apply to amending documents. Fed. R. Evid. 201 provides that 17 a court may take judicial notice of facts not subject to reasonable dispute if certain conditions are 18 satisfied. Fed. R. Evid. 201. Fed. R. Evid. 201 does not apply to amendment of documents. 19 To the extent that Plaintiff seeks any kind of temporary or preliminary injunctive relief 20 such a request is DENIED as premature. It is unclear if this case will proceed as Plaintiff has not 21 yet paid the filing fee or been granted in forma pauperis status. In addition, the Court has not yet 22 determined if the complaint states any cognizable claims. A plaintiff is only entitled to an 23 injunction based on claims pled in the complaint. *Pacific Radiation Oncology, LLC v. Queen’s* 24 *Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015). “[T]here must be a relationship between the injury 25 claimed in the motion for injunctive relief and the conduct asserted in the underlying complaint. 26 This requires a sufficient nexus between the claims raised in a motion for injunctive relief and the 27 claims set forth in the underlying complaint itself.” *Id.* (citation omitted); see, e.g., *id.* at 636-38 1 plaintiff had not asserted claim for HIPAA violation). The Court therefore cannot evaluate any 2 || request for temporary or preliminary injunctive relief until the Court screens the complaint.

3 CONCLUSION

4 For the reasons set forth above, the Court ORDERS as follows. 5 1. The Court ORDERS Plaintiff to, within twenty-eight (28) days of the date of this 6 || order, SHOW CAUSE why his request for leave to proceed in forma pauperis should not be 7 denied pursuant to the three strikes provision set forth in 28 U.S.C. § 1915. Failure to respond in 8 accordance with this order may result in dismissal of this action without further notice to Plaintiff 9 || pursuant to Fed. R. Civ. P. 41(b) for failure to comply with a court order. 10 2. The Court DENIES Dkt. Nos. 5, 11 11 This order terminates Dkt. Nos. 5, 11. 12 IT IS SO ORDERED. 13 || Dated: 3/3/2025 HAYWOOD S. GILLIAM, JR. IS United States District Judge 16 17 Z 18 19 20 21 22 23 24 25 26 27 28