

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

Jones v. M.C.R.P. Program, et al.

No. 3:25-cv-1082-CAB-VET (S.D. Cal. May 1, 2025) · No. 3:25-cv-1082-CAB-VET · Decided May 1, 2025

OPINION

Jones v. M.C.R.P. Program

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 WAYNE ELIJAH JONES, Case No.: 3:25-cv-1082-CAB-VET

CDCR #BU-7712,

12 ORDER: Plaintiff, 13

v. (1) DENYING MOTION TO

14 PROCEED IN FORMA PAUPERIS; M.C.R.P. PROGRAM, et al.,

15 and Defendants. 16

(2) DISMISSING COMPLAINT

17 18 On April 25, 2025, Plaintiff Wayne Elijah Jones, currently incarcerated at R.J. 19 Donovan
Correctional Facility (“RJD”) and proceeding pro se, filed a civil rights action 20 pursuant 42
U.S.C. § 1983. [Doc. No. 1.] Plaintiff did not prepay the civil filing fee 21 required by 28 U.S.C. §
1914(a) at the time of filing. He has instead filed a motion to 22 proceed in forma pauperis
 (“IFP”) pursuant to 28 U.S.C. §1915(a). [Doc. No. 2.] 23

I. IFP MOTION

24 All parties instituting any civil action, suit or proceeding in a district court of the 25 United
States, except an application for writ of habeas corpus, must pay a filing fee of 26 \$350, and those
not granted leave to proceed IFP must pay an additional administrative fee 27 of \$55. See 28
U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court 28 1 Misc. Fee Schedule,
§ 14 (eff. Dec. 1, 2023)). The action may proceed despite Plaintiff’s 2 failure to prepay the entire
fee only if he is granted leave to proceed IFP. See *Andrews v. 3 Cervantes*, 493 F.3d 1047, 1051
(9th Cir. 2007); see also *Rodriguez v. Cook*, 169 F.3d 4 1176, 1177 (9th Cir. 1999). 5 a. “Three
Strikes” Provision 6 For prisoners like Plaintiff, however, the Prison Litigation Reform Act
 (“PLRA”) 7 amended 28 U.S.C. § 1915 to preclude the privilege to proceed IFP: 8 . . . if the
prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought
an action or appeal in a court of the United 9 States that was dismissed on the grounds that it is
frivolous, malicious, or fails 10 to state a claim upon which relief can be granted, unless the

prisoner is under imminent danger of serious physical injury. 11 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’ 13 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005). 14 Once a prisoner has accumulated three strikes, he is prohibited by § 1915(g) from 15 pursuing any other IFP action in federal court unless he can show he is facing imminent 16 danger of serious physical injury. See 28 U.S.C. § 1915(g); *Cervantes*, 493 F.3d at 1055 17 (noting § 1915(g)’s exception for IFP complaints which “make[] a plausible allegation that 18 the prisoner faced ‘imminent danger of serious physical injury’ at the time of filing.”) 19 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which were 20 dismissed on the ground that [they were] frivolous, malicious, or fail[ed] to state a claim,” 21 *Andrews*, 398 F.3d at 1116 n.1, “even if the district court styles such dismissal as a denial 22 of the prisoner’s application to file the action without prepayment of the full filing fee.” 23 *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008). When courts “review a dismissal to 24 determine whether it counts as a strike, the style of the dismissal or the procedural posture 25 is immaterial. Instead, the central question is whether the dismissal rang the PLRA bells 26 of frivolous, malicious, or failure to state a claim.” *El-Shaddai v. Zamora*, 833 F.3d 1036, 27 1042 (9th Cir. 2016) (internal quotation marks and citation omitted). 28 1 While defendants typically carry the initial burden to produce evidence 2 demonstrating a prisoner is not entitled to proceed IFP, “[i]n some instances, the district 3 court docket may be sufficient to show that a prior dismissal satisfies at least one of the 4 criteria under § 1915(g) and therefore counts as a strike.” *Andrews*, 398 F.3d at 1120. That 5 is the case here. 6 b. Prior Strikes 7 A court “may take notice of proceedings in other courts, both within and without the 8 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) (internal quotation marks omitted). 10 Based on a review of its own dockets, the Court finds that Plaintiff, currently identified as 11 California Department of Corrections and Rehabilitation (“CDCR”) Inmate #BU-7712, 12 while incarcerated, has had at least four prior civil actions dismissed on the grounds that 13 they were frivolous, malicious, or failed to state a claim upon which relief may be granted. 14 They are: 15 (1) *Jones v. Peng, et al.*, No. 21-cv-1912-MMA-BLM (S.D. Cal. May 12, 2022) 16 (Order Granting Motion to Proceed IFP, Dismissing Complaint with leave to amend for 17 failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2) (B) & 1915A(b) [Doc. No. 11]) 18 (May 12, 2022 Order dismissing action [Doc. No. 12]) (strike one); 19 (2) *Jones v. Peng, et al.*, No. 22-55543 (9th Cir. Nov. 17, 2022) (Order Revoking 20 IFP and Dismissing Appeal as Frivolous [Dkt No. 24]) (strike two); 21 (3) *Jones v. Cal. Gov’t Claims Program, et al.*, No. 23-cv-1256-WQH-DDL (S.D. 22 Cal. Aug. 21, 2023) (Order Dismissing Case for failure to state a claim pursuant to 28 23 U.S.C. § 1915A [Doc. No. 7]) (strike three); 24 (4) *Jones v. Wasco State Prison*, No. 23-cv-0543-JLT-BAM (E.D. Cal. Sept. 15, 25 2023) (Findings and Recommendation (“F&R”) to Dismiss Civil Action for failure to state 26 a claim [Doc. No. 22]); (Order Adopting F&R and Dismissing Action [Doc. No. 23]) 27 (strike four). 28 Accordingly, Plaintiff has accumulated at least four strikes as defined by § 1915(g). 1 c. Imminent

Danger of Serious Physical Injury 2 Once a prisoner has accumulated three strikes, section 1915(g) prohibits his pursuit 3 ||of any subsequent IFP civil action or appeal in federal court unless he faces “imminent 4 || danger of serious physical injury.” See 28 U.S.C. § 1915(g); Cervantes, 493 F.3d at 1051- 5 ||52. The Court has reviewed Plaintiff’s complaint and concludes it contains no “plausible 6 || allegations” to suggest Plaintiff faced “imminent danger of serious physical injury at the 7 || time of filing.” Cervantes, 493 F.3d at 1055. Rather, Plaintiff seeks money damages for 8 ||retaliatory and defamatory actions. [Doc. No. 1 at 8, 10.] 9 Accordingly, because Plaintiff has, while incarcerated, accumulated at least three 10 “strikes” as defined by § 1915(g), and 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 Rodriguez v. Cook, 169 F.3d 13 1176, 1180 (9th Cir. 1999) (finding that 28 U.S.C. § 1915(g) “does not prevent all prisoners 14 || from accessing the courts; it only precludes prisoners with a history of abusing the legal 15 ||system from continuing to abuse it while enjoying IFP status’); see also Franklin v. 16 || Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984) (stating that “court permission to proceed 17 || [IFP] is itself a matter of privilege and not right’).

18 II. CONCLUSION

19 The Court DENIES the motion to proceed IFP pursuant to 28 U.S.C. § 1915(g), 20 ||[Doc. No. 2], and DISMISSES this civil action sua sponte without prejudice for failing 21 || to prepay the \$405 civil and administrative filing fees required by 28 U.S.C. § 1914(a). 22 || The Court CERTIFIES that an IFP appeal from this order would not be taken in good 23 || faith pursuant to 28 U.S.C. §1915(a)(3) and DIRECTS the Clerk of the Court to close the 24 || file. 25 IT IS SO ORDERED. — GB 27 Dated: May 1, 2025 Hon. Cathy Ann Bencivengo 28 United States District Judge