

1 **B. DISCUSSION**

2 A review of the actions filed by Plaintiff reveals that he is subject to 28 U.S.C. § 1915(g) and
3 is precluded from proceeding in forma pauperis unless he was, at the time the complaint was filed,
4 under imminent danger of serious physical injury.¹

5 The Court has reviewed Plaintiff's Complaint and finds that he does not meet the imminent
6 danger exception. See Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). Plaintiff's
7 complaint covers events from 2007 through 2009, and includes claims for retaliation, due process
8 violations related to a SHU term, Eighth Amendment deliberate indifference to a serious medical
9 need, violation of the First Amendment based on failure to provide a religious diet and violation of
10 the First Amendment based on Defendants' mail policy. None of Plaintiff's claims suggest that he is
11 in imminent danger of serious physical injury at the time he filed his complaint.

12 Based on the foregoing, the Court finds that Plaintiff fails to allege the imminent danger of
13 serious physical injury necessary to bypass § 1915(g)'s restriction on filing suit without prepayment
14 of the filing fee.²

15 **C. RECOMMENDATION**

16 Accordingly, it is HEREBY RECOMMENDED that:

- 17 1. Plaintiff's in forma pauperis status be REVOKED pursuant to 28 U.S.C. §
18 1915(g);
- 19 2. The Court's order entered on May 30, 2013, which granted Plaintiff leave to
20 proceed in forma pauperis and directed the CDCR to make payments for the
21 filing fee from Plaintiff's prison trust account, be VACATED; and
- 22 3. Plaintiff be required to pay the \$400.00 filing fee for this action in full within
23 thirty days of the date these Findings and Recommendations are adopted.

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25 ¹The Court takes judicial notice of the following cases which count as strikes: (1) Woods v. Carey, 3:05-cv-
26 01157-MJJ (N.D. Cal.) (dismissed on May 31, 2005, for failure to state a claim); (2) Woods v. Carey, 2:05-cv-00049-
27 MCE-DAD (E.D. Cal.) (dismissed on January 26, 2006, for failure to state a claim); (3) Woods v. Marshall, 2:11-cv-
08554-UA-OP (C.D. Cal.) (in forma pauperis status denied, and case dismissed, on January 26, 2012, for failure to state
a claim).

28 ² To date, the Court has not received any payment for Plaintiff's filing fee in this case. The filing fee for this
action is \$350.00 plus a \$50.00 administrative fee. 28 U.S.C. § 1914. The \$50.00 administrative fee does not apply to
persons granted in forma pauperis status. Id. Therefore, Plaintiff now owes a \$400.00 filing fee.

1 These Findings and Recommendations will be submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
3 days after being served with these Findings and Recommendations, Plaintiff may file written
4 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
5 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
6 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d
7 1153 (9th Cir. 1991).

8 IT IS SO ORDERED.

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10 Dated: May 19, 2014

/s/ Dennis L. Beck
11 UNITED STATES MAGISTRATE JUDGE
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