

1 noted in the F&R, Plaintiff had four strikes¹ under section 1915(g) prior to filing this action.
2 Thus, Plaintiff may only proceed under section 1915(g) if he meets the imminent danger of
3 serious physical injury exception at the time he filed the Complaint.

4 The Ninth Circuit has stated that "requiring a prisoner to 'allege [] an ongoing danger' . . .
5 is the most sensible way to interpret the imminency requirement." *Andrews v. Cervantes*, 493
6 F.3d 1047, 1056 (9th Cir.2007), citing *Ashley v. Dilworth*, 147 F.3d 715, 717 (8th Cir.2003).
7 *Andrews* held that the imminent danger faced by the prisoner need not be limited to the time
8 frame of the filing of the complaint, but may be satisfied by alleging a danger that is ongoing.
9 *See Andrews* at 1053.

10 As found in the F&R, Plaintiff failed to show that he was in imminent danger at the time
11 he filed the Complaint in his allegations -- false rules violation report having his inmate appeals
12 tampered with (Doc. 1, pp. 5-6), being denied access to the canteen and store (Doc. 1, at p. 7);
13 being given food trays with flies on them (*id.*); having his cell door repeatedly banged on by a
14 correctional officer (*id.*); having \$40 that his brother sent to him stolen (*id.*, at 7-8); being held at
15 a Level IV prison when he should be at a Level III prison (*id.*, at pp. 7, 9); being denied access to
16 the law library so he couldn't electronically file a complaint (*id.*, at p. 11); notices not being
17 posted as to when the law library would be closed (*id.*, at pp. 12-13); and having his inmate
18 appeals wrongly handled/denied (*id.*, at p. 14). None of these allegations amount to Plaintiff
19 being under an imminent danger at the time he filed the Complaint.

20 Plaintiff argues in his objections that Warden Katavich had Correctional Officers
21 Bienvenides and Reyes "try to kill plaintiff by injecting poison into an apple which Plaintiff bit
22 into and almost died." (Doc. 4, 2:16-19.) In the Complaint, Plaintiff does allege that he bit into
23 an apple that Correctional Officer Bienvenides gave him which he noticed had a small dark spot
24 on it and that he almost died, but that "God healed" him and "took death away" from him and that

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26 ¹*See Hill v. White, et al., Case Number 1:13-cv-01275-AWI-DLB (PC); Hill v. Williams, et al., 2:98-cv-07173-LGB-*
27 *CT (C.D. Cal.) (dismissed September 15, 1998 for failure to state a claim); Hill v. Wallace, et al., 2:99-cv-06406-*
28 *ABC-CT (C.D. Cal.) (dismissed July 7, 1999 for failure to state a claim; Hill v. Torrance Police Dept., et al., 2:11-*
cv-08794-UA-CW (C.D. Cal.) (dismissed July 20, 2012 for failure to state a claim); and Hill v. Horton, et al., 2:13-
cv-00805-UA-CW (C.D. Cal.) (dismissed February 28, 2013 for failure to state a claim).

1 a lieutenant brought three other officers to the building that evening to watch him to see if the
2 poisoned apple would kill him. (Doc. 1, p. 6.) On that same page, Plaintiff alleges four days
3 later, Correctional Officer Reyes gave him an apple with a small dark spot on it and he knew it
4 had been injected with poison too. (*Id.*) However, the fact that Plaintiff believed he was
5 poisoned because the apple he bit into had a spot on it, and that God healed him apparently
6 without any effort by medical staff to cure him, relies at the very most only on a sheer possibility
7 that these correctional officers acted unlawfully and need not be accepted since not facially
8 plausible. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp v. Twombly*, 550
9 U.S. 544, 556, 557, 570 (2007). Further, for arguments sake only, even if these allegations
10 against Officers Bienvenides and Reyes showed imminent danger, they are not related to any of
11 Plaintiff's other allegations upon which to allow him to proceed *in forma pauperis* in this action.
12 *See Fed.R.Civ.P.* 18.

13 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
14 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the F&R
15 to be supported by the record and by proper analysis. Plaintiff does not satisfy the imminent danger
16 exception to section 1915(g). *See Andrews*, 493 F.3d at 1055-56. Thus, Plaintiff's motion to be
17 granted *in forma pauperis* status is denied and he must submit the appropriate filing fee in order
18 to proceed with this action.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The Finding and Recommendation, filed April 29, 2015 (Doc. 3), is adopted in
21 full;
- 22 2. Plaintiff's motion to proceed *in forma pauperis* in this action, filed on April 21,
23 2015 (Doc. 2), is denied;
- 24 3. Within thirty days from the date of service of this order, Plaintiff is required to pay
25 the \$400.00 filing fee for this action in full; and

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4. Plaintiff's failure to comply with this order shall result in the dismissal of this action.

IT IS SO ORDERED.

Dated: July 6, 2015

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE