

1 873, 876 n.1 (9th Cir. 2004). Here, judicial notice is taken of *Hill v. White, et al.*, Case Number
2 1:13-cv-01275-AWI-DLB (PC). In that action, an order issued denying Plaintiff's application to
3 proceed *in forma pauperis* as Plaintiff had four strikes¹ under section 1915(g) prior to its filing
4 and finding that Plaintiff had not shown that he was in imminent danger of serious physical injury
5 at the time he filed suit which precluded him from proceeding *in forma pauperis*. Thus, Plaintiff
6 is subject to 28 U.S.C. § 1915(g) and is precluded from proceeding *in forma pauperis* in this
7 action unless at the time the Complaint was filed, he was under imminent danger of serious
8 physical injury.

9 The Court has reviewed Plaintiff's Complaint and finds that he does not meet the
10 imminent danger exception. *See Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007).
11 Plaintiff's Complaint arises from an alleged false rules violation report that was filed against him
12 at Wasco State Prison in April of 2013 which was dismissed. Subsequently, Plaintiff alleges a
13 series of events by the Defendants involved in that false RVR and adverse events that occurred
14 after he was transferred to the Secured Housing Unit at Corcoran State Prison. Plaintiff alleges
15 events that range from tampering of his inmate appeals (Doc. 1, pp. 5-6), to being denied access
16 to the canteen and store (*id.*, at p. 7); being given food trays with flies on them (*id.*); having his
17 cell door repeatedly banged on by a correctional officer (*id.*); having \$40 that his brother sent to
18 him stolen (*id.*, at 7-8); being held at a Level IV prison when he should be at a Level III prison
19 (*id.*, at pp. 7, 9); being denied access to the law library so he couldn't electronically file a
20 complaint (*id.*, at p. 11); notices not being posted as to when the law library would be closed (*id.*,
21 at pp. 12-13); and having his inmate appeals wrongly handled/denied (*id.*, at p. 14). None of
22 these allegations even suggest Plaintiff is at risk of imminent danger at the time he filed the
23 Complaint.

24 Plaintiff therefore fails to allege specific facts in the Complaint indicating that he was
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26 ¹The Court takes judicial notice of the following cases which count as strikes: 1) *Hill v. Williams, et al.*, 2:98-cv-
27 07173-LGB-CT (C.D. Cal.) (dismissed September 15, 1998 for failure to state a claim); 2) *Hill v. Wallace, et al.*,
28 2:99-cv-06406-ABC-CT (C.D. Cal.) (dismissed July 7, 1999 for failure to state a claim); (3) *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 (4) *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 under imminent danger at the time he filed the Complaint. Based on the foregoing, the Court
2 finds that Plaintiff fails to allege an imminent danger of serious physical injury necessary to
3 bypass § 1915(g)'s restriction on filing suit without prepayment of the filing fee.

4 Accordingly, Plaintiff may not proceed *in forma pauperis* in this action and must submit
5 the appropriate filing fee in order to proceed with this action.

6 **C. CONCLUSION and RECOMMENDATION**

7 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff's motion to
8 proceed *in forma pauperis*, filed April 21, 2015 (Doc. 2), be denied and that Plaintiff be ordered
9 to pay the filing fee in full.

10 These Findings and Recommendations will be submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within 30**
12 **days** after being served with these Findings and Recommendations, Plaintiff may file written
13 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
14 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
15 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
16 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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18 IT IS SO ORDERED.

19 Dated: April 29, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE