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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

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10 MICHAEL GONZALES,

11 Plaintiff,

12 v.

13 PODSAKOFF, et al.,

14 Defendants.

Case No. 1:15-cv-00924-SKO (PC)

**ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND AND DISCHARGING
ORDER TO SHOW CAUSE REGARDING
PLAINTIFF'S *IN FORMA PAUPERIS* STATUS
(Docs. 20-23)**

**ORDER GRANTING PLAINTIFF'S MOTIONS
FOR COPIES OF DOCUMENTS
(Docs. 7, 8, 18)**

THIRTY (30) DAY DEADLINE

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17 **I. INTRODUCTION**

18 Plaintiff, Michael Gonzales, is a state prisoner proceeding *pro se* and *in forma pauperis* in
19 this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint in this action
20 on June 18, 2015. Plaintiff filed an application to proceed *in forma pauperis* with the Complaint.
21 (Doc. 2.) This application was granted later that month even though Plaintiff had three strikes for
22 purposes of 28 U.S.C. § 1915 because it appeared that Plaintiff's allegations may suffice to show
23 imminent danger of serious physical injury. (Docs. 3, 5.)

24 Upon screening of Plaintiff's Complaint, however, it was determined that his allegations
25 which state cognizable claims fail to show an imminent danger of serious physical injury to be
26 excepted from the three strikes provision of 28 U.S.C. § 1915. Thus, two orders issued on April
27 25, 2016. The first order screened the Complaint and required Plaintiff to either file a first
28 amended complaint, or to submit a notice indicating he was willing to proceed only on the claims

1 which were found to be cognizable and related for purposes of Rule 18 of the Federal Rules of
2 Civil Procedure.¹ (Doc. 20.) Plaintiff's cognizable and related claims were found to be
3 retaliation and interference with Plaintiff's mail against Defendants A. Podsakoff and L.
4 Lawrence and an excessive force claim against Defendant A. Podsakoff for slamming Plaintiff's
5 wrist in the food port on April 9, 2014. (*Id.*) Because neither of these claims amounted to an
6 imminent danger of serious injury, an order to show cause (OSC) issued requiring Plaintiff to
7 show why his *in forma pauperis* status should not be revoked. (Doc. 21.)

8 **II. ANALYSIS and DISCUSSION**

9 **A. Plaintiff May Only Proceed *In Forma Pauperis* If He Is Able to Show That He** 10 **was in Imminent Danger of Serious Physical Injury When He Filed This Action**

11 As stated in the OSC, 28 U.S.C. § 1915 governs proceedings *in forma pauperis*. "In no
12 event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more
13 prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a
14 court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails
15 to state a claim upon which relief may be granted, unless the prisoner is under imminent danger
16 of serious physical injury." 28 U.S.C. § 1915(g). Plaintiff had three strikes before he filed this
17 action. (Doc. 21.) Thus to be allowed to proceed *in forma pauperis*, he must state allegations
18 which show that he was in imminent danger of serious physical injury and amount to a cognizable
19 claim under 42 U.S.C. § 1983.

20 Plaintiff filed two documents on May 25, 2016. The first document is Plaintiff's notice
21 that he does not desire to file an amended complaint and is willing to proceed on the claims found
22 cognizable in the screening order. (Doc. 22.) If Plaintiff proceeds on the claims previously found
23 cognizable, his *in forma pauperis* status will be revoked and he will be required to pay the filing
24 fee in full. The second document Plaintiff filed on May 25, 2016, is his response to the OSC
25 which suggests that he may be able to state a cognizable claim showing he was in imminent
26 danger of serious bodily injury at the time he filed this action based on the tainting of his food
27 with "antipsychotic medication" which caused him to experience "akinesia and tartive

28 ¹ The Federal Rules of Civil Procedure will hereinafter be referred to as "Rule *." Any reference to other statutory
authorities shall so indicate.

1 dyskinesia.” Since Plaintiff may be able to state cognizable claims which show that he was under
2 imminent danger of serious physical injury, he is granted opportunity to file a first amended
3 complaint. *Rodriguez v. Steck*, 795 F.3d 1187 (9th Cir. 2015).

4 Thus, the OSC is discharged and Plaintiff is granted the option, in the next thirty days to
5 either: (1) file a notice of his desire to proceed on the claims in the Complaint that were
6 previously found cognizable (*see* Doc. 20) in which case his *in forma pauperis* status will be
7 revoked and this action will be dismissed without prejudice to his re-filing upon prepayment of
8 the full filing fee; or (2) file a First Amended Complaint, limited to the instances when his food
9 was tainted at California State Prison (“CSP-Cor”) in Corcoran, California, as well any related
10 claims which do not violate Rule 18. Plaintiff is provided a copy of the order screening his
11 Complaint (Doc. 20) and the OSC (Doc. 21) for applicable standards.

12 **B. Plaintiff’s Motions For Copies of Documents Are Granted**

13 Plaintiff has filed several motions requesting copies of documents he has filed in this
14 action indicating that prison staff at CSP-Cor denied him copies for various reasons. (*See* Docs.
15 7, 8, 18.) Plaintiff has since been transferred to the California Correctional Institute (“CCI”) in
16 Tehachapi, California. Though litigants must generally pay for copies of documents, Plaintiff’s
17 requests will be granted gratis – on this one occasion. Plaintiff will hopefully no longer have
18 issues with obtaining copies of documents since he is no longer at CSP-Cor. Plaintiff is
19 cautioned, however, that such copies will not be provided in the future without remuneration.

20 **III. ORDER**

21 Accordingly, it is HEREBY ORDERD that:

22 1. The Order to Show Cause that issued on April 25, 2016, is DISCHARGED;

23 2. **Within thirty (30) days** of the date of service of this order, Plaintiff must:

24 a. file a notice of his desire to proceed on the claims in the Complaint that were
25 previously found cognizable (*see* Doc. 20) which will result in revocation of his
26 *in forma pauperis* status and the dismissal of this action without prejudice to his
27 re-filing upon prepayment of the full filing fee;

28 b. file a First Amended Complaint, limited to the instances when his food was

1 tainted at CSP-Cor and any claims which do not violate Rule 18; or

2 c. if he no longer desires to pursue this action, he must file a notice of
3 voluntary dismissal;

4 3. Plaintiff's motions for copies of his filings in this action, filed on August 31, 2015,
5 (Docs. 7, 8) and January 6, 2018, (Doc. 18) are GRANTED;

6 4. The Clerk's Office is directed to forward copies of the Complaint (Doc. 1),
7 Plaintiff's motion for temporary restraining order (Doc. 9), Plaintiff's motion of
8 petition for injunctive court order and temporary restraining order (Doc. 17), the
9 order which screened the Complaint (Doc. 20), and the order to show cause why *in*
10 *forma pauperis* status should not be revoked (Doc. 21); and

11 5. Plaintiff's failure to comply with this order **will result in dismissal of this action**
12 **for both failure to prosecute and failure to obey a court order.**

13 IT IS SO ORDERED.

14 Dated: May 31, 2016

15 /s/ Sheila K. Oberto
16 UNITED STATES MAGISTRATE JUDGE