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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GARY DALE BARGER aka
GARY FRANCIS FISHER,

Plaintiff,

v.

GIPSON,

Defendant.

Case No. 1:15-cv-00055-LJO-SKO (PC)

ORDER DISMISSING ACTION, WITHOUT
PREJUDICE, PURSUANT TO 28 U.S.C. §
1915(G)

(Doc. 1)

Plaintiff Gary Dale Barger aka Gary Francis Fisher, # F85263, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 12, 2015. Plaintiff is subject to 28 U.S.C. 1915(g), which provides that “[i]n no event shall a prisoner bring a civil action . . . under this section 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 States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”¹

¹ Plaintiff has at least three dismissals which qualify as final strikes under section 1915(g). Silva. The Court takes judicial notice of the following United States District Court cases: *Barger aka Fisher v. FBI, et al.*, 1:13-cv-00414-LJO-SAB (E.D.Cal.) (dismissed for failure to state a claim on Jul. 26, 2013); *Barger aka Fisher v. FBI, et al.*, 1:13-cv-00535-DLB (E.D.Cal.) (dismissed for failure to state a claim on Nov. 21, 2013); and *Fisher v. Bivens, 6 Unknown Agents, et al.*, 2:14-cv-01439-UA(MAN) (C.D.Cal.) (dismissed for failure to state a claim on Mar. 6, 2014).

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The Court has reviewed Plaintiff's complaint and his allegations do not satisfy the imminent danger exception to section 1915(g).² *Andrews v. Cervantes*, 493 F.3d 1047, 1055-56 (9th Cir. 2007). If Plaintiff wishes to pursue this action, he must first pay the \$400.00 filing fee.

Accordingly, the Court HEREBY ORDERS as follows this action is DISMISSED, without prejudice to re-filing accompanied by the \$400.00 filing fee.

IT IS SO ORDERED.

Dated: January 14, 2015

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

² Plaintiff is currently incarcerated at the California Health Care Facility in Stockton. Plaintiff's allegations concern events which occurred at California State Prison-Corcoran approximately four years ago, and his complaint presents no allegations that he is under imminent danger of serious physical injury.