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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

GARY DALE BARGER,  
Plaintiff,

v.

BAKERSFIELD POLICE DEPARTMENT,  
et al.,  
Defendants.

Case No. 1:15-cv-00328-AWI-DLB (PC)

FINDINGS AND RECOMMENDATION  
REGARDING MOTION FOR LEAVE TO  
PROCEED IN FORMA PAUPERIS AND  
DISMISSAL OF ACTION, WITHOUT  
PREJUDICE, PURSUANT TO 28 U.S.C. §  
1915(G)

(ECF No. 2)

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Plaintiff Gary Dale Barger aka Gary Francis Fisher, # F-85263, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on February 19, 2015, in the Sacramento Division of the Eastern District of California. The action was transferred to this Court on February 27, 2015. Plaintiff filed a motion for leave to proceed in forma pauperis on February 19, 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

1 injury.”<sup>1</sup> The Court has reviewed Plaintiff’s complaint and his allegations do not satisfy the  
2 imminent danger exception to section 1915(g).<sup>2</sup> Andrews v. Cervantes, 493 F.3d 1047, 1055-56  
3 (9th Cir. 2007). Therefore, Plaintiff must pay the \$400.00 filing fee if he wishes to litigate his  
4 claim.

### 5 RECOMMENDATION

6 Accordingly, the Court HEREBY RECOMMENDS that Plaintiff’s motion for leave to  
7 proceed in forma pauperis in this action be DENIED, and the action be DISMISSED, without  
8 prejudice to re-filing accompanied by the \$400.00 filing fee.

9 These Findings and Recommendations are submitted to the United States District Judge  
10 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen  
11 (14) days after date of service of these Findings and Recommendations, Plaintiff may file written  
12 objections with the Court. Such a document should be captioned “Objections to Magistrate  
13 Judge's Findings and Recommendations.” Plaintiff is advised that failure to file objections within  
14 the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
15 F.2d 1153 (9th Cir. 1991).

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17 IT IS SO ORDERED.

18 Dated: March 11, 2015

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

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24 <sup>1</sup> The Court takes judicial notice of the following United States District Court cases: Barger aka Fisher v. FBI, et al.,  
25 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,  
26 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).  
These strikes were final prior to the date Plaintiff filed this action. Silva v. Di Vittorio, 658 F.3d 1090, 1098-1100  
(9th Cir. 2011).

27 <sup>2</sup> Plaintiff is suing the Bakersfield Police Department, Bakersfield Police Officers, Kern County Superior Court  
28 employees, Kern County Sheriff Danny Youngblood, 3 Unknown Agents, FBI Mueller, FBI Hardy, and the Director  
of the Kern County FBI. (Compl., p. 2.) Plaintiff’s claim arises out of an alleged use of excessive force by officers  
during his arrest. His allegations do not satisfy the imminent danger exception to section 1915(g).