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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GARY DALE BARGER aka  
GARY FRANCIS FISHER,

Plaintiff,

v.

DIRECTOR OF OPS OF CDCR, et al.,

Defendants.

Case No. 1:15-cv-00338-LJO-SKO (PC)

ORDER DISMISSING ACTION, WITHOUT  
PREJUDICE, PURSUANT TO 28 U.S.C. §  
1915(G) AND DENYING PENDING  
MOTIONS AS MOOT

(Docs. 1-4)

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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 February 24, 2015, in the Northern District of California. The action was transferred to this court on February 26, 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.”<sup>1</sup>

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<sup>1</sup> Plaintiff has at least three dismissals which qualify as final strikes under section 1915(g). *Silva v. Di Vittorio*, 658 F.3d 1090, 1098-99 (9th Cir. 2011). 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

1 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). If Plaintiff wishes to pursue this action, he must first pay the \$400.00 filing fee.

4 Accordingly, this action is HEREBY ORDERED DISMISSED, without prejudice to re-  
5 filing accompanied by the \$400.00 filing fee, and Plaintiff's pending motions are DENIED as  
6 moot.

7  
8 IT IS SO ORDERED.

9 Dated: March 4, 2015

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

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25 on Nov. 21, 2013); and *Fisher v. Bivens, 6 Unknown Agents, et al.*, 2:14-cv-01439-UA(MAN) (C.D.Cal.) (dismissed  
26 for failure to state a claim on Mar. 6, 2014).

27 <sup>2</sup> Plaintiff is currently incarcerated at the California Health Care Facility in Stockton. Plaintiff alleges that he was  
28 released on parole on October 5, 2010, and an officer subsequently slammed him against the glass at a Greyhound  
station. Plaintiff alleges he only drank one beer, which is not against the law, and the officer failed to give him a field  
sobriety test. Plaintiff was then sent back to prison.