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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 SONNY BARGER II,
10 aka GARY FRANCIS FISHER,
11 aka GARY DALE BARGER,

12 Plaintiff,

13 vs.

14 KERN COUNTY SUPERIOR COURT,

15 et al.,

16 Defendants.

1:17-cv-00424-AWI-GSA-PC

ORDER DENYING APPLICATION TO
PROCEED IN FORMA PAUPERIS
UNDER 28 U.S.C. § 1915(g) AND
DISMISSING ACTION, WITHOUT
PREJUDICE TO REFILE WITH
SUBMISSION OF \$400.00 FILING FEE
IN FULL
(ECF Nos. 1, 3.)

ORDER FOR CLERK TO CLOSE
CASE

17 **I. BACKGROUND**

18 Sonny Barger II, aka Gary Francis Fisher, aka Gary Dale Barger (“Plaintiff”) is a state
19 prisoner proceeding *pro se* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff
20 filed the Complaint commencing this action on February 24, 2017, in the United States District
21 Court for the Northern District of California. (ECF No. 1.) On March 13, 2017, Plaintiff filed
22 a motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 3.) On March
23 22, 2017, this case was transferred to the Fresno Division of the Eastern District of California.
24 (ECF No. 5.).

25 **II. THREE-STRIKES PROVISION OF 28 U.S.C. § 1915(g)**

26 28 U.S.C. § 1915 governs proceedings *in forma pauperis*. Section 1915(g) provides
27 that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has,
28 on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action

1 or appeal in a court of the United States that was dismissed on the grounds that it is frivolous,
2 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is
3 under imminent danger of serious physical injury.”

4 **III. ANALYSIS**

5 A review of the cases filed by Plaintiff reveals that Plaintiff is subject to 28 U.S.C. §
6 1915(g) and is precluded from proceeding *in forma pauperis* unless Plaintiff was, at the time
7 the Complaint was filed, under imminent danger of serious physical injury. Court records
8 reflect that on at least three prior occasions, Plaintiff has brought actions while incarcerated that
9 were dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be
10 granted. See (1) Barger v. FBI, 1:13-cv-00535-DLB (E.D. Cal.) (dismissed November 21,
11 2013, for failure to state a claim); (2) Barger v. Casey, 2:13-cv-08889-UA-MAN (C.D. Cal.)
12 (dismissed December 20, 2013, for failure to state a claim; (3) Fisher v. FBI, 1:13-CV-00414-
13 LJO-SAB (E.D. Cal.) (dismissed July 26, 2013, for failure to state a claim); (4) Fisher v.
14 Planet, 2:14-cv-02766-UA-MAN (C.D. Cal.) (dismissed April 17, 2014, for failure to state a
15 claim); and (5) Fisher v. Bivens, 2:14-cv-01439-UA-MAN (C.D. Cal.) (dismissed March 6,
16 2014 for failure to state a claim).

17 The availability of the imminent danger exception turns on the conditions a prisoner
18 faced at the time the complaint was filed. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir.
19 2007). “[A]ssertions of imminent danger of less obviously injurious practices may be rejected
20 as overly speculative or fanciful, when they are supported by implausible or untrue allegations
21 that the ongoing practice has produced past harm.” Id. at 1057 n.11.

22 The court has reviewed Plaintiff’s Complaint for this action and finds that Plaintiff does
23 not meet the imminent danger exception. See Andrews, 493 F.3d at 1053. In the Complaint,
24 Plaintiff alleges that his rights to due process were violated by the Kern County Superior Court,
25 Kamala Harris hired an inept judge, Kings County Superior Court failed to notify him of a
26 court date, his mail and property were confiscated, his television was deliberately broken,
27 correctional officers failed to protect him from assault by another inmate, he was denied
28 medical care, his wheelchair and two walkers were confiscated, and Defendants retaliated and

1 discriminated against him. The Complaint appears to span several separate transactions that
2 occurred at different facilities. The Complaint is devoid of any showing that Plaintiff was
3 under imminent danger of serious physical injury at the time he filed the Complaint. See id.

4 Therefore, 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. Accordingly, Plaintiff's motion
6 to proceed *in forma pauperis* shall be denied, and this action shall be dismissed, without
7 prejudice to refiling with the submission of the \$400.00 filing fee in full.

8
9 **ORDER**

10 Based on the foregoing, it is HEREBY ORDERED that:

- 11 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff's motion to proceed *in forma pauperis*
12 in this action is DENIED;
- 13 2. This action is DISMISSED, without prejudice to refiling with the submission of
14 the \$400.00 filing fee in full; and
- 15 3. The Clerk is directed to CLOSE this case.

16 IT IS SO ORDERED.

17 Dated: April 7, 2017

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19 SENIOR DISTRICT JUDGE