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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARY DALE BARGER
aka GARY FRANCIS FISHER,

Petitioner,

v.

DIRECTOR OF OPERATIONS OF CDCR,

Respondent.

Case No. 1:17-cv-01067-SAB-HC

ORDER RE: MOTION TO BE HEARD

ORDER DENYING MOTION FOR
DOCUMENTS

(ECF Nos. 8, 9)

Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On August 21, 2017, the Court received Petitioner’s submission entitled “Motion to Be Heard.” (ECF No. 8). Therein, Petitioner: (1) inquires whether exhibits were included with his petition; (2) informs the Court that his handwriting is near illegible due to injuries arising from an attempt on Petitioner’s life; and (3) informs the Court that the ending of his memorandum was incomplete. The Court notes that exhibits were included with both Petitioner’s original and amended petitions. There are hundreds of prisoner civil cases presently pending before the Court. Due to these heavy caseloads, the Court will not respond to further inquiries regarding the status of filings.

In the motion for documents, Petitioner appears to request copies of his C-file from the California Department of Corrections and Rehabilitation (“CDCR”) pursuant to 5 U.S.C. § 552,

1 Rules 26 and 34 of the Federal Rules of Civil Procedure, the California Public Records Act, and
2 title 15, California Code of Regulations section 3375(h). (ECF No. 9 at 1, 3).¹ The CDCR, as a
3 state agency, is not covered under the Freedom of Information Act, 5 U.S.C. § 552. See St.
4 Michael's Convalescent Hosp. v. California, 643 F.2d 1369, 1373 (9th Cir. 1981). Rule 6 of the
5 Rules Governing Section 2254 Cases provides that leave of court is required for a party to
6 conduct discovery under the Federal Rules of Civil Procedure. Rule 6(a), Rules Governing
7 Section 2254 Cases. Here, the Court has not authorized Petitioner to conduct discovery.
8 Accordingly, Petitioner is not entitled to documents from the CDCR pursuant to 5 U.S.C. § 552
9 or Rules 26 and 34 of the Federal Rules of Civil Procedure. Moreover, to the extent that
10 Petitioner requests the Court to order the CDCR to provide documentation pursuant to the
11 California Public Records Act or the California Code of Regulations, this Court is not the proper
12 forum for such relief.

13 Accordingly, the Court HEREBY ORDERS that:

- 14 1. The motion to be heard (ECF No. 8) is TERMINATED; and
- 15 2. The motion for documents (ECF No. 9) is DENIED.

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17 IT IS SO ORDERED.

18 Dated: October 5, 2017


UNITED STATES MAGISTRATE JUDGE

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28 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.