

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY BARGER,  
Plaintiff,  
v.  
DIRECTOR CDCR,  
Defendants.

No. 2:14-cv-2325 KJN P

ORDER

Plaintiff Gary Barger, also known as Gary Francis Fisher, is a state prisoner proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On October 17, 2014, plaintiff filed a certified trust account statement, but did not file an application to proceed in forma pauperis. On October 24, 2014, plaintiff was directed to file an affidavit to proceed in forma pauperis, and was provided the court’s application form. Thirty days have passed, and plaintiff has not filed an application to proceed in forma pauperis.

Moreover, review of court records reveals that on at least three prior occasions lawsuits filed by the plaintiff have been dismissed on the grounds that they were frivolous or malicious or failed to state a claim upon which relief may be granted. See Orders filed March 6, 2014, in Fisher v. Bivens, Six Unknown Agents, 2:14-cv-1439-UA-MAN (C.D. Cal.) (failure to state a claim); December 20, 2013, Barger v. Casey, 2:13-cv-08889-UA-MAN (C.D. Cal.) (frivolous,

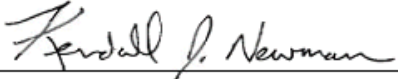
1 malicious or fails to state a claim upon which relief may be granted); November 21, 2013, in  
2 Barger v. FBI, 1:13-cv-0535 DLB (E.D. Cal.) (failure to state a claim); and July 26, 2013, in  
3 Fisher v. FBI, 1:13-cv-0414 LJO SAB (E.D. Cal.) (adopting June 17, 2013 findings that  
4 deficiencies in plaintiff's amended complaint cannot be cured by the allegation of other facts).

5 Accordingly, plaintiff is precluded from proceeding in forma pauperis in this action unless  
6 plaintiff is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Plaintiff  
7 has not alleged any facts which suggest that he is under imminent danger of serious physical  
8 injury.<sup>1</sup> Thus, plaintiff must submit the appropriate filing fee in order to proceed with this action.

9 In accordance with the above, IT IS HEREBY ORDERED that plaintiff shall submit,  
10 within twenty-one days from the date of this order, the appropriate filing fee. Plaintiff's failure to  
11 comply with this order will result in a recommendation that this action be dismissed.

12 Dated: December 8, 2014

13  
14 /barg2325.1915g

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 <sup>1</sup> Rather, in his complaint, plaintiff claims the trust account office of the CDCR refuses to  
28 provide plaintiff with trust account statements. (ECF No. 1 at 1-2.) The court notes that in  
addition to the trust account statement filed herein, a certified trust account statement was also  
filed in plaintiff's Case No. 2:14-cv-2525 on December 1, 2014.