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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY FISHER, aka GARY FRANCIS
FISHER, aka GARY DALE BARGER
(CDCR No. F-85263),

Plaintiff,

v.

R. J. ROUKLEY, et al.,

Defendants.

No. 2:14-cv-2417 DAD P

ORDER

Plaintiff Gary Fisher, also known as Gary Francis Fisher and Gary Dale Barger, is a state prisoner proceeding without counsel with a civil rights complaint filed pursuant to 42 U.S.C. § 1983. Plaintiff seeks leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff has consented to magistrate judge jurisdiction for all purposes pursuant to 28 U.S.C. § 636(c), and Local Rule 305(a). (See ECF No. 5.)

Review of court records¹ reveals that plaintiff is designated a “three strikes litigant” under 28 U.S.C. § 1915(g), which provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any

¹ Judicial notice may be taken of court records. Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978), aff’d, 645 F.2d 699 (9th Cir. 1981).

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

4 Such a designation indicates that plaintiff has brought three or more prior actions that were
5 dismissed as frivolous, malicious, or for failure to state a claim, and precludes plaintiff from
6 proceeding in forma pauperis in the present action unless he demonstrates that he was under
7 imminent danger of serious physical injury when he filed the complaint.

8 The undersigned notes that plaintiff has been denied in forma pauperis status due to his
9 three-strikes designation in at least five prior cases,² which together cite several cases in which
10 plaintiff's complaints were dismissed as frivolous, malicious or for failure to state a claim. This
11 court has reviewed the basis of the findings in those cases and concurs that plaintiff has suffered
12 at least three prior strike dismissals as defined by 28 U.S.C. § 1915(g).³

13 As a three strikes litigant, plaintiff may not proceed in forma pauperis in the present action
14 unless he demonstrates that he was "under imminent danger of serious physical injury" when he
15 filed his complaint. 28 U.S.C. § 1915(g). The imminent danger exception applies only if it is
16 clear that the danger existed when the complaint was filed. Andrews v. Cervantes, 493 F.3d

17 ² See Fisher v. Director of OPS of CDCR, Case No. 2:14-cv-1323 EFB TLN P (E.D. Cal., Aug.
18 5, 2014) (ECF No. 17); Barger v. Kern County Superior Court et al., Case No. 1:14-cv-01071
19 DLB P (E.D. Cal., Aug. 13, 2014) (ECF No. 12); Barger v. Kern County Superior Court et al.,
20 Case No. 1:14-cv-01667 LJO SAB P (E.D. Cal., Oct. 29, 2014) (ECF No. 11); Barger v. Kern
County Superior Court et al., Case No. 1:14-cv-01628 LJO DLB P (E.D. Cal., Nov. 5, 2014)
21 (ECF No. 10); Barger v. Director of OPS of CDCR, Case No. 2:14-cv-2525 KJN P (E.D. Cal.,
22 Nov. 12, 2014) (ECF No. 11). The court also takes judicial notice of the National Pro Se Three-
23 Strikes Database, which designates plaintiff a three-strikes litigant based on the above-noted order
and findings in Fisher v. Director of OPS, Case No. 2:14-cv-1323 EFB TLN P (E.D. Cal., Aug. 5,
2014) (ECF No. 17). See <http://nprose.circ9.dcn/Litigant.aspx>.

24 ³ The undersigned takes judicial notice of the following cases which count as strikes against
25 plaintiff under § 1915(g): (1) Fisher v. FBI, Case No. 1:13-cv-0414 LJO SAB P (E.D. Cal. 2013)
26 (dismissed on July 26, 2013, for failure to state a claim (ECF No. 19)); (2) Barger v. FBI, Case
27 No. 1:13-cv-0535 DLB P (E.D. Cal. 2013) (dismissed on November 21, 2013, for failure to state
28 a claim (ECF No. 10)); (3) Barger v. Casey et al., Case No. 2:13-cv-8889 UA MAN P (C.D. Cal.
2013) (dismissed December 20, 2103, as frivolous, malicious or fails to state a claim, and sought
relief from an immune defendant (ECF No. 6)); and (4) Fisher v. Bivens, Six Unknown Agents,
Case No. 2:14-cv-01439 UA MAN P (C.D. Cal. 2014) (dismissed on March 6, 2014, for failure to
state a claim (ECF No. 2)).

1 1047, 1053 (9th Cir. 2007). The danger must be real and proximate, Ciarpaglini v. Saini, 352
2 F.3d 328, 330 (7th Cir. 2003), and must be ongoing, Andrews, 493 F.3d at1056. Allegations of
3 imminent danger that are overly speculative or fanciful may be rejected. Id. at 1057 n.11. Absent
4 a showing that plaintiff was under imminent danger of serious physical injury at the time he filed
5 his complaint, his only option for proceeding with this action is to pay the full filing fee.

6 Plaintiff is currently incarcerated at the California Health Care Facility in Stockton. In the
7 complaint now pending before the court, plaintiff alleges that Warden Roukley allowed his staff
8 to destroy plaintiff’s administrative grievances, and that the appeals supervisors failed to honor
9 plaintiff’s requests to complete his in forma pauperis applications.⁴ Although plaintiff references
10 an “attempted murder” under Warden Roukley’s watch, his allegations in that regard are vague
11 and incoherent and do not appear to relate to plaintiff. Plaintiff also seeks the following relief:

12 For the hassle of No “IFPs,” for cheating on the 602 process, and all
13 around being dishonest I ask the sum of 214,000,000 or two
hundred 14 million dollars and 0 cents.

14 (ECF No. 1 at 5) (sic). The complaint does not allege that plaintiff faces imminent danger of
15 serious physical injury. Therefore, plaintiff may not proceed in forma pauperis in this action.
16 Rather, in order to proceed with this action, plaintiff must submit the appropriate fee of \$400.00
17 (\$350.00 filing fee plus \$50.00 administrative fee).

18 In accordance with the above, IT IS HEREBY ORDERED that:

19 1. Plaintiff’s September 26, 2014, motion to proceed in forma pauperis (ECF No. 2) is
20 denied.

21 2. Plaintiff shall, within twenty-one days from the date of this order, submit the
22 appropriate fee of \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee).

23 ////

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25 ////

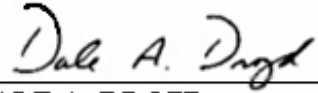
26 ////

27 _____
28 ⁴ Finally, the court takes judicial notice of the fact that plaintiff filed over 30 cases in this court in
the calendar year 2014 alone.

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3. Plaintiff's failure to timely comply with this order will result in the dismissal of this action.

Dated: December 2, 2014



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

DAD:4
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