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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GREGORIO C. FUNTANILLA, JR.,

CASE NO. 1:10-cv-01048-LJO-SMS PC

Plaintiff,

ORDER DENYING PLAINTIFF’S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS PURSUANT TO 28 U.S.C. § 1915(G), AND REQUIRING PLAINTIFF TO SUBMIT \$350.00 FILING FEE WITHIN THIRTY DAYS

v.

DAVID TRISTAN, et al.,

Defendants.

(Doc. 2)

\_\_\_\_\_ /

Plaintiff Gregorio C. Funtanilla, Jr., a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 9, 2010. Plaintiff seeks leave to proceed in forma pauperis.

28 U.S.C. § 1915 governs proceedings in forma pauperis. Section 1915(g) 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.” Plaintiff became subject to section 1915(g) on March 14, 2001, and is precluded from proceeding in forma pauperis unless he is, at the time the complaint is filed, under imminent danger of serious physical injury.<sup>1</sup>

<sup>1</sup> The Court takes judicial notice of case number 1:02-cv-06001-OWW-GSA PC Funtanilla v. Tristan, et al., (E.D.Cal.) (court record documents 144 & 153 - 3 strikes Findings and Recommendations dated July 5, 2005, & Order adopting dated Sept. 28, 2005, finding plaintiff subject to section 1915(g)).

1 The Court has reviewed Plaintiff's complaint and finds that Plaintiff does not meet the  
2 imminent danger exception.<sup>2</sup> Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). Because  
3 Plaintiff is not under imminent danger of serious physical injury, he is ineligible to proceed in forma  
4 pauperis in this action, and is precluded from proceeding on his complaint absent the submission of  
5 the filing fee in full.

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

- 7 1. Plaintiff's motion for leave to proceed in forma pauperis in this action is DENIED  
8 pursuant to 28 U.S.C. § 1915(g); and
- 9 2. Plaintiff shall submit the \$350.00 filing fee in full within **thirty (30) days** from the  
10 date of service of this order or this action will be dismissed, without prejudice.

11  
12 IT IS SO ORDERED.

13 Dated: June 16, 2010

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

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<sup>2</sup> Plaintiff's claim in this action arises from the confiscation of his personal property at Kern Valley State  
Prison. The Court expresses no opinion on the merits of Plaintiff's claim.