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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GREGORIO C. FUNTANILLA, JR.,

Plaintiff,

v.

DAVID TRISTAN, et al.,

Defendants.

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

ORDER GRANTING PLAINTIFF’S RULE 60(A) MOTION FOR RECONSIDERATION IN PART AND STRIKING FOOTNOTE 2 FROM COURT DOCUMENT 4, BUT DENYING REQUEST FOR RELIEF FROM ORDER DENYING IFP STATUS

(Doc. 5)

FIFTEEN-DAY DEADLINE TO PAY FILING FEE

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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, along with a motion seeking leave to proceed in forma pauperis. On June 16, 2010, the Court denied Plaintiff leave to proceed in forma pauperis and ordered Plaintiff to pay the filing fee in full within thirty days. 28 U.S.C. § 1915(g). On July 12, 2010, Plaintiff filed a motion for reconsideration.

Pursuant to Federal Rule of Civil Procedure 60(a), the Court may correct a mistake in an order. As pointed out by Plaintiff, footnote 2 in the order of June 16 is not applicable to his case. The footnote was left in the order through administrative error. Plaintiff’s motion is granted in part and the footnote is stricken from the order filed on June 16, 2010.

However, Plaintiff’s contention that his complaint was not reviewed prior to the issuance of the order is incorrect. The Court reviewed Plaintiff’s complaint on June 16, 2010, and found that it did not meet the imminent danger exception. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th

1 Cir. 2007); also Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949-50 (2009); Al-Kidd v. Ashcroft, 580 F.3d  
2 949, 977 (9th Cir. 2009).

3 Plaintiff's argument that paragraph 39 of his complaint meets the exception is without merit.  
4 The allegation that Plaintiff suffers from back pain due to arthritis and is unable to do the exercises  
5 doctors recommended to him in 2001 because his cell is too small does not meet the imminent  
6 dangers exception. Id. Therefore, Plaintiff's request to be relieved from the order in its entirety is  
7 denied, with prejudice. Plaintiff must pay the filing fee in full within fifteen days in order to proceed  
8 with this action.

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

- 10 1. Plaintiff's motion for reconsideration is GRANTED in part, and footnote number 2  
11 in the order filed on June 16, 2010, is STRICKEN;
- 12 2. Plaintiff's request to be relieved from the order finding him ineligible to proceed in  
13 forma pauperis is DENIED; and
- 14 3. Plaintiff has **fifteen (15) days** from the date of service of this order to pay the filing  
15 fee in full or this action will be dismissed.

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17 IT IS SO ORDERED.

18 **Dated: July 13, 2010**

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