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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GREGORIO FUNTANILLA, Jr.,

Plaintiff,

v.

CYNTHIA THOMAS, et al.,

Defendants.

CASE NO. 1:10-cv-1433-OWW-MJS (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS; DISMISSING
PLAINTIFF’S DENTAL CARE CLAIM AND
REVOKING PLAINTIFF’S *IN FORMA*
PAUPERIS STATUS

(ECF Nos. 2 & 6)

PLAINTIFF SHALL PAY \$350 FILING FEE
WITHIN THIRTY DAYS OR CASE WILL BE
DISMISSED WITHOUT PREJUDICE

Plaintiff Gregorio Funtanilla, Jr., a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 7, 2010, the Magistrate Judge filed a Findings and Recommendation recommending that Plaintiff’s claim relating to insufficient dental care be dismissed as duplicative, that his *in forma pauperis* status be revoked, and that this action be dismissed without prejudice. (ECF No. 6.)

Plaintiff filed objections to the Findings and Recommendation. In his Objections, Plaintiff argues that his dental care claim should not be dismissed. However, he does not dispute that he has filed the same dental care claim in more than one case. In fact, the Court has discovered that Plaintiff has included the same allegations of insufficient dental care in at least four cases currently pending before this Court. As noted in the Findings and Recommendation, Plaintiff’s dental care

1 claim can proceed only in the action in which it was first filed. See Adams v. California Dep't of
2 Health Servs., 487 F.3d 684, 688 (9th Cir. 2007).

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(c) and Local Rule 305, this Court
4 has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court
5 finds the Findings and Recommendations to be supported by the record and proper analysis.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The Findings and Recommendation, filed December 7, 2010, is adopted in full;
- 8 2. Plaintiff's claim for dental care is DISMISSED as duplicative;
- 9 3. Because the Court granted Plaintiff's *in forma pauperis* status based solely on his
10 allegations of imminent harm from poor dental care and that claim has been
11 dismissed, Plaintiff's *in forma pauperis* status is REVOKED;
- 12 4. Plaintiff shall pay the full filing fee within thirty days or the case will be dismissed
13 without prejudice. IT IS SO ORDERED.

14 **Dated: February 2, 2011**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE