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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GREGORIO C. FUNTANILLA JR.,

Plaintiff,

v.

GELINDA VELLA et al.,

Defendants.

CASE NO. 1:10-cv-01832-LJO-GBC PC

ORDER DENYING PLAINTIFF’S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS PURSUANT TO 28 U.S.C. § 1915(g) (Doc. 4)

ORDER DISMISSING DUPLICATIVE IMMINENT DANGER CLAIM AS FRIVOLOUS (Doc. 1)

ORDER DISMISSING ACTION, WITHOUT PREJUDICE TO REILING WITH SUBMISSION OF \$350.00 FILING FEE IN FULL (Doc. 1)

Plaintiff Gregorio C. Funtanilla, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on October 05, 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

1 danger of serious physical injury.<sup>1</sup>

2 The Court takes judicial notice that Plaintiff's imminent danger claim is identical in three  
3 separate civil rights actions that Plaintiff is currently litigating in: Funtanilla v. Tristan et al.,  
4 1:10-cv-01048-LJO-SMS; Funtanilla v. Thomas, et al., 1:10-cv-01433-MJS; and Funtanilla v.  
5 Williams et al., 1:10-cv-01624-DLB. A prisoner's claims are considered frivolous under 28 U.S.C.  
6 § 1915A(b)(1) if it "merely repeats pending or previously litigated claims." See Cato v. United  
7 States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (quoting Bailey v. Johnson, 846 F.2d 1019, 1021 (5th  
8 Cir.1988)). Therefore, the Court dismisses Plaintiff's imminent danger claim as frivolous. 28  
9 U.S.C. § 1915A(b)(1); Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). Moreover,  
10 upon review of the remaining of Plaintiff's complaint, the Court finds that Plaintiff does not meet  
11 the imminent danger exception. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007).

12 Because Plaintiff cannot bring the duplicative imminent danger claim and because the  
13 remainder of Plaintiff's complaint does not demonstrate that Plaintiff is in imminent danger of  
14 serious physical injury, he is ineligible to proceed in forma pauperis in this action.

15 Accordingly, it is HEREBY ORDERED that:

- 16 1. Plaintiff's duplicative imminent danger claim is dismissed with prejudice.
- 17 2. Plaintiff's motion for leave to proceed in forma pauperis in this action is denied; and
- 18 3. This action is dismissed, without prejudice to refile with the submission of the  
19 \$350.00 filing fee in full.

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21 IT IS SO ORDERED.

22 **Dated: November 18, 2010**

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

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27 <sup>1</sup> The Court takes judicial notice of case numbers 2:92-cv-01017-LKK-JFM PC Funtanilla v. Tieman, et al.,  
28 (E.D.Cal.) (dismissed 10/08/1992 as frivolous); 3:98-cv-03779-TEH PC Funtanilla v. Duke-Bray, et al., (N.D.Cal.)  
(dismissed 01/06/1999 for failure to state a claim); and 1:98-cv-06365-AWI-SMS PC Funtanilla v. Ninevella, et al.,  
(E.D.Cal.) (dismissed 03/14/2001 for failure to state a claim).