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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Cleo Westerfield,

 Plaintiff,

 vs.

M.T.A. Spinks, et al.,

 Defendants.

NO. CV-08-2457-RHW

**ORDER GRANTING APPLICATION TO
PROCEED IN FORMA PAUPERIS AND
DISMISSING COMPLAINT**

Before the Court is *pro se* state prisoner Plaintiff Cleo Westerfield's Application to Proceed In Forma Pauperis (**Ct. Rec. 5**), filed October 30, 2008. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983.

After review, **IT IS HEREBY ORDERED:**

1. Plaintiff's Application to Proceed In Forma Pauperis (**Ct. Rec. 5**) is **GRANTED**.

2. Because the Petition appears to be duplicative of a petition originally filed on August 21, 2008 and pending in the Eastern District of California, Sacramento Division under Civil Case number 08-1970-RCF, the Petition before this Court is **DISMISSED**. The Court may dismiss a duplicative petition as frivolous under the authority of 28 U.S.C. § 1915(d) if it "merely repeats pending or previously litigated claims." *Cato v. United States*, 70 F.3d 1103, 1105 n. 2

ORDER GRANTING APPLICATION TO PROCEED IN FORMA PAUPERIS AND DISMISSING COMPLAINT -- 1

1 (9th Cir. 1995) (citations omitted). Thus, the current petition is
2 subject to dismissal as duplicative. Plaintiff is cautioned that
3 unless he is under imminent danger of serious physical injury, a
4 prisoner may not bring a subsequent in forma pauperis action in the
5 district court if, while incarcerated, he has brought three or more
6 actions which were dismissed by the Court prior to service pursuant to
7 28 U.S.C. § 1915. See 28 U.S.C. § 1915(g).

8 Accordingly, the Court **GRANTS** Petitioner's request to proceed in
9 forma pauperis and **DISMISSES** the petition with prejudice to
10 reasserting the specified claims in another unpaid complaint.

11 **IT IS SO ORDERED.** The District Court Executive is directed to
12 enter this Order and forward a copy to Plaintiff.

13 **DATED** this 24th day of May 2010.

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16 S/Robert H. Whaley
17 ROBERT H. WHALEY
18 UNITED STATES DISTRICT JUDGE
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