

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FILED**  
07 AUG 21 PM 12:30  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RUSSELL JAMES KELLY,  
CDCR #K-50742,  
  
Plaintiff,  
  
vs.  
  
BONNIE DUMANIS, et al.,  
  
Defendants.

Civil No. 07-1631 W (LSP)

**ORDER:**

- (1) DISMISSING CIVIL ACTION AS DUPLICATIVE PURSUANT TO 28 U.S.C. § 1915A(b)(1); and**
- (2) DENYING MOTION TO PROCEED *IN FORMA PAUPERIS* AS MOOT [Doc. No. 2]**

Plaintiff, a state inmate currently incarcerated at North Kern State Prison located in Delano, California and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. §1983.<sup>1</sup> Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc. No 2].

<sup>1</sup> The proceedings were assigned to this Court, but all post-service matters have been referred to Magistrate Judge Leo S. Papas by Local Rule 72.3(e), “Assignment of § 1983 Prisoner Civil Cases to United States Magistrate Judges,” pursuant to 28 U.S.C. § 636.

1 **I. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

2 The Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A, obligates the Court to  
3 review complaints filed by anyone “incarcerated or detained in any facility who is accused of,  
4 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions  
5 of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after  
6 docketing” and regardless of whether the prisoner prepays filing fees or moves to proceed IFP.  
7 See 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any  
8 portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may  
9 be granted. 28 U.S.C. § 1915A(b); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

10 Plaintiff’s instant Complaint is subject to sua sponte dismissal pursuant to 28 U.S.C.  
11 § 1915A(b)(1) because it appears to be duplicative of a civil rights case Plaintiff has already  
12 litigated. Plaintiff’s Complaint contains identical claims and defendants that are found in *Kelly*  
13 *v. Allard, et al.*, S.D. Cal. Civil Case No. 02cv1838 IEG (JFS). A court “may take notice of  
14 proceedings in other courts, both within and without the federal judicial system, if those  
15 proceedings have a direct relation to matters at issue.” *United States ex rel. Robinson Rancheria*  
16 *Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

17 A prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it  
18 “merely repeats pending or previously litigated claims.” *Cato v. United States*, 70 F.3d 1103,  
19 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal  
20 quotations omitted). Because Plaintiff has already litigated the same claims presented in the  
21 instant action in *Kelly v. Allard, et al.*, S.D. Cal. Civil Case No. 02cv1838 IEG (JFS), the Court  
22 hereby **DISMISSES** Civil Case No. 07cv1631 W (LSP) pursuant to 28 U.S.C. § 1915A(b)(1).  
23 See *Cato*, 70 F.3d at 1105 n.2; *Resnick*, 213 F.3d at 446 n.1.

24 **II. Conclusion and Order**

25 Good cause appearing, **IT IS HEREBY ORDERED** that:

26 ////

27 ////

28 ////

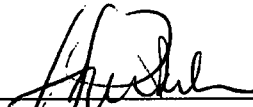
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiff's Complaint in Civil Case No. 07cv1631 W (LSP) is **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915A(b)(1). Plaintiff's Motion to Proceed IFP [Doc. No. 2] is **DENIED** as moot.

The Clerk shall close the file.

**IT IS SO ORDERED.**

**DATED:** 8/20/07

  
\_\_\_\_\_  
**HON. THOMAS J. WHELAN**  
United States District Judge