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

ANTHONY WAYNE JOHNSON. Jr.,
CDCR #F-58411,

Plaintiff,

vs.

M. GAINS, et al.,

Defendants.

Civil No. 09-2868 DMS (AJB)

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]

Anthony Wayne Johnson, Jr. (“Plaintiff”), currently incarcerated at Salinas Valley State Prison located in Soledad, California, and proceeding pro se, has submitted a civil rights Complaint pursuant to 28 U.S.C. § 1983.

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].

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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 case Plaintiff is currently litigating.
12 Plaintiff’s Complaint contains identical claims and defendants that are found in *Johnson v.*
13 *Gains, et al.*, S.D. Cal. Civil Case No. 09cv1312 LAB (POR). 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 is already litigating the same claims presented in the
21 instant action in *Johnson v. Gains, et al.*, S.D. Cal. Civil Case No. 09cv1312 LAB (POR), the
22 Court hereby **DISMISSES** Civil Case No. 09cv2868 DMS (AJB) pursuant to 28 U.S.C.
23 § 1915A(b)(1). 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:

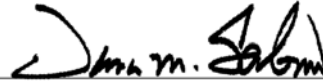
26 Plaintiff’s Complaint in Civil Case No. 09cv2868 DMS (AJB) is **DISMISSED** as
27 frivolous pursuant to 28 U.S.C. § 1915A(b)(1). Plaintiff’s Motion to Proceed IFP is **DENIED**
28 as moot.

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The Clerk shall close the file.

IT IS SO ORDERED.

DATED: January 6, 2010



HON. DANA M. SABRAW
United States District Judge