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9   **UNITED STATES DISTRICT COURT**

10   **SOUTHERN DISTRICT OF CALIFORNIA**

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12   RUSSO BAILEY,   CASE NO. 11cv2480 BEN (WVG)

13   Plaintiff,   **ORDER DENYING MOTION TO
                                                             PROCEED IFP AND DISMISSING**
14   vs.   **COMPLAINT**

15   P. BONANNO, et al.,   [Dkt. No. 2]

16   Defendants.

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18   On March 23, 2011, Plaintiff Russo Bailey filed a Complaint in Case No. 11cv577 BEN

19   (WVG). Motions to dismiss were filed by all Defendants appearing in the case and those motions

20   were granted. (Dkt. Nos. 16-21, 28.) Plaintiff sought reconsideration of the Court's decision granting

21   the motions to dismiss and the Court denied Plaintiff's motion on August 8, 2011. (Dkt. Nos. 25, 27.)

22   On October 26, 2011, Plaintiff filed an identical Complaint in this case and a Motion for Leave to

23   Proceed In Forma Pauperis ("IFP"). (Dkt. Nos. 1-2.)

24   When a party is proceeding IFP, "the court shall dismiss the case at any time if the court

25   determines that . . . the action . . . is frivolous [or] fails to state a claim on which relief may be

26   granted." 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001); *see also*

27   *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990) (finding a "district court may deny leave to

28   proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that the

                                                    - 1 -   11cv2480

1 action is frivolous").

2   The claims asserted in the Complaint filed in this case are identical to the claims dismissed in

3 Case No. 11cv577 BEN (WVG). Because Plaintiff's Complaint fails to state a claim for relief and

4 Defendants should not be required to defend against the exact same claims having already obtained

5 dismissal of those claims, Plaintiff's motion to proceed IFP is **DENIED** and the case is **DISMISSED**.
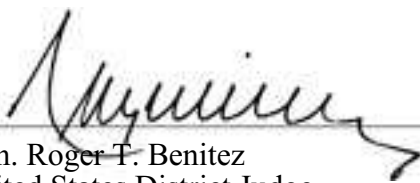
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7   **IT IS SO ORDERED**.

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9 DATED: December 30, 2011

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11 Hon. Roger T. Benitez
   United States District Judge

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