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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOHN DEAN MATTOX,

Plaintiff,

v.

E. MARTINEZ, et al.,

Defendants.

CASE NO. 1:09-cv-00816-LJO-GSA PC

ORDER VACATING ORDER GRANTING IFP  
AND DIRECTING CDCR TO COLLECT  
FILING FEE FOR THIS ACTION

(Doc. 6)

ORDER DIRECTING REIMBURSEMENT OF  
ANY PORTION OF FILING FEE COLLECTED

ORDER DISMISSING ACTION AS  
DUPLICATIVE OF CASE NUMBER 1:08-CV-  
01265-FRZ

(Doc. 10)

ORDER DIRECTING SERVICE ON CDCR  
AND FRESNO DIVISION FINANCIAL DEPT.

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On May 8, 2009, this action was opened upon receipt of a complaint form by Plaintiff John Dean Mattox, a state prisoner proceeding pro se. On June 3, 2009, an amended complaint was received and filed. On July 15, 2009, Plaintiff sent a letter notifying the Court that this action was opened in error, and his complaints were intended as his amended complaint in case number 1:08-cv-01265-FRZ. As s result of the error, case number 1:08-cv-01265-FRZ was dismissed for failure to state any claims following Plaintiff’s apparent failure to file an amended complaint in compliance with the Court’s order.

The Court has reviewed the record in both actions, and Plaintiff’s original and amended complaints in this action were both clearly labeled “Amended Complaint,” and are identical to one

1 another, evidencing Plaintiff's attempts to comply with the order to amend in case number 1:08-cv-  
2 01265-FRZ. This action was opened in error due to Plaintiff's failure to write his case number on  
3 what he intended to be an amended complaint in 1:08-cv-01265-FRZ. The Court will direct the  
4 closure of this action. Plaintiff's letter was filed both in this action and in case number 1:08-cv-  
5 01265-FRZ, so Plaintiff must await the Court's ruling in case number 1:08-cv-01265-FRZ.

6 For the reasons set forth above, it is HEREBY ORDERED that:

- 7 1. The Court's order granting Plaintiff leave to proceed in forma pauperis and directing  
8 the collection of the \$350.00 filing fee is VACATED;
- 9 2. The Clerk of the Court shall reimburse Plaintiff any portion of the filing fee that has  
10 been collected for this action;
- 11 3. This action is DISMISSED as duplicative of case number 1:08-cv-01265-FRZ; and
- 12 4. The Clerk's Office shall serve a copy of this order on (1) the Director of the  
13 California Department of Corrections and Rehabilitation and (2) the Financial  
14 Department, U.S. District Court, Eastern District of California, Fresno Division.

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17 IT IS SO ORDERED.

18 **Dated: July 21, 2009**

19 /s/ Lawrence J. O'Neill  
20 UNITED STATES DISTRICT JUDGE  
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