

1 asserts that his validation as an EME associate is not supported by “some evidence.” Plaintiff further
2 asserts that Defendants violated his due process rights.

3 According to exhibits attached to his complaint, Plaintiff also challenged his validation as an
4 associate of the EME by filing a state habeas corpus action in Lassen County Superior Court. The
5 Superior Court denied the petition on November 7, 2012. Plaintiff appealed the denial to the Court of
6 Appeal in and for the Third Appellate District. The appeal also was denied. Plaintiff subsequently
7 appealed to the California Supreme Court, which denied his petition for habeas corpus on June 12,
8 2013.

9 **B. Discussion**

10 **1. Prior Proceedings**

11 In his habeas proceedings, Plaintiff challenged his validation as an associate of the Mexican
12 Mafia prison gang (EME). The habeas court considered whether there was evidence or an insufficient
13 number of source items to support the administrative determination. The court found no defect of due
14 process and denied the petition for writ of habeas corpus on November 7, 2012. (Ex. O to Complaint.)

15 The California Court of Appeal denied Plaintiff’s petition for writ of habeas corpus on March
16 28, 2013. (Ex. P to Complaint.)

17 The California Supreme Court denied the petition for writ of habeas corpus on June 12, 2013.
18 (Ex. Q to Complaint.)

19 **2. Claim Preclusion**

20 Claim preclusion bars litigation of claims that were or could have been raised in a prior action.
21 [Holcombe v. Hosmer, 477 F.3d 1094, 1097 \(9th Cir. 2007\)](#) (quotation marks omitted). Federal courts
22 are required to give state court judgments the preclusive effects they would be given by another court
23 of that state. [Brodheim v. Cry, 584 F.3d 1262, 1268 \(9th Cir. 2009\)](#) (citing [Migra v. Warren City Sch.
24 Dist. Bd. of Educ., 465 U.S. 75, 84, 104 S.Ct. 892 \(1984\)](#) and [Maldonado v. Harris, 370 F.3d 945, 951
25 \(9th Cir. 2004\)](#)) (quotation marks omitted).

26 Under California law, a final judgment of a state court precludes further proceedings if they are
27 based on the same cause of action. [Brodheim, 584 F.3d at 1268](#) (citing [Maldonado, 370 F.3d at 951](#))
28 (quotation marks omitted). California courts employ the primary rights theory to determine what

1 constitutes the same cause of action for claim preclusion purposes, and under this theory, a cause of
2 action is (1) a primary right possessed by the plaintiff, (2) a corresponding primary duty devolving
3 upon the defendant, and (3) a harm done by the defendant which consists in a breach of such primary
4 right and duty. *Id.* (citing [City of Martinez v. Texaco Trading & Transp., Inc.](#), 353 F.3d 758, 762 (9th
5 Cir. 2003)) (quotation marks omitted). If two actions involve the same injury to the plaintiff and the
6 same wrong by the defendant, then the same primary right is at stake even if in the second suit the
7 plaintiff pleads different theories of recovery, seeks different forms of relief and/or adds new facts
8 supporting recovery. *Id.* (citing [Eichman v. Fotomat Corp.](#), 147 Cal.App.3d 1170, 1174, 197 Cal.Rptr.
9 612 (1983)) (quotation marks omitted).

10 **3. Findings**

11 Here, there is no doubt that Plaintiff is attempting to litigate in this action what he already
12 litigated and lost in the Lassen County Superior Court. In his habeas action, Plaintiff challenged his
13 validation as an associate of the EME and the Superior Court considered whether his due process
14 rights were violated. Likewise, in this [section 1983](#) action, Plaintiff challenges his validation as an
15 associate of the EME and asserts due process violations. The Court therefore finds that this action
16 involves the same primary rights as his state habeas action as the injury and wrong in both actions are
17 identical; that is, Plaintiff claims he was injured by his validation as an EME associate and he was
18 denied due process in the validation proceedings.

19 Insofar as Plaintiff argues his action is not barred by claim preclusion because the prior habeas
20 action did not address his freedom of association or Equal Protection claims and he is seeking different
21 forms of relief, his argument lacks merit. As noted above, because the actions involved the same
22 injury to Plaintiff and the same wrong, then the same primary right is at stake even if Plaintiff now
23 pleads different theories of recovery, seeks different forms of relief or adds new facts supporting
24 recovery in this action. [Brodheim](#), 584 F.3d at 1268. Given the nature of the deficiency at issue, leave
25 to amend is not warranted. [Lopez v. Smith](#), 203 F.3d 1122, 1130 (9th Cir. 2000).

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III. Conclusion and Order

For the reasons stated, this action is HEREBY DISMISSED, with prejudice, as barred by claim preclusion, and the Clerk's Office SHALL enter judgment.

IT IS SO ORDERED.

Dated: May 28, 2015

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE