

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL BLUE,

Plaintiff,

VS.

JEFFREY A. BEARD,

Defendant.

1:14-cv-01074-LJO-GSA-PC

ORDER TO SHOW CAUSE WHY THIS  
CASE SHOULD NOT BE DISMISSED AS  
DUPLICATIVE OF PLAINTIFF  
MICHAEL BLUE'S CASE IN 1:14-CV-  
0816-LJO-SAB-PC

## THIRTY DAY DEADLINE TO FILE RESPONSE

## I. BACKGROUND

Michael Blue (“Plaintiff”) is a state prisoner proceeding with counsel in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on January 28, 2014 at the United States District Court for the Central District of California. (Doc. 1.) On July 8, 2014, the case was transferred to the Eastern District of California. (Doc. 8.) The Complaint awaits the court’s requisite screening under 28 U.S.C. § 1915A.

On November 7, 2014, Plaintiff filed a motion for consolidation. (Doc. 18.)

## II. PLAINTIFF'S MOTION FOR CONSOLIDATION

Plaintiff argues that this case (hereinafter “Blue”) should be consolidated with case 1:14-cv-0060-LJO-SAB-PC (Smith v. Schwarzenegger) (hereinafter “Smith”), because both cases concern unlawful contraction by plaintiffs of the disease known as Valley Fever at the hands of the State.

1           **III. DISCUSSION**

2           It appears that Plaintiff's allegations and claims in Blue may be duplicative of plaintiff  
3 Michael Blue's allegations and claims in case 1:14-cv-00816-LJO-SAB-PC (Abukar v.  
4 Schwarzenegger) (hereinafter "Abukar"). Plaintiff shall be required to show cause why Blue  
5 should not be dismissed as a duplicative case.

6           **Duplicative Cases**

7           “District courts retain broad discretion to control their dockets and ‘[i]n the exercise of  
8 that power they may impose sanctions including, where appropriate, default or dismissal.’”  
9 Adams v. California Dept. of Health Services, 487 F.3d 684, 688 (9th Cir. 2007) (quoting  
10 Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir.1986) (per  
11 curiam)). “After weighing the equities of the case, the district court may exercise its discretion  
12 to dismiss a duplicative later-filed action, to stay that action pending resolution of the  
13 previously filed action, to enjoin the parties from proceeding with it, or to consolidate both  
14 actions.” Adams, 497 F.3d at 688 (citing see Curtis v. Citibank, N.A., 226 F.3d 133, 138–39  
15 (2d Cir. 2000); Walton v. Eaton Corp., 563 F.2d 66, 70–71 (3d Cir.1977) (en banc), cited with  
16 approval in Russ v. Standard Ins. Co., 120 F.3d 988, 990 (9th Cir.1997)).

17           “Plaintiffs generally have ‘no right to maintain two separate actions involving the same  
18 subject matter at the same time in the same court and against the same defendant.’” Adams,  
19 497 F.3d at 688 (quoting Walton, 563 F.2d at 70; see also Curtis, 226 F.3d at 138–39; Serlin v.  
20 Arthur Andersen & Co., 3 F.3d 221, 223–24 (7th Cir.1993)).

21           “To determine whether a suit is duplicative, we borrow from the test for claim  
22 preclusion.” Adams, 497 F.3d at 688. “[T]he true test of the sufficiency of a plea of ‘other suit  
23 pending’ in another forum [i]s the legal efficacy of the first suit, when finally disposed of, as  
24 ‘the thing adjudged,’ regarding the matters at issue in the second suit.” Id. (quoting The  
25 Haytian Republic, 154 U.S. 118, 124, 14 S.Ct. 992, 38 L.Ed. 930 (1894)). “Thus, in assessing  
26 whether the second action is duplicative of the first, we examine whether the causes of action  
27 and relief sought, as well as the parties or privies to the action, are the same.” Adams, 497 F.3d  
28 at 689 (citing see The Haytian Republic, 154 U.S. at 124, 14 S.Ct. 992 (“There must be the

1 same parties, or, at least, such as represent the same interests; there must be the same rights  
2 asserted and the same relief prayed for; the relief must be founded upon the same facts, and the  
3 ... essential basis, of the relief sought must be the same.” (internal quotation marks omitted));  
4 Curtis, 226 F.3d at 140 (holding that the trial court did not abuse its discretion in dismissing  
5 “Curtis II claims arising out of the same events as those alleged in Curtis I,” which claims  
6 “would have been heard if plaintiffs had timely raised them”); Serlin v. Arthur Anderson &

7 Co.

8 , 3 F.3d 221, 223 (7th Cir. 1993) (“[A] suit is duplicative if the claims, parties, and available  
relief do not significantly differ between the two actions.” (internal quotation marks omitted)).

9 **Plaintiff Michael Blue’s Cases**

10 The court’s record shows that plaintiff Michael Blue and numerous co-plaintiffs,  
11 proceeding with counsel including Benjamin Pavone, Esq., filed a civil rights action pursuant to  
12 42 U.S.C. § 1983 on May 7, 2014, which was opened by the Clerk as Abukar, in which the  
13 plaintiffs allege that they contracted the disease known as Valley Fever at the hands of State  
14 officials. (Court Record.) While it is not apparent on the face of the two complaints that the  
15 plaintiff Michael Blue in Abukar is the same person as Plaintiff Michael Blue in Blue, the  
16 Court finds evidence that the two cases may be duplicative with respect to the allegations and  
17 claims by Michael Blue. In Blue, Plaintiff alleges that he contracted Valley Fever as an inmate  
18 when he was housed at Pleasant Valley State Prison. In Abukar, Michael Blue and co-plaintiffs  
19 are all inmates or former inmates who contracted Valley Fever at Pleasant Valley State Prison  
20 or Avenal State Prison. Both of the plaintiffs named Michael Blue are represented by attorney  
21 Benjamin Pavone, Esq. Based on these facts, the court finds that Plaintiff’s case in Blue may  
22 be duplicative of plaintiff Michael Blue’s case in Abukar.

23 On August 18, 2014, Abukar was consolidated with Smith. As a result, Abukar was  
24 closed, and Michael Blue now proceeds as one of the plaintiffs in Smith.

25 **IV. ORDER TO SHOW CAUSE**

26 Based on the foregoing, **IT IS HEREBY ORDERED** that within thirty days of the date  
27 of service of this order, Plaintiff is required to show cause why the present case Blue (1:14-cv-  
28 //

1 01074-LJO-GSA-PC) should not be dismissed as duplicative of plaintiff Michael Blue's case in  
2 Abukar (1:14-cv-00816-LJO-SAB-PC).

3 IT IS SO ORDERED.  
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5 Dated: December 4, 2014

/s/ Gary S. Austin

6 UNITED STATES MAGISTRATE JUDGE  
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