

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 NORMAN GERALD DANIELS, III,

12 Plaintiff,

13 v.

14 STU SHERMAN,

15 Defendant.

Case No. 1:16-cv-01313-EPG (PC)

ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED AS BARRED
BY DOCTRINE OF *RES JUDICATA*

60 DAY DEADLINE

16
17 **I. BACKGROUND**

18 Plaintiff Norman Gerald Daniels, III is a state prisoner proceeding *pro se* and *in forma*
19 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges he was denied
20 access to the law library at his institution because Defendant Stu Sherman, the Warden of the
21 institution, declined to make the accommodations Plaintiff requested to make the computers in
22 the law library more accessible to visually-impaired inmates. The instant Complaint was filed
23 on September 6, 2016.

24 On October 6, 2016, Plaintiff consented to Magistrate Judge jurisdiction in this action
25 pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (ECF No. 10.)
26 Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of
27 California, the undersigned shall conduct any and all proceedings in the case until such time as
28 reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

1 Plaintiff has filed a related case against Sherman on the same day. *See Daniels v.*
2 *Sherman*, Case No. 1:16-cv-01312-EPG (“Case No. 1312”). In Case No. 1312, Plaintiff claims
3 his right of access to the courts is being violated due to lack of accommodations for visually-
4 impaired inmates, and he requests accommodations in the form of certain hardware and
5 software fixes in the law library. *See id.* (ECF No. 1 at 4-5.) The allegations in this case and
6 Case No. 1312 are essentially the same. The only difference appearing to the Court is that the
7 relief requested in each case is not exactly the same.

8 Based on these similarities, the Court issued an order on October 21, 2016, relating this
9 case to Case No. 1312. (ECF No. 11.) Both cases remain pending.

10 **II. ORDER TO SHOW CAUSE**

11 On October 17, 2016, the Court issued an order to show cause in Case No. 1312. *See*
12 *Daniels*, Case No. 1:16-cv-01312-EPG (ECF No. 9.) That order directed Plaintiff to show
13 cause as to why Case No. 1312 should not be dismissed, with prejudice, as barred by the
14 doctrine of *res judicata*. *See id.* The order noted that Plaintiff filed a separate action on January
15 10, 2013, that alleged that he was denied access to the law library at the same institution
16 because defendant Kathleen Allison, the then-acting Warden of the institution, declined to
17 make similar accommodations with respect to the computers in the law library. *See id.* The
18 2013 case, *Daniels v. Allison*, Case No. 1:12-cv-00545-LJO-GSA, was dismissed with
19 prejudice on February 21, 2014 and final judgment was entered against Plaintiff.

20 The doctrine of *res judicata*, or claim preclusion, bars Plaintiff from bringing the same
21 claims against the same parties a second time in a new lawsuit.¹ *Headwaters, Inc. v. U.S. Forest*
22 *Serv.*, 399 F.3d 1047, 1051 (9th Cir. 2005).

23 Due to the similarities of this case and Case No. 1312, the Court hereby finds it
24 appropriate to issue the same order to show cause in this case.

25
26 ¹ The Court also notes that the statute of limitations which applies to Plaintiff’s federal § 1983 claims is two years.
27 Cal. Civ. Proc. Code § 335.1; *Butler v. Nat’l Cmty. Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th Cir. 2014).
28 Plaintiff may have also been entitled to two additional years under the applicable tolling statute, if he is not serving
a sentence of life without the possibility of parole. Cal. Civ. Proc. Code § 352.1.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Accordingly, Plaintiff is HEREBY ORDERED to show cause why this action should not be dismissed, with prejudice, as barred by the doctrine of *res judicata*. *Headwaters, Inc.*, 399 F.3d at 1054-55.

No later than **60 days** after the service date of this order, Plaintiff shall file a written response explaining why the dismissal of the prior action should not bar the current litigation.

IT IS SO ORDERED.

Dated: **December 19, 2016**

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE