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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 NORMAN GERALD DANIELS, III,

12 Plaintiff,

13 v.

14 STU SHERMAN,

15 Defendant.  
16

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

**ORDER DISMISSING CASE AS BARRED  
BY RES JUDICATA**

**ORDER FOR CLERK TO CLOSE CASE**

(ECF No. 1.)

17 Plaintiff Norman Gerald Daniels, III is a state prisoner proceeding *pro se* and *in forma*  
18 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.<sup>1</sup> Plaintiff alleges he was  
19 denied access to the law library at his institution because Defendant Stu Sherman, the Warden  
20 of the institution, declined to make the accommodations Plaintiff requested to make the  
21 computers in the law library more accessible.

22 Plaintiff filed the Complaint commencing this action on September 6, 2016. (ECF No.  
23 1.) The Complaint alleges facts that are substantially similar to those in a complaint Plaintiff  
24 filed on April 9, 2012 in *Daniels v. Allison*, Case No. 1:12-cv-00545-LJO-GSA (the “545  
25 case”), which was dismissed with prejudice on February 21, 2014.

26  
27 <sup>1</sup> On October 6, 2016, Plaintiff consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. §  
28 636(c) and no other parties have made an appearance. (ECF No. 10.) Therefore, pursuant to Appendix A(k)(4) of  
the Local Rules of the Eastern District of California, the undersigned shall conduct any and all proceedings in the  
case until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(4).

1           On December 18, 2016, this Court issued an Order to Show Cause why this action  
2 should not be dismissed as barred by the doctrine of *res judicata*. (ECF No. 16.) The Court  
3 provided Plaintiff with an explanation of the *res judicata* doctrine and also explained what  
4 Plaintiff should do to respond to the Order to Show Cause. (*Id.*) On January 17, 2017, Plaintiff  
5 filed a response to the Order to Show Cause in this case. The Complaint is now before the  
6 Court for screening under 28 U.S.C. § 1915A(a).

7           This Court has previously noted that the allegations of this case are nearly identical to  
8 those in a second complaint Plaintiff filed on September 6, 2016 in *Daniels v. Sherman*, Case  
9 No. 1:16-cv-01312-EPG (the “1312 case”). (ECF No. 16). Like this case, the sole defendant in  
10 that case is Stu Sherman, Warden of SATF, and Plaintiff is complaining about lack of  
11 accommodations for blind inmates at SATF. The only difference appearing to the Court  
12 between this case and the 1312 case is that the specific accommodations complained of in each  
13 case, while nearly identical, are not the same. (*Id.*) In the 1312 case, Plaintiff is seeking “a  
14 court order requiring the prison to place the appropriate software on all computers, to allow  
15 blind inmates to have access to accessible computers in their housing units, that paper and ink  
16 be sold to inmates at cost, and that all CDCR personnel take disability sensitivity training.  
17 (1312 case, ECF No. 14 at 4.) In this case, Plaintiff is requesting the same accommodations as  
18 the 1312 case and some additional accommodations to help blind inmates access certain  
19 hardware available that may be available to other inmates. (ECF No. 1 at 8-9.)

20           The Court takes judicial notice that the 1312 case was dismissed on March 10, 2017 as  
21 barred by the doctrine of *res judicata*. (1312 case at ECF No. 14.) The Court has reviewed the  
22 findings and analysis of that order, and finds the decision to be appropriately reasoned and  
23 properly supported by applicable law. Accordingly, the *res judicata* discussion and analysis of  
24 the March 10, 2017 order (1312 case at ECF No. 14) directly applicable to this case and fully  
25 adopts and incorporates it here.

26           “The elements necessary to establish *res judicata* are: ‘(1) an identity of claims, (2) a  
27 final judgment on the merits, and (3) privity between parties.’” *Headwaters, Inc. v. U.S. Forest*  
28 *Serv.*, 399 F.3d 1047, 1052 (9th Cir. 2005), *quoting Tahoe-Sierra Pres. Council, Inc. v. Tahoe*

1 *Reg'l Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003). As explained immediately above,  
2 this case is nearly identical to the 1312 case. Like the 1312 case, the present action, Case No.  
3 1:16-cv-01313-EPG, also appears to be substantially identical to the previously dismissed case,  
4 Case No. 1:12-cv-00545-LJO-GSA.

5 The allegations of all three cases arise out of the same nucleus of facts and allege  
6 violations of the same right. The cases are based on the institution's failure to make a series of  
7 requested accommodations involving law library computers for disabled inmates. In all three  
8 cases, Plaintiff alleges the same accommodations have been denied and asks for the same relief.  
9 Even if Plaintiff's theory of Defendant's conduct has evolved or arises out of a continuing  
10 series of conduct, the claims still constitute the "same claim" for the purposes of claim  
11 preclusion because they arise out of the same core of conduct. *Stavrinides v. PG&E*, Case No.  
12 C 16-00433 WHA, 2016 WL 3345426, at \*1 (N.D. Cal. June 16, 2016) ("Res judicata thus  
13 precludes claims that could have been raised in the previous action but were not."), *citing Hiser*  
14 *v. Franklin*, 94 F.3d 1287, 1290-91 (9th Cir. 1996); *Pedrina v. Chun*, 906 F.Supp. 1377, 1400  
15 (D. Haw. 1995) ("a plaintiff cannot avoid the bar of claim preclusion merely by alleging  
16 conduct that was not alleged in his prior action or by pleading a new legal theory."), *citing*  
17 *McClain v. Apodaca*, 793 F.2d 1031, 1034 (9th Cir. 1986).

18 Moreover, final judgment was entered in the original case after it was dismissed for  
19 failure to state a claim. The Court has reviewed the dismissal order in the 545 Case and finds  
20 that it constituted final judgment of the asserted claims. *Stewart v. U.S. Bancorp*, 297 F.3d 953,  
21 957 (9th Cir. 2002) ("Supreme Court precedent confirms that a dismissal for failure to state a  
22 claim under Rule 12(b)(6) is a 'judgment on the merits' to which res judicata applies."),  
23 *quoting Federated Dep't Stores v. Moitie*, 452 U.S. 394, 399 n. 3 (1981).

24 The Court also finds there is privity between the parties. All complaints were filed by  
25 the same plaintiff, Norman Daniels. The defendant in the 545 Case, Katherine Allison, is  
26 different than the defendant in the present case and the 1312 case, Stu Sherman, but both  
27 defendants were named because of their positions as Warden of SATF. Because Plaintiff's  
28 claims in both cases are premised on the position that Allison and Sherman held, their interests

1 in the litigation are identical. *Headwaters Inc.*, 399 F.3d at 1052-53 (“Privity . . . is a legal  
2 conclusion ‘designating a person so identified in interest with a party to former litigation that  
3 he represents precisely the same right in respect to the subject matter involved.’”), *quoting In re*  
4 *Schimmels*, 127 F.3d 875, 881 (9th Cir. 1997).

5 Based on this analysis, the Court finds that the doctrine of *res judicata* prohibits the re-  
6 litigation of Plaintiff’s claims against him in the present case 1:16-cv-01313-EPG, which were  
7 previously decided on their merits in case 1:12-cv-00545-LJO-GSA. The action should thus be  
8 dismissed with prejudice.<sup>2</sup>

9 Accordingly, IT IS HEREBY ORDERED that pursuant to 28 U.S.C. § 1915A and 28  
10 U.S.C. § 1915(e), this action is DISMISSED with prejudice. The Clerk of the Court is  
11 DIRECTED to close this case.

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13 IT IS SO ORDERED.

14 Dated: March 20, 2017

15 /s/ Eric P. Groj  
16 UNITED STATES MAGISTRATE JUDGE

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27 <sup>2</sup> Given the Court’s ruling, it need not evaluate the related issue of collateral estoppel. Moreover, the Court finds  
28 that *res judicata* is the more appropriate doctrine because this concerns similar if not identical cases rather than  
individual issues in otherwise different cases.