



1           **II. Plaintiff's Allegations**

2           Plaintiff is currently incarcerated at Salinas Valley State Prison in Soledad, California.  
3           The events in the complaint are alleged to have occurred while Plaintiff was incarcerated at  
4           Corcoran State Prison in Corcoran, California. Plaintiff appears to name the following  
5           defendants: Warden D. Davey; CMO of Corcoran State Prison, and Medical Executive of  
6           Corcoran State Prison. The complaint states, in total, the following:

7           I'm under multiple violation of my right 1st 5th 6th 14th amendment hindering  
8           outgoing mail, denied adequate medical care, 8th amendment violation victim of  
9           assault and battery. Having problem with my back, need a cane to walk. I  
10          receive injury, breach of contract. I completed internal administrative process.  
11          Is medical malpractice. See attach declaration and/or summary judgment is  
12          required. Victim of appeal restriction victim of assault and battery by 27 officers  
13          at Corcoran State Prison.

14          (ECF No. 1, p. 3.)

15          Although Plaintiff references a declaration in his statement of his claim, there was no  
16          declaration attached to the complaint. Plaintiff seeks monetary damages and sues defendants in  
17          their official and individual capacities. (Id.)

18           **III. Pending Action**

19           On January 20, 2016, Plaintiff filed Martinez v. Davey, et al., No. 1:16-cv-00084-LJO-  
20           BAM ("Martinez I").<sup>1</sup> The complaint filed in Martinez I is nearly identical to the complaint  
21           Plaintiff later filed in the instant action. The only differences between the complaint filed in  
22           Martinez I and the complaint form in the instant action are the addition of a sentence at the end of  
23           the Statement of Claim, the removal of any reference to the Clerk of the Court for the Northern  
24           District, and the updating of the date on the signature page. (See Martinez I, Compl., Docket No.  
25           1, pp. 1–4; ECF No. 1, pp. 1–4.)

26           On August 9, 2016, the Court dismissed the complaint with leave to amend. (Martinez I,  
27           Order Dismissing Compl. with Leave to Amend, Docket No. 25.) Plaintiff filed a first amended  
28           complaint on December 1, 2016. (Martinez I, First Am. Prisoner Civil Rights Compl., Docket  
29           No. 37.) The first amended complaint has not yet been screened.

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<sup>1</sup> The Court takes judicial notice of the files in that case. Fed. R. Evid. 201.

1           **IV. Discussion**

2           Duplicative lawsuits filed by a plaintiff proceeding in forma pauperis are subject to  
3 dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e). See, e.g., Cato v. United  
4 States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); McWilliams v. State of Colo., 121 F.3d 573, 574  
5 (10th Cir. 1997); Pittman v. Moore, 980 F.2d 994, 994–95 (5th Cir. 1993); Bailey v. Johnson, 846  
6 F.2d 1019, 1021 (5th Cir. 1988). An in forma pauperis complaint that merely repeats pending or  
7 previously litigated claims may be considered abusive and dismissed under § 1915. Cato, 70 F.3d  
8 at 1105 n.2; Bailey, 846 F.2d at 1021. “Dismissal of the duplicative lawsuit, more so than the  
9 issuance of a stay or the enjoinder of proceedings, promotes judicial economy and the  
10 comprehensive disposition of litigation.” Adams v. Cal. Dep’t of Health Servs., 487 F.3d 684,  
11 688, 692–94 (9th Cir. 2007), overruled on other grounds by Taylor v. Sturgell, 553 U.S. 880, 904  
12 (2008).

13           To assess whether a claim is duplicative, courts use the test for claim preclusion. “Thus,  
14 in assessing whether the second action is duplicative of the first, we examine whether the causes  
15 of action and relief sought, as well as the parties or privies to the action, are the same.” Adams,  
16 487 F.3d at 689 (citations omitted). “Plaintiffs generally have no right to maintain two separate  
17 actions involving the same subject matter at the same time in the same court and against the same  
18 defendant.” Id. at 688 (internal quotations and citations omitted).

19           As discussed above, the complaint in Martinez I is nearly identical to the complaint form  
20 filed in the instant case. The same defendants are named, and the same facts are alleged, except  
21 for the addition of a sentence in the Statement of Claim section. In both cases, Plaintiff raises  
22 nearly the same claims, apparently arising out of the same events, involving the same parties, and  
23 infringing upon the same rights. To the extent that Plaintiff pleaded additional facts in this action,  
24 he had the opportunity to include those facts in the first amended complaint filed in Martinez I.

25           Therefore, the Court finds that this case is duplicative of Plaintiff’s prior current pending  
26 case because the claims, parties, and requested relief do not significantly differ between the two  
27 actions.

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**V. Conclusion and Order**

For the reasons stated, it is HEREBY ORDERED that Plaintiff show cause why this action should not be dismissed as duplicative within twenty-one (21) days of the date of service of this order. **Failure to comply with this order will result in dismissal of this action, as duplicative, with prejudice.**

IT IS SO ORDERED.

Dated: June 5, 2017

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE