



1 § 1915(e)(2)(B)(ii).

2 **II. Plaintiff's Allegations**

3 Plaintiff is currently incarcerated at California Correctional Institution ("CCI") in  
4 Tehachapi, California. The events in the complaint are alleged to have occurred while Plaintiff  
5 was incarcerated at CCI. Plaintiff names the CDCR, Tony Chavez, Kim Holland, Anthony  
6 Steiber, M. Garikaparathi, and John Keeler, Plaintiff alleges that in March 2012 he was diagnosed  
7 as being allergic to eggs. In summary, Plaintiff alleges that in and throughout 2013, Plaintiff was  
8 not given food to accommodate his food allergy and as a result he lost weight and suffered other  
9 harms as a result of food deprivation.

10 **III. Another Pending Action**

11 On September 16, 2013, Plaintiff filed McCoy v. M. Garkaparathi, et al., No. 1:13-cv-  
12 01495-DAD-BAM ("McCoy I").<sup>1</sup> The complaint filed in McCoy I also complains of food  
13 deprivation in and throughout 2013 at CCI. That claim is now pending following an appeal  
14 before the Ninth Circuit Court of Appeals and denial of defendants' motion to dismiss. See Doc.  
15 19, 48, 49.

16 **IV. Discussion**

17 Duplicative lawsuits filed by a plaintiff proceeding in forma pauperis are subject to  
18 dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e). See, e.g., Cato v. United  
19 States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); McWilliams v. State of Colo., 121 F.3d 573, 574  
20 (10th Cir. 1997); Pittman v. Moore, 980 F.2d 994, 994–95 (5th Cir. 1993); Bailey v. Johnson, 846  
21 F.2d 1019, 1021 (5th Cir. 1988). A complaint that merely repeats pending or previously litigated  
22 claims may be considered abusive and dismissed under § 1915. Cato, 70 F.3d at 1105 n.2;  
23 Bailey, 846 F.2d at 1021. "Dismissal of the duplicative lawsuit, more so than the issuance of a  
24 stay or the enjoinder of proceedings, promotes judicial economy and the comprehensive  
25 disposition of litigation." Adams v. Cal. Dep't of Health Servs., 487 F.3d 684, 688, 692–94 (9th  
26 Cir. 2007), overruled on other grounds by Taylor v. Sturgell, 553 U.S. 880, 904 (2008).

27 To assess whether a claim is duplicative, courts use the test for claim preclusion. "Thus,

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

1 in assessing whether the second action is duplicative of the first, we examine whether the causes  
2 of action and relief sought, as well as the parties or privies to the action, are the same.” Adams,  
3 487 F.3d at 689 (citations omitted). “Plaintiffs generally have no right to maintain two separate  
4 actions involving the same subject matter at the same time in the same court and against the same  
5 defendant.” Id. at 688 (internal quotations and citations omitted).

6 As discussed above, the complaint in McCoy I is nearly identical to the complaint filed in  
7 the instant case. In both cases, Plaintiff raises nearly the same claims, apparently arising out of  
8 the same events, involving the same parties, and infringing upon the same rights.

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

12 **V. Conclusion and Order**

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

17  
18 IT IS SO ORDERED.

19 Dated: June 13, 2017

20 /s/ Barbara A. McAuliffe  
21 UNITED STATES MAGISTRATE JUDGE