



1           **I. LEGAL STANDARD**

2           “Plaintiffs generally have ‘no right to maintain two separate actions involving the same  
3 subject matter at the same time in the same court and against the same defendant.’” *Adams v. Cal.*  
4 *Dep’t of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007) (quoting *Walton v. Eaton Corp.*, 563  
5 F.2d 66, 70 (3d Cir. 1977)), *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880, 904  
6 (2008).

7           “To determine whether a suit is duplicative, we borrow from the test for claim  
8 preclusion.”<sup>1</sup> *Adams*, 487 F.3d at 688. “[T]he true test of the sufficiency of a plea of ‘other suit  
9 pending’ in another forum [i]s the legal efficacy of the first suit, when finally disposed of, as ‘the  
10 thing adjudged,’ regarding the matters at issue in the second suit.” *Id.* (second alteration in  
11 original) (quoting *The Haytian Republic*, 154 U.S. 118, 124 (1894)). “Thus, in assessing whether  
12 the second action is duplicative of the first, we examine whether the causes of action and relief  
13 sought, as well as the parties . . . to the action, are the same.” *Adams*, 487 F.3d at 689; *see also*  
14 *Serlin v. Arthur Anderson & Co.*, 3 F.3d 221, 223 (7th Cir. 1993) (“[A] suit is duplicative if the  
15 claims, parties, and available relief do not significantly differ between the two actions.” (internal  
16 quotation marks omitted)).

17           “After weighing the equities of the case, the district court may exercise its discretion to  
18 dismiss a duplicative later-filed action, to stay that action pending resolution of the previously  
19 filed action, to enjoin the parties from proceeding with it, or to consolidate both actions.” *Adams*,  
20 487 F.3d at 688.

21           **II. DISCUSSION**

22           Plaintiff, along with Anthony Barker, David Ponce, James Wallace, and Jesse Gomez,  
23 filed the complaint in *Ponce* on August 25, 2021. (*Ponce*, ECF No. 1.) The complaint in *Ponce*  
24 names Officer Loll, Officer Gomez, and the Kings County Sheriff’s Department, among others,<sup>2</sup>

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26 <sup>1</sup> The primary difference between dismissing a case as duplicative and dismissing a case under the doctrine of claim  
27 preclusion is that a final judgment need *not* have been entered to dismiss a case as duplicative while claim preclusion  
28 requires a final judgment on the merits. *Cook v. C.R. England, Inc.*, 2012 WL 2373258, at \*3 (C.D. Cal. June 21,  
2012). A final judgment has not been entered in *Ponce*. Accordingly, the Court does not apply the doctrine of claim  
preclusion.

<sup>2</sup> The complaint in *Ponce* also brings claims against additional defendants on behalf of the other plaintiffs.

1 as defendants. (*Id.*)

2 Plaintiff filed this case on August 30, 2021, along with a motion to proceed *in forma*  
3 *pauperis*. (ECF Nos. 1, 2.) Plaintiff's complaint also names Officer Loll, Officer Gomez, and the  
4 Kings County Sheriff's Department as defendants. (ECF No. 1.) On September 1, 2021, the Court  
5 entered an order granting Plaintiff's motion to proceed *in forma pauperis*. (ECF No. 6.) The  
6 Court's order directed the Kings County Sheriff to collect and forward payments from Plaintiff's  
7 prison trust account. (*Id.*)

8 In this case and in *Ponce*, Plaintiff alleges that, on February 23, 2021, Officers Loll and  
9 Gomez beat Plaintiff while he was in a prone position and suffering from an intestinal problem.  
10 (ECF No. 1 at 3; *Ponce*, ECF No. 1 at 3.) In comparing the three complaints, "it is clear that the . .  
11 . . actions share a common transaction nucleus of facts." *Adams*, 487 F.3d at 689. Additionally, all  
12 of the defendants named in this case are also named *Ponce*. In this case, Plaintiff requests relief in  
13 the form of monetary and punitive damages totaling \$1.5 million "per strike/punch/blow" and that  
14 "the officers be brought to justice to the fullest extent of the law." (ECF No. 1 at 6.) In *Ponce*,  
15 Plaintiff requests declaratory and injunctive relief, \$9.5 million in compensatory damages, \$5.9  
16 million in punitive damages against each defendant, interest, and any other relief allowed by law  
17 and equity. (*Ponce*, ECF No. 1 at 6.)

18 Based on the foregoing, the Court finds that the claims, relief sought, and parties to this  
19 action and to *Ponce* do not significantly differ. The instant case is therefore duplicative of *Ponce*.  
20 Further, both cases are in early stages and have not yet been screened. Thus, weighing the  
21 equities, the Court recommends that this case be dismissed. Additionally, in light of this  
22 recommendation, the Court will vacate its order granting *in forma pauperis* status.

23 **III. CONCLUSION, ORDER, AND RECOMMENDATIONS**

24 Accordingly, IT IS HEREBY ORDERED that:

25 1. The Court's order granting Plaintiff's motion to proceed *in forma pauperis* is

26 VACATED and the Kings County Sheriff is no longer required to collect payments  
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