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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT ELLIS,

Plaintiff,

v.

KEENER, et al.,

Defendants.

No. 2:13-cv-1299 JAM AC P

ORDER

Plaintiff, a state prisoner, has filed an action pursuant to 42 U.S.C. § 1983. By findings and recommendations filed on August 21, 2013 (ECF No. 9), the undersigned recommended dismissal without prejudice of this action for plaintiff’s failure to respond to the court’s order (ECF No. 7) directing plaintiff either to file an in forma pauperis affidavit or pay the appropriate filing fee. See 28 U.S.C. §§ 1914(a), 1915(a). On August 22, 2013, the court received plaintiff’s completed in forma pauperis affidavit (ECF No. 10). Accordingly, the court will vacate the pending findings and recommendations. Nevertheless, the court will not grant plaintiff in forma pauperis status or assess a filing fee because plaintiff chooses not to proceed in this action and instead seeks to dismiss this action voluntarily. Plaintiff’s filings at ECF Nos. 11 and 12 indicate his intent is instead to appeal the ruling in Case No. 2:11-cv-2954 TLN DAD P. In any event, as plaintiff concedes that the issues in the instant case have already been decided in the prior case, the doctrine of res judicata would appear to foreclose plaintiff’s ability to maintain this

1 duplicative action.<sup>1</sup>

2 In light of plaintiff's request to have the instant action dismissed (and no defendants  
3 having appeared), the action is dismissed pursuant to Fed. R. Civ. P. 41(a).

4 Accordingly, IT IS HEREBY ORDERED:

5 1. The findings and recommendations (ECF No. 9), filed on August 21, 2013, are hereby  
6 vacated;

7 2. The Clerk of the Court is directed to file plaintiff's requests at ECF No. 11 and ECF  
8 No. 12 in the docket of Case No. 2:11-cv-2954 TLN DAD P; and

9 3. The Clerk shall close this case.

10 DATED: September 6, 2013

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12 ALLISON CLAIRE  
13 UNITED STATES MAGISTRATE JUDGE

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26 <sup>1</sup> Under the doctrine of res judicata, “a final judgment on the merits of an action precludes the  
27 parties or their privies from relitigating issues that were or could have been raised in that action.”  
28 Dodd v. Hood River County, 59 F.3d 852, 863 (9th Cir. 1995) (quoting Allen v. Curry, 449 U.S.  
90, 94 (1980). Res judicata principles apply to §1983 actions. See, Clark v. Yosemite  
Community College Dist., 785 F.2d 781, 788 n.9 (9th Cir. 1986).