

1 The Civil Rights Act under which this action was filed provides as follows:

2 Every person who, under color of [state law] . . . subjects, or causes
3 to be subjected, any citizen of the United States . . . to the deprivation
4 of any rights, privileges, or immunities secured by the Constitution .
. . shall be liable to the party injured in an action at law, suit in equity,
or other proper proceeding for redress.

5 42 U.S.C. § 1983. Here, the defendants must act under color of federal law. Bivens, 403 U.S. at
6 389. The statute requires that there be an actual connection or link between the
7 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
8 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
9 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
10 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
11 omits to perform an act which he is legally required to do that causes the deprivation of which
12 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

13 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
14 their employees under a theory of respondeat superior and, therefore, when a named defendant
15 holds a supervisory position, the causal link between him and the claimed constitutional
16 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);
17 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations
18 concerning the involvement of official personnel in civil rights violations are not sufficient. See
19 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

20 **I. Allegations in the Complaint**

21 Plaintiff states that, at all relevant times, he was an inmate at California State Prison,
22 Sacramento (“SAC”). (ECF No. 1 at 1.) He names Warden Jeff Lynch as the sole defendant in
23 this action. (Id. at 2.)

24 Plaintiff claims that defendant Lynch was deliberately indifferent as he failed to respond
25 to plaintiff’s letters and inmate appeals which sought to inform defendant Lynch that there existed
26 a risk to his health and safety. (Id. at 3-4.) Plaintiff believes that another inmate was paid to kill
27 plaintiff. (Id. at 3.) He alleges that it was correctional officers that placed a bounty on his head
28 and paid the inmate to attack him. (Id.) As a result of defendant ignoring plaintiff’s attempts to

1 contact him, plaintiff was “stabbed countless times” and placed in administrative segregation.

2 (Id.)

3 **II. Failure to State a Claim**

4 Examination of the complaint and review of the Court’s docket reveals that the pleading
5 filed in this action contains allegations, nearly identical to, and therefore duplicative of, a
6 previous complaint filed on January 26, 2023, in Parker v. Lynch, 2:23-cv-02015-KJN (E.D.
7 Cal.).¹

8 “A complaint ‘that merely repeats pending or previously litigated claims’” is subject to
9 dismissal under 28 U.S.C. § 1915(e). Cato v. United States, 70 F.3d 1103, 1105 (9th Cir. 1995)
10 (quoting Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988)). “[A] duplicative action arising
11 from the same series of events and alleging many of the same facts as an earlier suit” may be
12 dismissed as frivolous or malicious under section 1915(e). See Bailey, 846 F.2d at 1021.
13 “Dismissal of the duplicative lawsuit, more so than the issuance of a stay or the enjoinder of
14 proceedings, promotes judicial economy and the ‘comprehensive disposition of litigation.’”
15 Adams v. California Dep’t of Health Servs., 487 F.3d 684, 692 (9th Cir. 2007) (citation omitted),
16 overruled on other grounds by Taylor v. Sturgell, 553 U.S. 880, 904 (2008).

17 To determine whether a claim is duplicative, courts use the test for claim preclusion.
18 Adams, 487 F.3d at 688. “Thus, in assessing whether the second action is duplicative of the first,
19 [courts] examine whether the causes of action and relief sought, as well as the parties or privies to
20 the action, are the same.” Id. at 689 (citations omitted). “Plaintiff’s generally have no right to
21 maintain two separate actions involving the same subject matter at the same time in the same
22 court and against the same defendant.” Id. at 688 (internal quotation marks and citations
23 omitted).

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26 ¹ Magistrate Judge Kendall Newman later had Parker v. Lynch, 2:23-cv-02015-KJN (E.D.
27 Cal.) severed into two separate actions. (See ECF No. 20.) Plaintiff’s claims regarding sexual
28 assault he suffered were moved to a separate action. Plaintiff’s claims against defendant Lynch
for failure to act in connection with his attack by inmate Puckett remain in Parker v. Lynch, 2:23-
cv-02015-KJN (E.D. Cal.). (See ECF No. 24 at 5.)

1 In both this action and Parker v. Lynch, 2:23-cv-02015-KJN (E.D. Cal.), plaintiff alleges
2 that defendant Lynch failed to act in response to a threat of assault from inmate Puckett. Both
3 complaints also detail the same factual allegations that a “hit” was placed on plaintiff and that
4 defendant Lynch was deliberately indifferent to that danger. Thus, the court finds that this action
5 is duplicative of Parker v. Lynch, 2:23-cv-02015-KJN (E.D. Cal.) as it states the same allegations
6 against the same defendant.² Accordingly, the complaint should be dismissed.

7 **LEAVE TO AMEND**

8 For the reasons stated above, the complaint should be dismissed. The undersigned has
9 carefully considered whether plaintiff may amend the complaint to state a claim upon which relief
10 can be granted. “Valid reasons for denying leave to amend include undue delay, bad faith,
11 prejudice, and futility.” California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d
12 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau,
13 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the
14 court does not have to allow futile amendments). Here, given the defects noted above, the
15 undersigned finds that granting leave to amend would be futile.

16 **IN FORMA PAUPERIS**

17 As stated above, plaintiff filed a request for leave to proceed in forma pauperis pursuant to
18 28 U.S.C. § 1915 along with the complaint. (ECF No. 2.) However, because the court
19 recommends dismissal of this action without leave to amend, the court further recommends that
20 plaintiff’s request to proceed in forma pauperis be denied as moot.

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27 ² The court in Parker v. Lynch, 2:23-cv-02015-KJN (E.D. Cal.) recently identified these same
28 claims and screened them. Parker v. Lynch, 2:23-cv-02015-KJN, 2023 WL 2667077 (E.D. Cal.
Mar. 28, 2023).

1 **CONCLUSION**


2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. The motion to proceed in forma pauperis (ECF No. 2) is denied as moot; and
4 2. The Clerk of the Court is directed to randomly assign a district judge to this action.

5 Further, IT IS HEREBY RECOMMENDED that this action be dismissed as duplicative of
6 a claim raised in a prior action.

7 These findings and recommendations will be submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty (20)
9 days after being served with these findings and recommendations, plaintiff may file written
10 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
11 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
12 specified time may result in waiver of the right to appeal the district court’s order. Martinez v.
13 Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 Dated: April 3, 2023

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17 DEBORAH BARNES
18 UNITED STATES MAGISTRATE JUDGE
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