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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SCOTT FRANK FIALHO,
12 CDCR #AL-1830,

13 Plaintiff,

14 v.

15 G. HERRERA; KISSOL; ANDERSON,

16 Defendants.
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Case No.: 17-cv-1004-JAH-JMA

**1) DISMISSING CIVIL ACTION
AS FRIVOLOUS PURSUANT
TO 28 U.S.C. § 1915A(b)(1)**

AND

**2) DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
AS MOOT [ECF Doc. No. 3]**

20 Scott Frank Fialho (“Plaintiff”), currently housed at Mule Creek State Prison
21 located in Ione, California, and proceeding pro se, filed this action pursuant to 42 U.S.C.
22 § 1983. See Compl. at 1, ECF Doc. No. 1. Plaintiff did not prepay the civil filing fees
23 required by 28 U.S.C. § 1914(a) at the time of filing; instead he has filed a Motion to
24 Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF Doc. No. 3).

25 **I. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

26 The Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A, obligates the
27 Court to review complaints filed by anyone “incarcerated or detained in any facility who
28 is accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or

1 the terms or conditions of parole, probation, pretrial release, or diversionary program,”
2 “as soon as practicable after docketing” and regardless of whether the prisoner prepays
3 filing fees or moves to proceed IFP. See 28 U.S.C. § 1915A(a), (c). Pursuant to this
4 provision of the PLRA, the Court is required to review prisoner complaints which “seek[]
5 redress from a governmental entity or officer or employee of a government entity,” and to
6 dismiss those, or any portion of those, which are “frivolous, malicious, or fail[] to state a
7 claim upon which relief may be granted,” or which “seek monetary relief from a
8 defendant who is immune.” 28 U.S.C. § 1915A(b)(1)-(2); *Resnick v. Hayes*, 213 F.3d
9 443, 446-47 (9th Cir. 2000); *Hamilton v. Brown*, 630 F.3d 889, 892 n.3 (9th Cir. 2011).
10 “The purpose of § 1915A is ‘to ensure that the targets of frivolous or malicious suits need
11 not bear the expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir.
12 2014) (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir.
13 2012)).

14 Plaintiff’s complaint is subject to sua sponte dismissal pursuant to 28 U.S.C.
15 § 1915A(b)(1) because it is duplicative of another civil action he is currently litigating.
16 See *Fialho v. Herrera, et al.*, S.D. Cal. Civil Case No. 3:16-cv-01170-MMA-DHB
17 (Compl., ECF Doc. No. 1). A court “‘may take notice of proceedings in other courts, both
18 within and without the federal judicial system, if those proceedings have a direct relation
19 to matters at issue.’” *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting
20 *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

21 A prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it
22 “merely repeats pending or previously litigated claims.” *Cato v. United States*, 70 F.3d
23 1103, 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and
24 internal quotations omitted). Because Plaintiff is already litigating the identical claims
25 presented in the instant action against the same defendants in *Fialho v. Herrera, et al.*,
26 S.D. Cal. Civil Case No. 3:16-cv-01170-MMA-DHB, the Court must dismiss this
27 duplicative and subsequently filed civil case pursuant to 28 U.S.C. § 1915A(b)(1). See
28 *Cato*, 70 F.3d at 1105 n.2; *Resnick*, 213 F.3d at 446 n.1; *see also Adams v. Cal. Dep’t of*

1 Health Servs., 487 F.3d 684, 688–89 (9th Cir. 2007) (“[I]n assessing whether the second
2 action is duplicative of the first, we examine whether the causes of action and relief
3 sought, as well as the parties or privies to the action, are the same.”), overruled on other
4 grounds by Taylor v. Sturgell, 553 U.S. 880, 904 (2008).

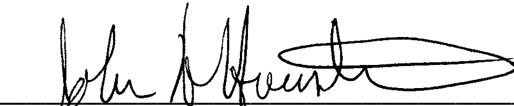
5 **II. Conclusion and Order**

6 Good cause appearing, **IT IS HEREBY ORDERED** that this civil action is
7 **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915A(b)(1).

8 **IT IS FURTHER ORDERED** that Plaintiff’s Motion to Proceed In Forma
9 Pauperis (ECF Doc. No. 3) is **DENIED** as moot and that this dismissal shall operate
10 without prejudice to Plaintiff’s pursuit of the same claims against the same parties which
11 are currently pending in Fialho v. Herrera, et al., S.D. Cal. Civil Case No. 3:16-cv-
12 01170-MMA-DHB.

13 The Clerk shall close the file.

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15 Dated: June 26, 2017



HONORABLE JOHN A. HOUSTON
United States District Judge