

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 ROBERT L. NELSON, aka Jamal Myxz,  
12 CDCR #BF-6447,

13 Plaintiff,

14 v.

15 WILLIAM GORE; PATRICK FOX;  
16 IMPERIAL BEACH SHERIFF DEP'T;  
17 CITY OF IMPERIAL BEACH; JOHN  
DOES,;

18 Defendants.

Case No.: 18-cv-00648-BAS-KSC

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

**AND**

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

19 Robert L. Nelson, also known as Jamal Myxz, (“Plaintiff”), currently housed at the  
20 Substance Abuse and Treatment Facility located in Corcoran, California, and proceeding  
21 *pro se*, filed this action pursuant to 42 U.S.C. §1983. (ECF No. 1, Compl. at 1.) Plaintiff  
22 did not prepay the civil filing fees required by 28 U.S.C. §1914(a) at the time of filing. He  
23 has instead filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C.  
24 §1915(a) (ECF No. 2). For the reasons herein, the Court dismisses the action and denies  
25 the IFP motion as moot.

26 **I. *SUA SPONTE* SCREENING PURSUANT TO 28 U.S.C. §1915A(b)**

27 The Prison Litigation Reform Act (“PLRA”), 28 U.S.C. §1915A, obligates the Court  
28 to review complaints filed by anyone “incarcerated or detained in any facility who is

1 accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the  
2 terms or conditions of parole, probation, pretrial release, or diversionary program,” “as  
3 soon as practicable after docketing” and regardless of whether the prisoner prepays filing  
4 fees or moves to proceed IFP. *See* 28 U.S.C. §1915A(a), (c). Pursuant to this provision of  
5 the PLRA, the Court is required to review prisoner complaints which “seek[] redress from  
6 a governmental entity or officer or employee of a government entity,” and to dismiss those,  
7 or any portion of those, which are “frivolous, malicious, or fail[] to state a claim upon  
8 which relief may be granted,” or which “seek monetary relief from a defendant who is  
9 immune.” 28 U.S.C. §1915A(b)(1)-(2); *Resnick v. Hayes*, 213 F.3d 443, 446–47 (9th Cir.  
10 2000); *Hamilton v. Brown*, 630 F.3d 889, 892 n.3 (9th Cir. 2011). “The purpose of §1915A  
11 is ‘to ensure that the targets of frivolous or malicious suits need not bear the expense of  
12 responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler*  
13 *v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 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 has brought in this Court.  
16 *See Nelson v. City of Imperial Beach*, No. 3:17-cv-01913-GPC-KSC, ECF Nos. 1, 5 (S.D.  
17 Cal.). A court “‘may take notice of proceedings in other courts, both within and without  
18 the federal judicial system, if those proceedings have a direct relation to matters at issue.’”  
19 *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*,  
20 285 F.3d 801, 803 n.2 (9th Cir. 2002)). A prisoner’s complaint is considered frivolous  
21 under 28 U.S.C. §1915A(b)(1) if it “merely repeats pending or previously litigated  
22 claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (construing former  
23 28 U.S.C. §1915(d)) (citations and internal quotations omitted). Because Plaintiff has  
24 already brought identical claims presented in the instant action against the same defendants  
25 in *Nelson v. City of Imperial Beach*, the Court must dismiss this duplicative and  
26 subsequently filed civil case pursuant to 28 U.S.C. §1915A(b)(1). *See Cato*, 70 F.3d at  
27 1105 n.2; *Resnick*, 213 F.3d at 446 n.1; *see also Adams v. Cal. Dep’t of Health Servs.*, 487  
28 F.3d 684, 688–89 (9th Cir. 2007) (“[I]n assessing whether the second action is duplicative


1 of the first, we examine whether the causes of action and relief sought, as well as the parties  
2 or privies to the action, are the same.”), *overruled on other grounds by Taylor v. Sturgell*,  
3 553 U.S. 880, 904 (2008).

4 **II. CONCLUSION & ORDER**

5 For the foregoing reasons, the Court **ORDERS** that this action is **DISMISSED** as  
6 frivolous pursuant to 28 U.S.C. §1915A(b)(1). Plaintiff’s Motion to Proceed *In Forma*  
7 *Pauperis* is **DENIED AS MOOT**. (ECF No. 2) This dismissal shall operate without  
8 prejudice to Plaintiff’s pursuit of the same claims against the same parties which are  
9 currently pending in *Nelson v. City of Imperial Beach*, No. 3:17-cv-01913-GPC-KSC, ECF  
10 Nos. 1, 5 (S.D. Cal.). The Clerk of the Court is directed to close the file.

11 **IT IS SO ORDERED.**

12  
13 **DATED: April 25, 2018**

14   
15 **Hon. Cynthia Bashant**  
16 **United States District Judge**