IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

HAROLD E. STRICKLAND,	)	
Plaintiff	)	Civil Action No.: 7:13cv00141
	)	
v.	)	
	)	**REPORT AND RECOMMENDATION**
DR. LAURENCE S. WANG, et al.,	)	By: PAMELA MEADE SARGENT
Defendants.	)	United States Magistrate Judge

The pro se plaintiff, Harold E. Strickland, an inmate currently incarcerated at Augusta Correctional Center, ("ACC"), sues numerous defendants over his medical treatment for Crohn's disease while incarcerated at the Danville City Jail and Danville Adult Detention Center. This case is before the court on the plaintiff's motion for the court to exercise supplemental jurisdiction over his state tort claims, (Docket Item No. 2), plaintiff's motion to compel limited discovery, (Docket Item No. 45), motions to dismiss filed by the defendants, (Docket Item Nos. 31, 37, 40, 62 and 66), and a motion for sanctions filed by the defendants, (Docket Item No. 33). None of the parties have requested a hearing. The dispositive motions are before the undersigned magistrate judge by referral pursuant to 28 U.S.C. § 636(b)(1)(B). The undersigned now submits the following report recommending that the motions to dismiss be granted and the plaintiff's claims dismissed based on res judicata. Based on this recommendation, the undersigned, by separate order, will deny the plaintiff's motions.

I. Facts

On July 25, 2011, Strickland filed suit in this court under 42 U.S.C. § 1983 and the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq., against Dr. Laurence S. Wang, Danville City Sheriff Michael S. Mondule, Officer Kevin Meadows, the Director of the Danville Adult Detention Center and the City of Danville, (Civil No. 7:11cv358). Strickland's claims were based on allegations of inadequate medical care for and discrimination because of Crohn's disease while incarcerated at the Danville Adult Detention Center and the Danville City Jail on three separate occasions from December 6, 2009, to January 11, 2010, from March 19, 2010, to July 30, 2010, and from November 7, 2010, to April 29, 2011. By Memorandum Opinion and Order entered March 7, 2013, Strickland's claims were dismissed for failing to exhaust administrative remedies prior to filing suit as required by 42 U.S.C. § 1997e(a).

In the present action, Strickland has filed suit under 42 U.S.C. § 1983 and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., against Dr. Wang, the City of Danville, the Danville Adult Detention Center, Frank E. Mardavich, Director of the Danville Adult Detention Center, Meadows, Sheriff Mondule, Head Nurse at the Danville City Jail, John Doe, an Unknown Health Care Contractor and the Danville City Jail. Strickland's claims are based on allegations of inadequate medical care for and discrimination because of Crohn's disease while incarcerated at the Danville Adult Detention Center and the Danville City Jail on three separate occasions from December 6, 2009, to January 11, 2010, from March 19, 2010, to July 30, 2010, and from November 7, 2010, to April 29, 2011. Each of the defendants who has appeared has moved to dismiss Strickland's claims because they are barred by the doctrine of res judicata.

II. Analysis

Under certain circumstances, the res judicata bar may be raised in a Rule 12(b)(6) motion to dismiss for failure to state a claim. *See Andrews v. Daw*, 201 F.3d 521, 524 n.1 (4th Cir. 2000) (affirmative defense such as res judicata may be raised under Rule 12(b)(6) only if it clearly appears on the face of the complaint). When considering a motion to dismiss on res judicata grounds, a court may take judicial notice of facts from a prior judicial proceeding when there is no disputed issue of fact. *See Day v. Moscow*, 955 F.2d 807, 811 (2nd Cir. 1992); *Briggs v. Newberry County Sch. Dist.*, 838 F. Supp. 232, 234 (D. S.C. 1992), *aff'd*, 989 F.2d 491 (4th Cir. Mar. 11, 1993) (unpublished). "Under the doctrine of res judicata, a final judgment on the merits bars further claims by the parties or their privies based on the same cause of action" *Daw*, 201 F.3d at 524 (internal quotation omitted). In order to successfully assert a res judicata defense, defendant "must establish: (1) a final judgment on the merits in a prior suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits." *Daw*, 201 F.3d at 524 (internal quotation omitted). When the doctrine of res judicata applies, a party is precluded from relitigating claims actually raised and claims that could have been raised. *See Nevada v. United States*, 463 U.S. 110, 129-30 (1983).

These three requirements are met in this case based on the court's review of its own dockets. First, a final order was entered in the first case on March 7, 2013, dismissing Strickland's claims for failure to exhaust administrative remedies. Second, the same substantive allegations were made in the first case. Third, the

cases were filed against the same individuals and entities.[1] Strickland had a full and fair opportunity to litigate the exhaustion issue in his first case. *See Weinberger v. Tucker*, 510 F.3d 486, 491 (4th Cir. 2007); *Va. Hosp. Ass'n v. Baliles*, 830 F.2d 1308, 1311 (4th Cir. 1987). The court ruled that his claims were barred for failure to exhaust his administrative remedies. Strickland did not appeal that ruling. Therefore, Strickland should be precluded from attempting to file the same claims against the same parties or others who he could have sued in his first case.

The court may dismiss a claim when, taking the facts alleged in the complaint as true, the facts alleged in the complaint do not state a claim upon which relief may be granted. *See Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). Based on the above, I will recommend that the court grant the motions to dismiss.

I further recommend that the court grant in part and deny in part the defendants' Motion For Sanctions, (Docket Item No. 33), and order that Strickland may file no further actions against the defendants named in this suit without the approval of the court. While pro se complaints are to be read liberally, they still may be frivolous if filed after a previous dismissal of an action involving the same parties under the same legal theories. *See Kurkowski v. Volcker*, 819 F.2d 201, 204 (8th Cir. 1987).

[1] Strickland also has sued three unnamed defendants: Head Nurse at the Danville City Jail, John Doe and Unknown Health Care Contractor, who either have not been served or have not appeared.

PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

As supplemented by the above summary and analysis, the undersigned now submits the following formal findings, conclusions and recommendations:

1. Strickland's claims are barred by res judicata and, as such, should be dismissed; and
2. The court should impose sanctions against Strickland for filing this frivolous action.

RECOMMENDED DISPOSITION

Based on the above-stated reasons, I recommend that the court grant the motions and dismiss plaintiff's claims and impose sanctions.

Notice to Parties

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C):

> Within fourteen days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed finding or recommendation to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence to recommit the matter to the magistrate judge with instructions.

Failure to file written objection to these proposed findings and recommendations within 14 days could waive appellate review. At the conclusion of the 14-day period, the Clerk is directed to transmit the record in this matter to the Honorable Samuel G. Wilson, United States District Judge.

The Clerk is directed to send copies of this Report and Recommendation to all counsel of record and unrepresented parties.

DATED: This 20th day of August, 2013.

/s/ *Pamela Meade Sargent*
UNITED STATES MAGISTRATE JUDGE