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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT HERRERA,

Plaintiff,

No. CIV S-10-1280 DAD P

vs.

B. WHEELER, et al.,

Defendants.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding pro se. Plaintiff’s complaint was filed with the court on May 24, 2010. The court’s own records reveal that on May 13, 2010, plaintiff filed another complaint containing virtually identical allegations against the same defendants. (See Case No. Civ. S-10-1181 JFM P).¹ Specifically, plaintiff alleges in both complaints that:

On April 17, 2009, an incident took place in which I was accused of [a] CDC115, committing battery on [a] correctional ASU officer at this institution (H.D.S.P.) (please see CDC 115 incident report marked as exhibits “C”), in which excessive [force] was used on me and [I] was beaten by several officers[;] officer Wheeler along with other officers punched me on my face several times [] which caused pain and bru[i]ses on my face.

¹ A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 Due to the duplicative nature of the present action, the court will recommend that
2 this complaint be dismissed.

3 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court is directed to
4 randomly assign a United States District Judge to this action.

5 Also, IT IS HEREBY RECOMMENDED that:

- 6 1. Plaintiff's complaint be dismissed without prejudice; and
- 7 2. The Clerk of Court be directed to close this case.

8 These findings and recommendations are submitted to the District Judge assigned
9 to this case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after
10 being served with these findings and recommendations, plaintiff may file written objections with
11 the court. The document should be captioned "Objections to Magistrate Judge's Findings and
12 Recommendations." Plaintiff is advised that failure to file objections within the specified time
13 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
14 Cir. 1991).

15 DATED: June 1, 2010.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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