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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>BRYAN EDWIN RANSOM,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>D. ORTIZ; et al.,</p> <p>Defendants - Appellees.</p> |
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No. 11-16970

D.C. No. 1:11-cv-00617-OWW-GBC

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted May 15, 2012**

Before: CANBY, GRABER, and M. SMITH, Circuit Judges.

Bryan Edwin Ransom, a California state prisoner, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action as duplicative.

We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

discretion a district court's decision to dismiss an action as duplicative, *Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007), and we reverse and remand.

Dismissal of claim 1 in Ransom's action as duplicative of his claim in *Ransom v. Scribner*, No. 1:06-cv-00208-LJO-DLB, was an abuse of discretion because the claims do not arise out of the same transactional nucleus of facts, involved different defendants, occurred more than 4 years apart, and are not, therefore, duplicative. *See Adams*, 487 F.3d at 689. Moreover, while claims 2-9 in Ransom's action are the same as those raised in *Ransom v. Johnson*, No. 1:05-cv-00086-OWW-GSA, they are not duplicative because the claims in *Johnson* had previously been dismissed without prejudice for failure to pay the filing fee. *See Adams*, 487 F.3d at 688 (duplicative actions are "two separate actions involving the same subject matter at the same time in the same court[.]" (citation and internal quotation marks omitted)). Accordingly, we reverse and remand for further proceedings consistent with this disposition.

Ransom's motion for judicial notice is denied.

REVERSED and REMANDED.