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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RIGOBERTO POLANCO,)	1:12-cv-01306 GSA PC
)	
Plaintiff,)	ORDER DISMISSING ACTION
)	AS DUPLICATIVE
v.)	
)	
M. D. BITER,)	
)	
Defendant.)	

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c).

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

Plaintiff, an inmate in the custody of the California Department of Corrections and Rehabilitation (CDCR) at Pelican Bay State Prison, brings this action against M.D. Biter and other

1 correctional officials employed by the CDCR at Kern Valley State Prison. The incident at issue in
2 this lawsuit is the use of force on Plaintiff on May 5, 2011. Plaintiff makes the exact same allegation
3 in Polanco v. Biter, 1:12 cv 00984 GBC PC, filed on June 19, 2012. This action was filed on August
4 10, 2012. That action challenges the use of force on Plaintiff on May 5, 2011. A review of this
5 complaint reveals that the allegations are identical to the earlier action.

6 Accordingly, IT IS HEREBY ORDERED that this action is dismissed, without prejudice, as
7 duplicative of the earlier action.

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12 IT IS SO ORDERED.

13 **Dated: September 18, 2012**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE