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**III.**  
**DISCUSSION**

**A. Dismissal as Duplicative**

In order to determine whether cases are duplicative, the Court examines “whether the causes of action and relief sought, as well as the parties or privies to the action, are the same.” Adams v. California, 487 F.3d at 689.

The Court takes judicial notice of the fact that Plaintiff has another pending action in this Court in case number 1:18-cv-00060-BAM (PC), Montoya v. Murphy, et.al. (E.D. Cal. filed Jan. 5, 2018) (Montoya I). For the reasons explained below, the Court finds that the present action is duplicative of case number 1:18-cv-00060-BAM (PC) and must be dismissed.

In Montoya I, Plaintiff names both parole agent Lorraine Murphy and Warden of CCI as Defendants.<sup>1</sup> On July 10, 2018, the Court screened Montoya I, found Plaintiff failed to state a cognizable claim for relief, and granted leave to amend. Plaintiff’s amended complaint is currently due on or before August 9, 2018. One of Plaintiff’s claims in Montoya I was that “Parole Agent Murphy failed to proofread the information she entered into her state-owned computer” because “[s]he reportedly entered a penal code section that did not apply to Plaintiff and which caused him to be stabbed multiple times, leaving him permanently handicapped. (Screening Order, ECF No. 16 at 2:22-25.) Plaintiff attached some of the same exhibits as those attached to the present complaint. It is clear that the two actions arise out of the same nucleus of facts. Both actions involve the claim that he was subjected to cruel and unusual punishment because Lorraine Murphy entered the wrong penal code which resulted in injury to Plaintiff. In addition, Plaintiff seeks monetary damages in both actions. Therefore, because the two actions share the same cause of action and parties, Plaintiff’s instant action is duplicative of Montoya I and must be dismissed with prejudice. Adams, 487 F.3d at 692 (finding no abuse of discretion for dismissing the later-filed complaint with prejudice).

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<sup>1</sup> Plaintiff also names correctional officers Scott and Decord.

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**IV.**

**RECOMMENDATION**

Based on the foregoing, it is HEREBY RECOMMENDED that:

1. The instant action be dismissed with prejudice; and
2. The Clerk of Court is directed to randomly assign a District Judge to this action.

This Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **twenty-one (21) days** after being served with this Findings and Recommendation, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: August 2, 2018



UNITED STATES MAGISTRATE JUDGE