

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAULINE V. MONTGOMERY,

Plaintiff,

v.

CDCR CORRECTIONS, OFFICER, et al.,

Defendants.

No. 1:23-cv-01044 NODJ GSA (PC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

ORDER DIRECTING PLAINTIFF'S NOTICE
BE FILED IN MONTGOMERY V. CDCR
CORRECTIONS OFFICER, NO. 1:23-CV-
00439 NODJ BAM AND IN MONTGOMERY
V. MADERA DEP'T OF CORRECTIONS,
NO. 1:23-CV-00919 JLT BAM

(ECF No. 14)

ORDER VACATING ORDER DIRECTING
DEBIT OF PLAINTIFF'S PRISON TRUST
FUND ACCOUNT

(ECF No. 8)

ORDER DIRECTING CLERK OF COURT TO
COORDINATE WITH COURT'S
FINANCIAL DEPARTMENT TO RETURN
FEES DEBITED FROM PLAINTIFF'S
TRUST FUND ACCOUNT IN COMPLIANCE
WITH JULY 17, 2023, ORDER

(ECF No. 8)

ORDER RECOMMENDING THIS MATTER
BE DISMISSED WITH PREJUDICE AS
DUPLICATIVE OF EARLIER-FILED
MONTGOMERY V. CDCR CORRECTIONS
OFFICER, 1:23-CV-00439 NODJ BAM

PLAINTIFF’S OBJECTIONS TO FINDINGS
AND RECOMMENDATIONS DUE
FEBRUARY 20, 2024

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. ECF No. 1 (“Montgomery II”). The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

For the reasons stated below, the Clerk of Court will be ordered to file Plaintiff’s recent notice (ECF No. 14) in the two other active cases Plaintiff has filed in this Court. The undersigned will also vacate the July 17, 2023 order issued to the California Department of Corrections and Rehabilitation (“CDCR”) directing payment of the filing fee for this matter. See ECF No. 8. In addition, it will be recommended that this matter be dismissed with prejudice as duplicative of Montgomery v. CDCR Corrections Officer, No. 1:23-cv-00439 NODJ BAM (PC) (“Montgomery I”), which is currently pending before a different magistrate judge. Finally, it will be recommended that the Clerk of Court coordinate with the Court’s Financial Department to return to Plaintiff the funds debited to date from her prison trust fund account for this case.

I. RELEVANT FACTS

A. Montgomery v. CDCR Corrections Officer, No. 1:23-cv-00439 NODJ BAM¹

On March 23, 2023, the complaint filed by Plaintiff in Montgomery v. CDCR Corrections Officer, No. 1:23-cv-00439 NODJ BAM (PC) was docketed. Montgomery I, ECF No. 1. In it, Plaintiff names a CDCR correctional officer at Central California Women’s Facility (“CCWF”) as well as the Madera County Sheriff as defendants. Id. at 1-2. The complaint raises claims of

¹ A review of Montgomery I indicates that the magistrate judge presiding over it has recommended that that matter be dismissed for failure to obey court orders and for failure to prosecute. See Montgomery I, ECF No. 16. Specifically, it appears that Plaintiff has neither filed a completed, signed forma pauperis application with the requisite trust account statement, nor in the alternative, paid the filing fee in that case. In addition, it appears that Plaintiff has not filed a signed complaint as she has also been ordered to do. See Montgomery, ECF No. 14 (order directing Plaintiff to do same). The pending findings and recommendations were issued on September 25, 2023. See Montgomery I, ECF No. 16. The docket does not indicate that Plaintiff has filed objections to those findings and recommendations.

1 excessive force, threat to safety, and deprivation of medical care stemming from an incident at the
2 Madera County Courthouse during which an officer grabbed her shoulders and forcibly turned her
3 back and forth, presumably, to make her stand in line properly. See id. at 3-5.

4 Plaintiff states that when she reported the incident the officers did not report it to a higher-
5 level authority or give her access to medical care. Id. at 4-5. She claims that the incident left her
6 with red marks and bruising as well as with mental health issues. Montgomery I, ECF No. 1 at 3-
7 5. She also states that she feared for her safety. Id. at 4. As a remedy, Plaintiff requests that the
8 officers be punished for not following proper procedures. Id. at 6.

9 B. Montgomery v. CDCR Corrections Officer, No. 1:23-cv-01044 GSA

10 On July 7, 2023, the instant complaint and application to proceed in forma pauperis were
11 filed in the Central District of California. Montgomery II, ECF Nos. “doc,” 2. Shortly thereafter,
12 the matter was transferred to this district. Id., ECF No. 4. On July 17, 2023, Plaintiff’s trust fund
13 account statement was docketed, and her in forma pauperis application was granted. Id., ECF
14 Nos. 7, 8. The order granting Plaintiff in forma pauperis status directs the CDCR to debit
15 Plaintiff’s trust fund account in increments until the filing fee is paid in full. See id., ECF No. 8.
16 Screening of the complaint is pending.

17 With the exception of some additional exhibits attached to the Montgomery II complaint,
18 it is a duplicate of Montgomery I. The named defendants, the language used, and the incident at
19 issue are all the same. Compare Montgomery I, ECF No. 1, with Montgomery II, ECF No.
20 “doc”.

21 C. Plaintiff’s Notice Docketed January 11, 2024

22 On January 11, 2024, a letter Plaintiff filed with the Court, which the Court has construed
23 as a notice, was docketed. Montgomery II, ECF No. 14. The intended primary focus of the
24 document is unclear, however in it Plaintiff alleges, in relevant part, that she has two cases in this
25 Court with the same name: “Montgomery v. Madera Dep’t of Corrections”,² and she admits that

26 _____
27 ² Plaintiff appears to be mistaken. A review of the titles of the three cases Plaintiff has filed
28 indicates that the two which share the same name are the Montgomery I and Montgomery II
matters. The Montgomery v. Madera Dep’t of Corrections, No. 1:23-cv-0919 JLT SAB matter is
the only case that has been filed in this district with that name, and it has different facts that

1 the incidents in them occurred “at the same institution with the same people.” Id. at 1. She
2 further states that in the Madera case, she has been charged a filing fee, and she asks the Court
3 why she is being asked to file an amended complaint in it. Id.

4 II. APPLICABLE LAW

5 “Plaintiffs generally have ‘no right to maintain two separate actions involving the same
6 subject matter at the same time in the same court and against the same defendant’.” Adams v.
7 California Dep’t of Health Servs., 487 F.3d 684, 688 (9th Cir. 2007) overruled on other grounds
8 by Taylor v. Sturgell, 553 U.S. 880, 904 (2008); Walton v. Eaton Corp., 563 F.2d 66, 70 (3d Cir.
9 1977) (stating same).

10 To determine whether a matter is duplicative, a court must ask the following:

11
12 (1) whether rights or interests established in the prior judgment would be destroyed
13 or impaired by prosecution of the second action; (2) whether substantially the same
14 evidence is presented in the two actions; (3) whether the two suits involve
15 infringement of the same right; and (4) whether the two suits arise out of the same
16 transactional nucleus of facts.

17 Costantini v. Trans World Airlines, 681 F.2d 1199, 1201-1202 (9th Cir. 1982) (citing Harris v.
18 Jacobs, 621 F.2d 341, 343 (9th Cir. 1980)). The fourth criteria is the most important. Id. at 1202.
19 The dismissal of duplicative lawsuits promotes judicial economy. Adams, 487 F.3d at 693.

20 III. DISCUSSION

21 The instant complaint must be dismissed. Considering the Costantini factors, because a
22 dispositive order has yet to issue in Montgomery I, the first factor cannot be considered.
23 However, with respect to factors two through four, in Montgomery II, the same facts are
24 presented in the body of the complaint that have been set forth in Montgomery I; Plaintiff alleges
25 the same violations of right as she has in Montgomery I, and both suits arise out of the same

26 _____
appear to be unrelated to Montgomery I and Montgomery II.

27 Plaintiff is informed that this Court cannot address issues in other cases in this district that
28 are not before it. However, *as a one-time courtesy*, the Court will direct the notice to be filed in
Montgomery I and in the third case mentioned above. Plaintiff is informed that it is her
responsibility, *not* the Court’s, to make certain her filings are docketed in the correct case.

1 transactional nucleus of facts. Because Plaintiff’s prison trust fund account is being debited for
2 this duplicate matter, in the interests of justice, the order directing her trust account to be debited
3 will be vacated and the Clerk of Court and Financial Department will be ordered to return to
4 Plaintiff any fees debited from it for this case to date.

5 In sum, the instant complaint is virtually a carbon copy of the complaint that was filed in
6 Montgomery I. The factors in Costantini have been satisfied. For these reasons the undersigned
7 finds that this case is a duplicate of Montgomery I. As a result, it is recommended that it be
8 dismissed with prejudice. See, e.g., Adams, 487 F.3d at 694 (finding court acted within its
9 discretion in dismissing duplicative complaint with prejudice).

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. The Clerk of Court shall file a copy of Plaintiff’s notice (ECF No. 14) in the following
12 cases:

- 13 a. Montgomery v. CDCR Corrections Officer, No. 1:23-cv-00439 NODJ BAM, and
- 14 b. Montgomery v. Madera Dep’t of Corrections, No. 1:23-cv-0919 JLT SAB;

15 2. The July 17, 2023, order which grants in forma pauperis status and directs the
16 California Department of Corrections and Rehabilitation to debit Plaintiff’s trust fund account to
17 collect the filing fee for this case (see ECF No. 8) is VACATED;

18 3. Consistent with the vacation of the July 17, 2023, order, the Clerk of Court and the
19 Financial Department shall coordinate and ensure that the FILING FEES taken from Plaintiff’s
20 trust fund account to date in compliance with it (see ECF No. 8) are RETURNED to Plaintiff, and

21 IT IS FURTHER RECOMMENDED that this matter be DISMISSED with prejudice as
22 DUPLICATIVE of the earlier-filed Montgomery v. CDCR Corrections Officer, No. 1:23-cv-
23 00439 NODJ BAM.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
26 after being served with these findings and recommendations – **by February 20, 2024**, – Plaintiff
27 may file written objections with the Court. Such a document should be captioned “Objections to
28 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file

1 objections within the specified time may waive the right to appeal the District Court's order.

2 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3

4

5

6

IT IS SO ORDERED.

7

Dated: February 5, 2024

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28