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

CHARLES NEUMANN,

Plaintiff,

No. CIV S-07-0099 GEB DAD P

vs.

TILTON, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding pro se. The above-captioned action was commenced in the Northern District of California on November 3, 2006, when an in forma pauperis application and a motion for appointment of counsel were filed. Although both documents appear to have included the case number of an action commenced by plaintiff in the Northern District on August 24, 2006, a new case was opened. Both cases have been transferred to the Eastern District of California. The earlier filed case was filed in the Eastern District on January 12, 2007, and was assigned case No. CIV S-07-0082 DFL CMK P. The later filed case, was filed in the Eastern District on January 16, 2007, and was assigned case No. CIV S-07-0099 GEB DAD P.

A review of the filings in the transferred cases reveals that the second case is duplicative. The motion in case No. CIV S-07-0099 asserts deprivation of adequate dental care

1 and seeks an order appointing counsel in an action concerning poor emergency dental care. The
2 complaint in case No. CIV S-07-0082 concerns deprivation of proper dental care. On the basis
3 of the court's own records,¹ the undersigned finds that case No. CIV S-07-0099 is duplicative of
4 case No. CIV S-07-0082. Case No. CIV S-07-0099 should be dismissed without prejudice to
5 further proceedings in case No. CIV S-07-0082. See Fed. R. Civ. P. 41(b).

6 In accordance with the above, IT IS HEREBY RECOMMENDED that:

- 7 1. Plaintiff's motion for appointment of counsel be denied;
- 8 2. Plaintiff's application to proceed in forma pauperis be denied; and
- 9 3. This case be dismissed without prejudice as duplicative of case No. CIV S-07-
10 0082 DFL CMK.

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

18 DATED: January 22, 2007.

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21 _____
DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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26 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).