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

DAVID BRUCE TRACY,

Plaintiff,

No. CIV S-08-0121 JAM DAD P

vs.

SHEEHAN, et al.,

Defendants.

ORDER AND

FINDINGS & RECOMMENDATIONS

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. The initial complaint in this action was filed by plaintiff Tracy and five other inmates at the Rio Cosumnes Correctional Center. On February 22, 2008, the court ordered that the claims be severed and that plaintiff Tracy proceed as the sole plaintiff in this case. His complaint was dismissed and plaintiff was ordered to file an amended complaint that set forth his individual claims. Despite additional time granted by the court on April 15, 2008, plaintiff failed to file his amended complaint and a new application requesting leave to proceed in forma pauperis. On May 29, 2008, the court filed findings and recommendations recommending that this action be dismissed without prejudice. On June 16, 2008, plaintiff filed a letter and requested that his case be put on "hold" until his anticipated release on August 17, 2008. (Letter, filed 6/16/08) at 1.) On July 1, 2008, plaintiff filed his amended complaint.

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1           The court's own records reveal that plaintiff's amended complaint filed on July 1,  
2 2008, contain virtually identical allegations against the same defendants as those set forth in an  
3 earlier action filed by plaintiff in this court. See Tracey v. Sacramento County Sheriff Dep't, et  
4 al., Case No. Civ. S-08-0007 MCE DAD P.<sup>1</sup> Due to the duplicative nature of the present action,  
5 the court will recommend that this action be dismissed. In addition, the court will vacate the  
6 findings and recommendations filed on May 29, 2008, as moot.

7           In accordance with the above, IT IS HEREBY ORDERED that the findings and  
8 recommendations, filed on May 29, 2008 (Doc. No. 20), are vacated.

9           Also, IT IS HEREBY RECOMMENDED that this action be dismissed as  
10 duplicative. See Fed. R. Civ. P. 41(b).

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

18 DATED: April 2, 2009.

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22 DALE A. DROZD  
23 UNITED STATES MAGISTRATE JUDGE

22 DAD:4  
23 trac0121.23

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26 <sup>1</sup> 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).