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

ROBERT EARL DEARMON,

Plaintiff,

No. 2:09-cv-1308-JFM (PC)

vs.

CITY OF FAIRFIELD, et al.,

ORDER AND

Defendants.

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se. Plaintiff's complaint was filed with the court on May 12, 2009. The court's own records reveal that on November 24, 2008, plaintiff filed a complaint containing virtually identical allegations against the same defendants. (No. 2:08-cv-2843-MCE-KJM).¹ Due to the duplicative nature of the present action, the court will recommend that it be dismissed.²

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).

² By order filed May 27, 2009, plaintiff's motion to proceed in forma pauperis was denied without prejudice and plaintiff was granted thirty days to file a new application for leave to proceed in forma pauperis on the form used by this district together with a certified copy of his inmate trust account statement for the six month period that preceded the filing of this action. On June 2, 2009, plaintiff filed a new in forma pauperis application, dated May 28, 2009, on the same form as the application that accompanied his original complaint and once again accompanied by a trust account statement that is not certified. Plaintiff has not responded to the court's May 27, 2009 order.

1 Good cause appearing, IT IS HEREBY ORDERED that the Clerk of the Court is
2 directed to assign this action to a United States District Judge; and

3 IT IS HEREBY RECOMMENDED that this action be dismissed without
4 prejudice. See Fed. R. Civ. P. 41(b).

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

12 DATED: August 10, 2009.

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15 UNITED STATES MAGISTRATE JUDGE

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