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

EDWARD ANTONIO BATTISTE,

Plaintiff,

No. CIV S-09-2782 DAD P

vs.

DVI et al.,

ORDER AND

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a former state prisoner proceeding pro se. On October 6, 2009, plaintiff commenced this action by filing a complaint pursuant to 42 U.S.C. § 1983. The court’s own records reveal that, on July 27, 2009, plaintiff filed a complaint containing virtually identical allegations against the same defendants.¹ (Case No. CIV S-09-2053 GGH P).² Due to the

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¹ The only defendant plaintiff has identified in the instant action that he did not identify in his complaint filed in Case No. CIV S-09-2053 GGH P is Deuel Vocational Institution (“DVI”). However, plaintiff cannot proceed against DVI in any event because, under the Eleventh Amendment, “agencies of the state are immune from private damage actions or suits for injunctive relief brought in federal court.” Dittman v. California, 191 F.3d 1020, 1025-26 (9th Cir. 1999).

² 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).

1 duplicative nature of the present action, the court will recommend that plaintiff's complaint be
2 dismissed.

3 IT IS HEREBY ORDERED that:

4 1. The Clerk of the Court is directed to randomly assign a United States District
5 Judge to this action; and

6 2. Plaintiff's motion for appointment of counsel (Doc. No. 9) is denied without
7 prejudice to refile in Case No. CIV S-09-2053 GGH P.

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

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

17 DATED: February 11, 2010.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE