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

DARRYL HUBBARD,

Plaintiff,

No. CIV S-11-1568 GGH P

vs.

HOUGLAND, et. al.,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. In the instant case, plaintiff alleges that defendant Hougland assaulted him on July 7, 2008. However, this is plaintiff's fourth civil rights complaint regarding this exact same incident in this court.

In No. CIV S-09-0939 JAM GGH P, the court dismissed the case for failure to exhaust administrative remedies on September 22, 2010.¹ Plaintiff has appealed the case to the Ninth Circuit and the case is currently pending. In No. CIV S-09-2092 GGH P, plaintiff filed another complaint involving this incident which he later voluntarily dismissed. In No. CIV S-10-2696 LKK KJN P, plaintiff filed a complaint just a few weeks after the same complaint was

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).

1 dismissed in No. CIV S-09-0939 JAM GGH P, and while plaintiff was appealing to the Ninth
2 Circuit. Plaintiff later voluntarily dismissed case No. CIV S-10-2696 LKK KJN P.

3 On June 10, 2011, plaintiff filed the instant complaint containing the same
4 allegations. Plaintiff has not included any new information regarding exhaustion of this claim.²
5 Within 21 days plaintiff shall show cause why this case should not be dismissed and why this
6 filing is not frivolous and whether it should be considered as a strike pursuant to 28 U.S.C. §
7 1915(g).

8 In accordance with the above, IT IS HEREBY ORDERED that within 21 days
9 plaintiff shall show cause why this case should not be dismissed and why this filing is not
10 frivolous and whether it should be considered as a strike pursuant to 28 U.S.C. § 1915(g).

11 DATED: June 17, 2011

12 /s/ Gregory G. Hollows

13 _____
14 GREGORY G. HOLLOWES
15 UNITED STATES MAGISTRATE JUDGE

16 GGH: AB
17 hubb1568.osc

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25 ² The information that plaintiff has provided regarding exhaustion seems to be the same
26 information that was involved in the motion to dismiss for failure to exhaust in No. CIV S-09-0939
JAM GGH P.