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

KENNETH ARDELL SMITH,

Plaintiff,

No. CIV S-12-0587 JAM GGH PS

vs.

SCOTT JONES, et al.,

Defendants.

ORDER AND FINDINGS &  
RECOMMENDATIONS

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Plaintiff is proceeding in this action pro se. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by E.D. Cal. L.R. 302(c)(21).

Plaintiff has submitted the affidavit required by 28 U.S.C. § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security for them. (Dkt. No. 2.) Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff's complaint was filed with the court on March 6, 2012. The court's own records reveal that on December 19, 2011, plaintiff filed a complaint containing virtually identical allegations involving Sacramento County Sheriff Department officers or bailiffs, except that plaintiff names the Sacramento Sheriff Department as the defendant in the 2011 action,

1 whereas he names Scott Jones (as director of the Sacramento County Sheriff Department) and  
2 several individual officers/bailiffs as defendants in the instant 2012 action. (Compare Dkt. No. 1  
3 with Civ. No. S-11-3351 MCE JFM PS, Dkt. No. 1.)<sup>1</sup> The 2011 complaint also contains more  
4 detailed factual allegations. Nevertheless, in both actions, plaintiff alleges that he was injured  
5 during a December 30, 1999 incident when officers/bailiffs Hicks, Lonteen, Burrow, and Shahda  
6 allegedly used excessive force on him, injured him, and refused him medical treatment. He  
7 further alleges that these officers/bailiffs falsified two felony criminal charges against him.

8           Due to the duplicative nature of the present action, the court will recommend that  
9 the complaint be dismissed. If plaintiff wishes to add the above-mentioned individual officers or  
10 another party to the 2011 action, the proper course of action is to seek leave to amend his  
11 complaint in the 2011 action – not to file a new action.

12           In accordance with the above, IT IS HEREBY ORDERED that plaintiff’s request  
13 for leave to proceed in forma pauperis (dkt. no. 2) is granted.

14           IT IS ALSO HEREBY RECOMMENDED that this action be dismissed without  
15 prejudice as duplicative.

16           These findings and recommendations are submitted to the District Judge assigned  
17 to this case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after  
18 being served with these findings and recommendations, plaintiff may file written objections with  
19 the court. The document should be captioned “Objections to Magistrate Judge’s Findings and  
20 Recommendations.” Plaintiff is advised that failure to file objections within the specified time

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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).

1 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th  
2 Cir. 1991).

3 DATED: March 16, 2012

4 /s/ Gregory G. Hollows  
5 UNITED STATES MAGISTRATE JUDGE

6 GGH/wvr  
7 Smith.587.fr.dup.wpd

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