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

FIKRI BAYRAMOGLU,

Plaintiff,

No. 2:12-cv-02886 JFM P

vs.

JAMES H. GOMEZ,

Defendant.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding without counsel. Plaintiff’s complaint was filed with the court on November 28, 2012.¹ The allegations of the complaint reveal that it is identical to a second amended complaint prepared for filing in another action in this court, Case No. 2:10-cv-0328 EFB P. Court records reveal that plaintiff voluntarily dismissed Case No. 2:10-cv-0328 EFB P on February 1, 2012 without filing the second amended complaint, despite having been granted leave to do so.² Here, plaintiff alleges that he had prepared the second amended complaint but did not submit it in that action “because of plaintiff’s mistrust for” the magistrate judge assigned to that action. Complaint, filed November 28, 2012, at 3. Plaintiff

¹ Plaintiff also filed a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. For the reasons set forth in these findings and recommendations, the court will not rule on plaintiff’s application to proceed in forma pauperis.

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 may not dismiss and refile an action in an effort to get a new judge. See Hernandez v. City of El
2 Monte, 138 F.3d 393, 399 (9th Cir. 1998) (quoting Chambers v. NASCO, Inc., 501 U.S. 32, 44-45
3 (1991) (“Judge-shopping clearly constitutes ‘conduct which abuses the judicial process.’”) The
4 court has “the inherent power sua sponte to dismiss an action for judge-shopping.” Hernandez,
5 138 F.3d at 198. For the foregoing reasons, the court recommend that this action be dismissed.

6 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed to
7 assign this action to a United States District Judge; and

8 IT IS RECOMMENDED that this action be dismissed.

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

16 DATED: December 19, 2012.

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19 UNITED STATES MAGISTRATE JUDGE

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