

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAFONZO R. TURNER,
Plaintiff,
v.
S. BYER,
Defendant.

No. 2:17-cv-1978 KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se. Plaintiff's complaint was filed with the court on September 25, 2017. The court's own records reveal that on September 8, 2017, plaintiff filed a complaint containing virtually identical allegations. (2:17-cv-1869 EFB).¹ Except for the proof of service on page 8 filed in the earlier action, the instant complaint appears to be a copy of the complaint filed in 2:17-cv-1869 EFB, and both complaints were signed on September 5, 2017. Indeed, the complaint filed in the instant action bears plaintiff's note at the top of page one: "Inmate's Copy -- Returned Filed." (ECF No. 1 at 1.) Due to the duplicative nature of the present action, the court recommends that the complaint in this case be dismissed.

In addition, because it appear plaintiff may have intended his request to proceed in forma pauperis to accompany his initial complaint, and his request is also signed September 5, 2017, the

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 Clerk of the Court is directed to file plaintiff's September 25, 2017 motion to proceed in forma
2 pauper, without the instant case banner, in his prior case, No. 2:17-cv-1869 EFB.


3 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed to:

- 4 1. Assign a district judge to this case; and
- 5 2. File plaintiff's motion to proceed in forma pauperis (ECF No. 2), without the CM/ECF
6 banner, in his earlier case, No. 2:17-cv-1869 EFB.

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

9 These findings and recommendations are submitted to the District Judge assigned to this
10 case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served
11 with these findings and recommendations, plaintiff may file written objections with the court.
12 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: October 3, 2017

17 
18 _____
19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE

21 turn1978.23
22
23
24
25
26
27
28