

1 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
2 relief.” *Id.* § 1915A(b).

3 The instant complaint, filed December 29, 2017, alleges that defendants Morton and
4 Fajardo used excessive force against plaintiff on February 8, 2017. ECF No. 1 at 3. Examination
5 of the court’s records reveals that plaintiff has already commenced an action with a complaint
6 concerning this alleged use of excessive force. *See Adams v. CHCF*, No. 2:17-cv-1817-MCE-
7 EFB (E.D. Cal.), ECF No. 1 (Aug. 31, 2017 Complaint). Therefore, this action must be
8 dismissed as duplicative of the earlier action. *See Barapind v. Reno*, 72 F. Supp. 2d 1132, 1144
9 (E.D. Cal. 1999) (when a complaint involving the same parties and issues has already been filed
10 in another federal district court, the court has discretion to abate or dismiss the second action).
11 “Federal comity and judicial economy give rise to rules which allow a district court to transfer,
12 stay, or dismiss an action when a similar complaint has already been filed in another federal
13 court.” *Id.* at 1145 (citation omitted). “[I]ncreasing calendar congestion in the federal courts
14 makes it imperative to avoid concurrent litigation in more than one forum whenever consistent
15 with the right of the parties.” *Crawford v. Bell*, 599 F.2d 890, 893 (9th Cir. 1979).

16 Due to the duplicative nature of the present action, this action should be dismissed and
17 plaintiff should proceed on the action he initially commenced *See Cato v. United States*, 70 F.3d
18 1103, 1105 n.2 (9th Cir. 1995) (A complaint that “merely repeats pending or previously litigated
19 claims” may be dismissed as frivolous under the authority of 28 U.S.C. § 1915).

20 **III. Conclusion**

21 Accordingly, IT IS ORDERED that:

- 22 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 2) is granted.
- 23 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
24 in accordance with the notice to the California Department of Corrections and
25 Rehabilitation, filed concurrently herewith.
- 26 3. The Clerk of the Court shall randomly assign a United States District Judge to this
27 action.

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1 Further, it is hereby RECOMMENDED that this action be dismissed as duplicative and
2 the Clerk be directed to close the case.

3 These findings and recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
5 after being served with these findings and recommendations, any party may file written
6 objections with the court and serve a copy on all parties. Such a document should be captioned
7 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
8 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
9 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

10 Dated: May 16, 2018.

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12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE
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