

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

DANIEL J. ARZAGA,  
Plaintiff,  
v.  
SANTIAGO, et al.,  
Defendants.

No. 2:18-cv-0313 KJN P  
ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se. Plaintiff’s complaint was filed with the court on February 6, 2018. The court’s records reveal that on January 25, 2016, plaintiff filed a complaint including the instant allegations, all stemming from alleged incidents on December 24, 2014, to December 25, 2014, at the California Health Care Facility in Stockton, California.

Arzaga v. Cate, et al., 2:16-cv-0151 AC P.<sup>1</sup> Although the instant complaint is not identical to the complaint filed in the earlier-action, the allegations in the earlier-filed complaint included plaintiff’s current claims that from December 24, 2014, to December 25, 2014, he suffered rape or sodomy by defendants, and that two of the defendants put items in plaintiff’s eyes.<sup>2</sup> Due to the

<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).

<sup>2</sup> In the instant pleading, plaintiff claims defendants forced metal objects into his eyes on two separate occasions. In his prior case, plaintiff alleged that defendants put cameras in his eyes.


1 duplicative nature of the present action, the court will recommend that the complaint be  
2 dismissed.

3 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed to assign  
4 a district judge to this case; and

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

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

14 Dated: February 14, 2018

15   
16 \_\_\_\_\_  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

17 /arza0313.23

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28