

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 EARL WARNER,
4 Plaintiff,

5 v.

6 RABBI Y. FRIEDMAN, et al.,
7 Defendants.
8

Case No. [16-cv-04345-YGR](#) (PR)

ORDER OF DISMISSAL

9 Plaintiff filed the instant *pro se* complaint under 42 U.S.C. § 1983, in which he seeks
10 enforcement of a settlement agreement reached in his earlier case, Case No. C 11-5039 YGR (PR)
11 (N.D. Cal. filed October 13, 2011). He also seeks leave to proceed *in forma pauperis* under 28
12 U.S.C. § 1915, which will be resolved in a separate written Order.

13 Plaintiff should not have filed a duplicative complaint in a new action, but, instead, he
14 should have sought enforcement of the settlement agreement in his earlier case. The Court may
15 dismiss as frivolous a complaint that merely repeats pending or previously litigated claims. 28
16 U.S.C. § 1915A. *See Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *Bailey v.*
17 *Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). Accordingly, the instant action is DISMISSED as
18 duplicative. If Plaintiff wishes to pursue a motion to enforce the settlement agreement in Case No.
19 C 11-5039 YGR (PR), he may file such a motion in his earlier action. Plaintiff must clearly
20 indicate the case number of that action— Case No. C 11-5039 YGR (PR)—and he must entitle it:
21 “Motion to Enforce Settlement Agreement.”

22 For the foregoing reasons, Plaintiff’s instant action is DISMISSED as duplicative. 28
23 U.S.C. § 1915A (b)(1). The Clerk of the Court shall enter judgment, terminate all pending
24 motions as moot, and close the file.

25 IT IS SO ORDERED.

26 Dated: January 11, 2017

27 
28 YVONNE GONZALEZ ROGERS
United States District Judge