IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

LUCRETIA GALLOW, Plaintiff, v. SERGEANT SMITH, et al., Defendants.	1:07-cv-00173 LJO YNP GSA (PC) ORDER DENYING DEFENDANTS' MOTION TO DISMISS AS DUPLICATIVE (Doc. 24)

Plaintiff is a former state prisoner proceeding pro se in this civil rights action. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

This action was initiated by civil complaint filed on January 31, 2007. Plaintiff, formerly an inmate in the custody of the California Department of Corrections and Rehabilitation at Valley State Prison for Women in Chowchilla, filed this action, naming as defendants Sergeant Smith, Sergeant Waybright and Sergeant Miller. On July 15, 2008, an order was entered, dismissing the complaint and granting Plaintiff leave to file an amended complaint. Plaintiff failed to do so and on October 8, 2008, a recommendation of dismissal was entered. Plaintiff filed objections and on November 18, 2008, the recommendation of dismissal was vacated and Plaintiff was granted an extension of time in which to file an amended complaint.

Plaintiff failed to file an amended complaint, and the Court again recommended dismissal

for failure to prosecute. Plaintiff filed objections and the Court granted an extension of time in which to comply. Plaintiff failed to do so, and on June 15, 2009, findings and recommendations were entered, recommending dismissal for failure to prosecute. The findings and recommendations were returned to the Court as undeliverable, though addressed to Plaintiff at her address of record. On July 29, 2009, the recommendation of dismissal was adopted and this action was dismissed for Plaintiff's failure to prosecute. Judgment was entered pursuant to the order adopting the findings and recommendations.

On February 12, 2010, a motion to dismiss was filed by the Attorney General's office on behalf of Defendants Smith and Donaldson. There is no Defendant Donaldson in this case. On the same date, an identical motion was filed in Lucretia Gallow v. T. Smith, et al.,1:07 cv 01279 AWI SKO PC. A review of the motions indicates they are identical. Plaintiff did not state a claim in this action, and no defendant was served. It appears that the motion was inadvertently filed in this case.

Accordingly, IT IS HEREBY ORDERED that the motion to dismiss filed on February 12, 2010, is denied as duplicative. This case remains closed.

IT IS SO ORDERED.

Dated: June 23, 2010 **/s/ Lawrence J. O'Neill**
UNITED STATES DISTRICT JUDGE