

1 Case no. 1:-08-cv-00693-WMW (HC) is still pending; indeed, Respondent filed an answer to the
2 petition on September 5, 2008. (Doc. 13). In that answer, Respondent addresses the merits of
3 Petitioner’s contentions but also argues for dismissal because none of the claims in the petitions have
4 been exhausted. Similarly, in this case, Petitioner notes that he has not presented his claims to the
5 California Supreme Court and therefore the issues in the instant petition are also unexhausted. The
6 Court has reviewed both petitions and finds that the instant petition is duplicative of the petition in
7 case no. 1:08-cv-00693-WMW (HC). Accordingly, the instant petition should be dismissed.

8 “After weighing the equities of the case, the district court may exercise its discretion to
9 dismiss a duplicative, later-filed action, to stay that action pending resolution of the previously filed
10 action, to enjoin the parties from proceeding with it, or to consolidate both actions.” Adams v.
11 California Dept. of Health Services, 487 F.3d 684, 688 (9th Cir. 2007). “Plaintiffs generally have
12 ‘no right to maintain two separate actions involving the same subject matter at the same time in the
13 same court and against the same defendant.’” Adams, 487 F.3d at 688 (quoting Walton v. Eaton
14 Corp., 563 F.2d 66, 70 (3d Cir. 1977) (en banc)).

15 In assessing whether a second action is duplicative of the first, the court examines whether
16 the causes of action and relief sought, as well as the parties or privies to the action, are the same.
17 Adams, 487 F.3d at 689. First, the court must examine whether the causes of action in the two suits
18 are identical pursuant to the transaction test, developed in the context of claim preclusion. Id.
19 Second, the court determines whether the defendants are the same or in privity. Privity includes an
20 array of relationships which fit under the title of “virtual representation.” Kourtis v. Cameron, 419
21 F.3d 989, 996 (9th Cir. 2005). “The necessary elements of virtual representation are an identity of
22 interests and adequate representation.” Adams, 487 F.3d at 691 (citing Kourtis, 419 F.3d at 996).
23 “Additional features of a virtual representation relationship include a close relationship, substantial
24 participation, and tactical maneuvering.” Adams, 487 F.3d at 691 (quoting Kourtis, 419 F.3d at
25 996).

26 A plaintiff is required to bring at one time all of the claims against a party or privies relating
27 to the same transaction or event. Adams, 487 F.3d at 693. The court has discretion to dismiss a
28 duplicative complaint with prejudice to prevent a plaintiff from “fragmenting a single cause of action

1 and litigating piecemeal the issues which could have been resolved in one action.” Adams, 487 F.3d
2 at 694 (quoting Flynn v. State Bd. of Chiropractic Exam'rs, 418 F.2d 668, 668 (9th Cir.1969)
3 (per curiam)).

4 In this case, both petitions challenge the same conviction, raise the same constitutional
5 issues, name the same Respondents, and seek the same relief. Under such circumstances, the instant
6 petition is duplicative of the prior petition. Petitioner has no right to maintain two duplicative
7 petitions before different judges of this Court. Adams, 487 F.3d at 688. Therefore, the instant
8 action should be dismissed.

9 **ORDER**

10 Accordingly, the Court HEREBY ORDERS as follows:

- 11 1. The petition for writ of habeas corpus (Doc. 1), is DISMISSED as duplicative; and
- 12 2. The Clerk of the Court is DIRECTED to terminate this action in its entirety and close
13 the file.

14
15 IT IS SO ORDERED.

16 Dated: April 2, 2009
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16 /s/ Theresa A. Goldner
17 UNITED STATES MAGISTRATE JUDGE