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10 UNITED STATES DISTRICT COURT

11 EASTERN DISTRICT OF CALIFORNIA

12 DOUGLAS RAY STANKEWITZ,) 1:09-CV-00162 GSA HC
13 Petitioner,) ORDER DISMISSING PETITION
14 v.) ORDER DIRECTING CLERK OF COURT
15) TO ENTER JUDGMENT AND TERMINATE
16 ROBERT L. AYERS, et al.,) CASE
17 Respondents.)
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19 Petitioner is a state prisoner proceeding pro se who has filed a petition for writ of habeas
20 corpus pursuant to 28 U.S.C. § 2254. Petitioner has returned his consent/decline form indicating
21 consent to the jurisdiction of the Magistrate Judge.

22 On January 20, 2009, Petitioner filed the instant federal petition in the Sacramento Division
23 of this Court. The petition was then transferred to this Court and assigned case number “1:09-CV-
24 00162 GSA HC.” The petition challenges Petitioner’s 1978 convictions in the Fresno County
25 Superior Court of murder, robbery and kidnaping for which he was given a sentence of death.

26 Review of the Court’s dockets shows Petitioner has already filed a habeas petition with
27 respect to these convictions. That petition was assigned case number “1:91-CV-00616 AWI.”
28 “After weighing the equities of the case, the district court may exercise its discretion to dismiss a

1 duplicative later-filed action, to stay that action pending resolution of the previously filed action, to
2 enjoin the parties from proceeding with it, or to consolidate both actions.” Adams v. California
3 Dept. of Health Services, 487 F.3d 684, 688 (9th Cir. 2007). “Plaintiffs generally have ‘no right to
4 maintain two separate actions involving the same subject matter at the same time in the same court
5 and against the same defendant.’” Adams, 487 F.3d at 688 (quoting Walton v. Eaton Corp., 563
6 F.2d 66, 70 (3d Cir. 1977) (en banc)).

7 In assessing whether a second action is duplicative of the first, the court examines whether
8 the causes of action and relief sought, as well as the parties or privies to the action, are the same.
9 Adams, 487 F.3d at 689. First, the court must examine whether the causes of action in the two suits
10 are identical pursuant to the transaction test, developed in the context of claim preclusion. Id.
11 Second, the court determines whether the defendants are the same or in privity. Privity includes an
12 array of relationships which fit under the title of “virtual representation.” Kourtis v. Cameron, 419
13 F.3d 989, 996 (9th Cir. 2005). “The necessary elements of virtual representation are an identity of
14 interests and adequate representation.” Adams, 487 F.3d at 691 (citing Kourtis, 419 F.3d at 996).
15 “Additional features of a virtual representation relationship include a close relationship, substantial
16 participation, and tactical maneuvering.” Adams, 487 F.3d at 691 (quoting Kourtis, 419 F.3d at
17 996).
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19 A plaintiff is required to bring at one time all of the claims against a party or privies relating
20 to the same transaction or event. Adams, 487 F.3d at 693. The court has discretion to dismiss a
21 duplicative complaint with prejudice to prevent a plaintiff from “fragmenting a single cause of action
22 and litigating piecemeal the issues which could have been resolved in one action.” Adams, 487 F.3d
23 at 694 (quoting Flynn v. State Bd. of Chiropractic Exam'rs, 418 F.2d 668, 668 (9th Cir. 1969) (per
curiam)).

24 Because the instant petition challenges the same convictions as the petition currently pending
25 in case number “1:91-CV-00616 AWI,” the instant petition must be dismissed as duplicative. To the
26 extent Petitioner seeks to pursue his remedies with respect to the underlying convictions, he must do
27 so in the original case.

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