

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LEON HAWKINS,

1:09-cv-00771-LJO-SMS-PC
1:09-cv-00826-AWI-SMS-PC

Plaintiff,

ORDER GRANTING PLAINTIFF’S MOTION TO REOPEN CASE 1:09-cv-00771-LJO-SMS-PC (Doc. 13.)

v.

ORDER DISMISSING CASE 1:09-cv-00826-AWI-SMS-PC AS DUPLICATIVE

DERRAL G. ADAMS, et al.,

ORDER FOR CLERK TO REOPEN CASE 1:09-cv-00771-LJO-SMS-PC, AND TO CLOSE CASE 1:09-cv-00826-AWI-SMS-PC

Defendants.

ORDER FOR CLERK TO DOCKET THIS ORDER IN BOTH CASES

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Plaintiff Leon Hawkins (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint initiating this action on April 30, 2009. (Doc. 1.) This action was dismissed on July 17, 2009, by the Court's order granting Plaintiff’s request for voluntary dismissal. (Docs. 10, 11.) Subsequently, on July 23, 2009, Plaintiff filed a motion to reopen this case. (Doc. 13.)

Plaintiff states that it was not his intention to completely dismiss his claim. Plaintiff explains that he filed the request for voluntary dismissal in this action to determine if the Court had assigned two different case numbers to the same claim, and if so, to eliminate one of the case numbers. Plaintiff filed two civil complaints within a short period of time, one on April 30, 2009 (*this case* – 1:09-cv-00771-LJO-SMS-PC; Hawkins v. Adams) and one on May 11, 2009 (*second case* – 1:09-cv-00826-AWI-SMS-PC; Hawkins v. Adams). The Court has thoroughly examined both complaints and finds they are identical except for a proof of service attached to the complaint for this case. It appears to the naked eye that each complaint, consisting of four pages and signed by Plaintiff on April 25, 2009, was an exact copy of the other before the Clerk stamped the date of filing on the

1 front page of each complaint. The Court has not yet screened either complaint pursuant to 28 U.S.C.
2 § 1915A. Plaintiff has requested to proceed, or is proceeding in forma pauperis in both cases. The
3 Court denied appointment of counsel in both cases, and no defendant has filed an answer or other
4 responsive pleading in either case. If open, both cases would be proceeding at essentially the same
5 stage of the litigation. Therefore, the Court finds the two cases to be duplicative.

6 Plaintiff can rest assured that his claim was not dismissed. Although this case was dismissed
7 and closed on July 17, 2009, Plaintiff's second case, 1:09-cv-00826-AWI-SMS-PC, filed on May
8 11, 2009, remained open and pending before the Court.

9 When two complaints are found to be duplicative, it is the Court's practice to dismiss the
10 later-filed complaint, leaving the plaintiff to proceed on the earlier-filed complaint. Therefore, in
11 this instance, Plaintiff's motion to reopen this case shall be granted, and Plaintiff's second case shall
12 be dismissed as duplicative. As a result, Plaintiff's claim shall proceed with only case number, 1:09-
13 cv-00771-LJO-SMS-PC. Plaintiff is advised that he should use case number 1:09-cv-00771-LJO-
14 SMS-PC when filing all further pleadings involving the above two cases. Plaintiff is cautioned that
15 use of an incorrect case number, including initials, may result in a delay of documents being
16 processed and copies thereof being correctly distributed and received by the appropriate judicial
17 officer.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff's motion to reopen this case is GRANTED;
- 20 2. Plaintiff's second case, 1:09-cv-00826-AWI-SMS-PC, is DISMISSED as duplicative;
- 21 3. The Clerk shall:
 - 22 (1) REOPEN this case, 1:09-cv-00771-LJO-SMS-PC;
 - 23 (2) CLOSE Plaintiff's second case, 1:09-cv-00826-AWI-SMS-PC; and
 - 24 (3) DOCKET this order in both cases.

25 IT IS SO ORDERED.

26 **Dated: July 28, 2009**

27 **/s/ Lawrence J. O'Neill**
28 **UNITED STATES DISTRICT JUDGE**