1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 8 EASTERN DISTRICT OF CALIFORNIA 9 10 LEROY DEWITT HUNTER, CASE NO. 1:10-cv-00096-AWI-MJS (PC) 11 Plaintiff, FINDINGS AND RECOMMENDATIONS COMPLAINT BE DISMISSED WITH 12 PREJUDICE AS DUPLICATIVE ٧. 13 ATTORNEY GENERAL FOR THE STATE (ECF No. 1) 14 OF CALIFORNIA, et al., PLAINTIFF'S OBJECTIONS, IF ANY, DUE 15 Defendants. IN THIRTY (30) DAYS 16 17 18 FINDINGS AND RECOMMENDATIONS TO DISMISS COMPLAINT AS DUPLICATIVE 19 On January 19, 2010, Plaintiff Leroy Dewitt Hunter, a state prisoner proceeding pro 20 se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. (ECF 21 No. 1.) 22 The substantive issues in Plaintiff's Complaint in this action are identical to those 23 24 raised in a complaint filed by Plaintiff on December 18, 2009, in case 1:09-cv-02203-25 MJS-PC, Hunter v. Director of Corrections. 26 "After weighing the equities of the case, the district court may exercise its discretion 27 1

to dismiss a duplicative later-filed action, to stay that action pending resolution of the previously filed action, to enjoin the parties from proceeding with it, or to consolidate both actions." Adams v. California Dept. of Health Services, 487 F.3d 684, 688 (9th Cir. 2007). "Plaintiffs generally have 'no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant." Id. (quoting Walton v. Eaton Corp., 563 F.2d 66, 70 (3d Cir. 1977) (en banc)). "[A] suit is duplicative if the claims, parties, and available relief do not significantly differ between the two actions." Id. at 689.

Plaintiff's current Complaint simply copies, verbatim except for heading and date changes and an introduction, eleven pages from his December 18, 2009 complaint. The present pleading deletes language from the original; it does not add anything of substance. In short, everything of substance alleged in the current Complaint also is alleged in the former complaint. This one is duplicative and should be dismissed for that reason.

Accordingly, it is HEREBY RECOMMENDED that:

- 1. The complaint in this action be dismissed as duplicative of the complaint in case 1:09-cv-02203-MJS-PC, <u>Hunter v. Department of Corrections</u>; and
- 2. The Clerk of Court be directed to close this action.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(I). Within thirty (30) days after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right

1	to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)		
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3	IT IS SO ORDERED.		
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5	Dated:	September 29, 2011	1st Michael J. Seng
6	ci4d6		UNITED STATES MAGISTRATE JUDGE
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