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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10

11 MARIO GUTIERREZ,  
12                      Petitioner,

13                      v.

14 THE PEOPLE,  
15                      Respondent.

) Case No.: 1:12-cv-01487-JLT  
)  
) FINDINGS AND RECOMMENDATIONS TO  
) DISMISS PETITION FOR WRIT OF HABEAS  
) CORPUS AS DUPLICATIVE  
)  
) ORDER DIRECTING THAT OBJECTIONS BE  
) FILED WITHIN TWENTY DAYS  
)  
) ORDER DIRECTING CLERK OF THE COURT TO  
) ASSIGN DISTRICT JUDGE TO CASE  
)

18  
19                      Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas  
20 corpus pursuant to 28 U.S.C. § 2254. The instant petition was filed on August 8, 2012, challenging a  
21 1998 Kern County Superior Court conviction for assault with a deadly weapon that resulted in a  
22 determinate sentence of seven years. (Doc. 1, p. 2).

23                      In the course of screening this case, the Court has become aware of a virtually identical  
24 petition filed by Petitioner in case no. 1:12-cv-01289-AWI-GSA, filed the same date as the instant  
25 petition. The two petitions are identical with two exceptions: (1) the instant petition contains a request  
26 for damages in the amount of two billion dollars; and (2) an “explanatory” note on page nine about  
27 why the 1998 strike conviction was improper. Petitioner also indicates in the instant petition that it is  
28 intended to be the original and that two other copies were submitted to the Court as copies.

1 **DISCUSSION**

2 Although it appears that Petitioner may have intended only to submit one petition for filing,  
3 i.e., the instant petition, the Clerk of the Court filed both the instant petition and at least one other  
4 copy, giving them different case numbers and assigning them to different Magistrate Judges. In case  
5 no. 1:12-cv-01289-AWI-GSA, the Court, on September 25, 2012, dismissed the petition on the  
6 grounds that it fails to state a claim for habeas relief, it contains unexhausted claims, and fails to name  
7 a proper respondent. (Doc. 14, case no. 1:12-cv-01289-AWI-GSA). However, the Court in that case  
8 gave Petitioner an opportunity to file a first amended petition that corrects the deficiencies the Court  
9 identified in its order dismissing the original petition. The amended petition is presently due on or  
10 before October 29, 2012.

11 Because the instant petition is, with the exceptions noted above, verbatim identical to the  
12 petition in case no. 1:12-cv-01289-AWI-GSA, the Court will recommend that this petition be  
13 dismissed as duplicative and that Petitioner proceed with any claims he wishes to pursue in a first  
14 amended petition in the other case. If Petitioner wishes to pursue money damages or wishes to further  
15 elaborate on his contention that his 1998 strike was unlawful, he will have to raise these issues before  
16 the Court in that action.

17 **ORDER**

18 The Clerk of the Court is DIRECTED to assign a United States District Judge to this case.

19 **RECOMMENDATIONS**

20 Accordingly, the Court HEREBY RECOMMENDS that the instant petition be dismissed as  
21 duplicative of case no. 1:12-cv-01289-AWI-GSA.

22 This Findings and Recommendation is submitted to the United States District Court Judge  
23 assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local  
24 Rules of Practice for the United States District Court, Eastern District of California. Within twenty  
25 (20) days after being served with a copy of this Findings and Recommendation, any party may file  
26 written objections with the Court and serve a copy on all parties. Such a document should be  
27 captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to the  
28 Objections shall be served and filed within ten (10) court days (plus three days if served by mail) after

1 service of the Objections. The Court will then review the Magistrate Judge's ruling pursuant to 28  
2 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time  
3 may waive the right to appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir.  
4 1991).

5  
6 IT IS SO ORDERED.

7 Dated: September 28, 2012

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE