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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IVORY NORWOOD,
Petitioner,
v.
PAUL COPENHAVER,
Respondent.

Case No. 1:14-cv-00588 LJO GSA HC
FINDINGS AND RECOMMENDATION
REGARDING DUPLICATIVE PETITION

Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On April 21, 2014, Petitioner filed a petition for writ of habeas corpus in this Court. This petition has been assigned case number 1:14-CV-00574 AWI MJS HC, and is currently awaiting screening.

On April 23, 2014, Petitioner filed a duplicate of the first federal petition for writ of habeas corpus in this Court. This petition has been assigned case number 1:14-CV-00588 LJO GSA HC.

“After weighing the equities of the case, the district court may exercise its discretion 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

1 have ‘no right to maintain two separate actions involving the same subject matter at the same
2 time in the same court and against the same defendant.’” Adams, 487 F.3d at 688 (quoting
3 Walton v. Eaton Corp., 563 F.2d 66, 70 (3d Cir. 1977) (en banc)).

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

15 A plaintiff is required to bring at one time all of the claims against a party or privies
16 relating to the same transaction or event. Adams, 487 F.3d at 693. The court has discretion to
17 dismiss a duplicative complaint with prejudice to prevent a plaintiff from “fragmenting a single
18 cause of action and litigating piecemeal the issues which could have been resolved in one
19 action.” Adams, 487 F.3d at 694 (quoting Flynn v. State Bd. of Chiropractic Exam'rs, 418 F.2d
20 668, 668 (9th Cir.1969) (per curiam)).

21 Normally, “where a new pro se petition is filed before the adjudication of a prior petition
22 is complete, the new petition should be construed as a motion to amend the pending petition
23 rather than as a successive application.” Woods v. Carey, 525 F.3d 886, 888-890 (9th Cir.
24 2008). However in this case, the new petition is an exact duplicate of the petition currently
25 pending in the previously-filed petition. Therefore, construing the new petition as a motion to
26 amend would serve no purpose. The instant petition should be dismissed as duplicative.

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1 **RECOMMENDATION**

2 Accordingly, the Court RECOMMENDS that the Petition for Writ of Habeas Corpus be
3 DISMISSED as duplicative.

4 This Findings and Recommendation is submitted to the Honorable Lawrence J. O’Neill,
5 United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and
6 Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of
7 California. Within fourteen (14) days after being served with a copy, Petitioner may file written
8 objections with the Court. Such a document should be captioned “Objections to Magistrate
9 Judge’s Findings and Recommendation.” The Court will then review the Magistrate Judge’s
10 ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Petitioner is advised that failure to file objections
11 within the specified time may waive the right to appeal the District Court’s order. Martinez v.
12 Ylst, 951 F.2d 1153 (9th Cir. 1991).

13
14 IT IS SO ORDERED.

15 Dated: May 12, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE