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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL EUGENE THOMAS,
Petitioner,

v.

RONALD DAVIS, Warden,
Respondent.

Case No. 1:15-cv-00126 MJS (HC)

**FINDINGS AND RECOMMENDATION TO
DISMISS PETITION FOR WRIT OF
HABEAS CORPUS AS DUPLICATIVE OF
EARLIER FILED PETITION**

**ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT COURT JUDGE TO
THE PRESENT MATTER**

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On January 20, 2015, Petitioner filed a federal petition for writ of habeas corpus. That petition was assigned case number “1:15-cv-00119 SAB HC,” and is currently pending before the Court. In it, Petitioner presents two claims relating to his March, 1989 conviction: that the state court lacked jurisdiction; and, that there were defects in the information and other documents filed in the case.

On January 20, 2015, Petitioner filed a second federal petition for writ of habeas corpus. This petition has been assigned case number “1:15-cv-0126 MJS HC.” In the instant petition, Petitioner presents similar, if not identical, jurisdictional challenges to his 1989 state court conviction. (Pet. at 5, ECF No. 1.)

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

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

20 A plaintiff is required to bring at one time all of the claims against a party or privies
21 relating to the same transaction or event. Adams, 487 F.3d at 693. The court has
22 discretion to dismiss a duplicative complaint with prejudice to prevent a plaintiff from
23 “fragmenting a single cause of action and litigating piecemeal the issues which could
24 have been resolved in one action.” Adams, 487 F.3d at 694.

25 In the present case, the instant petition challenges the same issues already being
26 adjudicated by the Court in case number “1:15-cv-00119 SAB HC.” The Court
27 recommends the instant petition be dismissed as duplicative.

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RECOMMENDATION

It is RECOMMENDED that the petition for writ of habeas corpus be DISMISSED as duplicative. Further, the Court ORDERS the Clerk of Court to assign a District Court Judge to the present matter.

These findings and recommendations are submitted to the United States District Court Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within thirty (30) days after being served with a copy, Petitioner may file written objections with the Court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(c). Petitioner is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, ___ F.3d ___, ___, No. 11-17911, 2014 WL 6435497, at *3 (9th Cir. Nov. 18, 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: January 26, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE