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## UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID HUME,  
  
                        Plaintiff,  
  
          v.  
  
JULIE SU, et al.,  
  
                        Defendants.

Case No. 1:15-cv-00486-LJO-SKO

### **ORDER DISMISSING COMPLAINT AS DUPLICATIVE**

#### **BACKGROUND**

On August 25, 2014, the California Division of Labor Standards Enforcement filed suit against David Hume ("Hume") stating one cause of action for backpay and injunctive relief for unlawful discharge in violation of California Labor Code Section 98.6. (*Su v. Hume et al.*, ("*Hume I*"), 1:14-cv-01917-JAM-GSA, Doc. 1, p. 7-14.) On December 3, 2014, Hume removed the case to this Court asserting federal jurisdiction. (*Hume I*, 1:14-cv-01917-JAM-GSA, Doc. 1.) Among other things, Hume predicated his assertion of federal jurisdiction on a "cross-complaint" he filed on December 11, 2014, after he removed the case to federal court. (*See Hume I*, 1:14-cv-01917-JAM-GSA, Doc. 6.) The cross-complaint asserted 19 causes of action against Julie Su, Christine Baker, Ethera Clemons, Barbara Beckerley, World Financial Corporation, Primerica Corporation, and ROES 1-100. (*Hume I*, 1:14-cv-01917-JAM-GSA, Doc. 6.)

Hume filed a First Amended Cross-Complaint in *Hume I* on February 2, 2015. (*See Hume I*, 1:14-cv-01917-JAM-GSA, Doc. 21.) On April 2, 2015, Judge Mendez determined neither the complaint nor the First Amended Cross-Complaint supplied subject matter jurisdiction, and the matter was remanded to Fresno County Superior Court, where it remains pending. (*Hume I*, 1:14-

1 cv-01917-JAM-GSA, Doc. 25; *Su v. Hume, et al.*, 14-CE-CG-02826 (Fresno County Superior  
2 Court.)

3 On March 25, 2015, Hume filed a verified complaint in this action (*Hume v. Su, et al.*,  
4 "*Hume II*"), 1:15-cv-00486-LJO-SKO) which is virtually identical to the First Amended Cross-  
5 Complaint filed in *Hume I*.

6 **DISCUSSION**

7 Duplicative or repetitious litigation of virtually identical causes of action is subject to  
8 dismissal under 28 U.S.C. §1915(d). *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988).  
9 "[A]n IFP complaint that merely repeats pending or previously litigated claims may be considered  
10 abusive and dismissed under the authority of section 1915(d)." *Id.*

11 Upon review of the dockets of both *Hume I*, 1:14-cv-01917-JAM-GSA and *Sue v. Hume,*  
12 *et al.*, 14-CE-CG-02826, the complaint in this action, *Hume II*, is duplicative of the First Amended  
13 Cross-Complaint now pending before the Fresno County Superior Court. The causes of action  
14 alleged are identical and arise out of the same factual allegations made in the First Amended  
15 Cross-Complaint in *Hume I*. See *Adams v. Cal. Dep't of Health Services*, 487 F.3d 684, 688 (9th  
16 Cir. 2007) ("[A] suit is duplicative if the claims, parties, and available relief do not significantly  
17 differ between the two actions."). Therefore, *Hume II* shall be dismissed as duplicative of *Hume I*.

18 **CONCLUSION**

19 For the reasons set forth above, IT IS HEREBY ORDERED that:

- 20 1. Plaintiff's complaint is DISMISSED without prejudice as duplicative of his First  
21 Amended Cross-Complaint currently pending before the Fresno County Superior  
22 Court; and  
23 2. The Clerk of Court shall close this case.

24  
25 IT IS SO ORDERED.

26 Dated: August 3, 2015

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