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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 MOSES FLORES,

10 Plaintiff,

11 v.

12 RED ROBIN,

13 Defendant.

Case No. 1:17-cv-00595-DAD-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING ACTION
AS DUPLICATIVE

(ECF No. 1)

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

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15 Plaintiff Moses Flores, a Nevada state prisoner, is appearing pro se in this action and is
16 seeking relief pursuant to the Equal Pay Act, 29 U.S.C. § 206(d). In his complaint, Plaintiff
17 states that he had already attempted to file this action but had not heard back so he is assuming
18 that the case was lost in the mail. (Compl. 2, ECF No. 1.) The Court finds upon review of the
19 Court’s records, that Plaintiff filed an action, Flores v. Red Robin, 1:17-cv-00396-LJO-SKO, on
20 March 20, 2017 alleging similar violations of the Equal Pay Act.

21 A plaintiff generally has “no right to maintain two separate actions involving the same
22 subject matter at the same time in the same court and against the same defendant.” Adams v.
23 California Dep’t of Health Servs., 487 F.3d 684, 688 (9th Cir. 2007), overruled in part on other
24 grounds by Taylor v. Sturgell, 553 U.S. 880 (2008) (citing Walton v. Eaton Corp., 563 F.2d 66,
25 70 (3d Cir.1977)). “After weighing the equities of the case, the district court may exercise its
26 discretion to dismiss a duplicative later-filed action, to stay that action pending resolution of the
27 previously filed action, to enjoin the parties from proceeding with it, or to consolidate both
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1 actions.” Adams, 487 F.3d at 688. In deciding whether the action is duplicative, the Court
2 examines whether the causes of action and relief sought, as well as the parties or privies to the
3 action, are the same. Id. at 689.

4 Here, Plaintiff brings the same cause of action against the same defendant based upon the
5 same facts that are presented in Flores v. Red Robin, 1:17-cv-00396-LJO-SKO. Plaintiff has
6 brought both actions against the same plaintiff, Red Robin and is seeking relief under the Equal
7 Pay Act. Finally, the Court finds that both of these actions share a common nucleus of facts. In
8 both actions, Plaintiff contends that he was hired as a line cook by the defendant and after
9 learning both stations was to take the position of a female employee. Plaintiff asserts that he was
10 not paid the same wage as the female employee who quit. The Court finds that these two actions
11 are duplicative and therefore, recommends that this action be dismissed.

12 Accordingly, IT IS HEREBY RECOMMENDED that this action be DISMISSED as
13 duplicative of the previously filed action, Flores v. Red Robin, 1:17-cv-00396-LJO-SKO.

14 This findings and recommendations are submitted to the district judge assigned to this
15 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within fourteen
16 (14) days of service of this recommendation, Plaintiff may file written objections to these
17 findings and recommendations with the Court. Such a document should be captioned
18 “Objections to Magistrate Judge’s Findings and Recommendations.” The district judge will
19 review the magistrate judge’s findings and recommendations pursuant to 28 U.S.C. §
20 636(b)(1)(C). Plaintiff is advised that failure to file objections within the specified time may
21 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
22 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23
24 IT IS SO ORDERED.

25 Dated: May 17, 2017


UNITED STATES MAGISTRATE JUDGE