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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 TONY R. LEWIS,

12 Plaintiff(s),

13 v.

14 CALIFORNIA DEPARTMENT OF
15 CORRECTIONS AND
16 REHABILITATION *et al.*,

17 Defendant(s).
18

1:17-cv-01102-EPG-PC

**ORDER DISMISSING THIS CASE AS
DUPLICATIVE OF CASE 1:17-cv-
01064-EPG**

19 Tony R. Lewis (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis*
20 in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
21 commencing this action on August 16, 2017. (ECF No. 1.)

22 The Court finds that this case is duplicative of another pending case filed by Plaintiff on
23 August 9, 2017, and therefore, this case must be dismissed.

24 **I. DUPLICATIVE CASES**

25 “District courts retain broad discretion to control their dockets and ‘[i]n the exercise of
26 that power they may impose sanctions including, where appropriate, default or dismissal.’”
27 *Adams v. California Dept. of Health Services*, 487 F.3d 684, 688 (9th Cir. 2007) (quoting
28 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir.1986) (per

1 curiam)). “After weighing the equities of the case, the district court may exercise its discretion
2 to dismiss a duplicative later-filed action, to stay that action pending resolution of the
3 previously filed action, to enjoin the parties from proceeding with it, or to consolidate both
4 actions.” *Adams*, 497 F.3d at 688 (citing *see Curtis v. Citibank, N.A.*, 226 F.3d 133, 138–39
5 (2d Cir. 2000); *Walton v. Eaton Corp.*, 563 F.2d 66, 70–71 (3d Cir. 1977) (en banc), cited with
6 approval in *Russ v. Standard Ins. Co.*, 120 F.3d 988, 990 (9th Cir. 1997)).

7 “Plaintiffs generally have ‘no right to maintain two separate actions involving the same
8 subject matter at the same time in the same court and against the same defendant.’” *Adams*,
9 497 F.3d at 688 (quoting *Walton*, 563 F.2d at 70; *see also Curtis*, 226 F.3d at 138–39; *Serlin v.*
10 *Arthur Andersen & Co.*, 3 F.3d 221, 223–24 (7th Cir. 1993)).

11 “To determine whether a suit is duplicative, we borrow from the test for claim
12 preclusion.” *Adams*, 497 F.3d at 688. “[T]he true test of the sufficiency of a plea of ‘other suit
13 pending’ in another forum [i]s the legal efficacy of the first suit, when finally disposed of, as
14 ‘the thing adjudged,’ regarding the matters at issue in the second suit.” *Id.* (quoting *The*
15 *Haytian Republic*, 154 U.S. 118, 124 (1894)). “Thus, in assessing whether the second action is
16 duplicative of the first, we examine whether the causes of action and relief sought, as well as
17 the parties or privies to the action, are the same.” *Adams*, 497 F.3d at 689 (citing *see The*
18 *Haytian Republic*, 154 U.S. at 124 (“There must be the same parties, or, at least, such as
19 represent the same interests; there must be the same rights asserted and the same relief prayed
20 for; the relief must be founded upon the same facts, and the ... essential basis, of the relief
21 sought must be the same.” (internal quotation marks omitted)); *Curtis*, 226 F.3d at 140 (holding
22 that the trial court did not abuse its discretion in dismissing “Curtis II claims arising out of the
23 same events as those alleged in Curtis I,” which claims “would have been heard if plaintiffs had
24 timely raised them”); *Serlin*, 3 F.3d at 223 (“[A] suit is duplicative if the claims, parties, and
25 available relief do not significantly differ between the two actions.” (internal quotation marks
26 omitted)).

27 **II. DISCUSSION**

28 Plaintiff has two civil rights cases pending before this Court. The first case was filed on

1 August 9, 2016 as case 1:17-cv-01064-EPG (*Lewis v. CDCR, et al.*) (“Case 17-1064”). The
2 second case is the present case, 1:17-cv-01102-EPG-PC (*Lewis v. CDCR, et al.*) (“Case 17-
3 1102”) filed on August 16, 2017. (ECF No. 1.) On August 16, 2017, Plaintiff filed a motion to
4 proceed *in forma pauperis* in this action. (ECF No. 2.) By Order dated August 17, 2017, this
5 Court granted Plaintiff’s application to proceed *in forma pauperis*. (ECF No. 4.)

6 The Court has reviewed Plaintiff’s two cases and finds that both cases are civil rights
7 actions pursuant to 42 U.S.C. § 1983, and the parties, allegations, claims, and requested relief
8 are identical.

9 Based on these facts, the Court finds this case to be duplicative of Case 17-1064.
10 Therefore, this case must be dismissed.

11 However, the Court finds that two documents should be moved from Case 17-1102 for
12 consideration in Case 17-1064: (1) Plaintiff’s application to proceed *in forma pauperis*, filed
13 on August 16, 2017 (ECF No. 2) and (2) the Court’s August 17, 2017 Order granting Plaintiff’s
14 application to proceed *in forma pauperis* (ECF No. 4.).

15 **III. CONCLUSION AND ORDER**

16 Therefore, based on the foregoing, **IT IS HEREBY ORDERED** that:

- 17 1. This case is DISMISSED as duplicative of case 1:17-cv-01064-EPG (*Lewis v.*
18 *CDCR, et al.*);
- 19 2. The Clerk is directed to move two documents from the present case to case 1:17-
20 cv-01064-EPG: (1) Plaintiff’s application to proceed *in forma pauperis*, filed on
21 August 16, 2017 (ECF No. 2) and (2) the Court’s August 17, 2017 Order granting
22 Plaintiff’s application to proceed *in forma pauperis* (ECF No. 4.); and
- 23 3. The Clerk is directed to administratively CLOSE this case.

24
25 IT IS SO ORDERED.

26 Dated: September 5, 2017

27 /s/ Eric P. Grosjean
28 UNITED STATES MAGISTRATE JUDGE