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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 WAYNE THOMPSON,

12 Plaintiff,

13 vs.

14 TOM CAGLE, et al.,

15 Defendants.
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1:18-cv-01050-DAD-GSA-PC

**FINDINGS AND RECOMMENDATIONS
TO DISMISS THIS CASE AS
DUPLICATIVE OF CASE 1:18-cv-01020-
LJO-EPG-PC**

**OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS**

17 **I. BACKGROUND**

18 Wayne Thompson (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
19 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the
20 Complaint commencing this action on July 27, 2018, at the United States District Court for the
21 Southern District of California. (ECF No. 1.) The case was transferred to this court on August
22 6, 2018. (ECF No. 3.)

23 On October 12, 2018, Plaintiff notified the court that funds are being withdrawn from
24 his prison trust account to pay the filing fees for two cases at this court, 1:18-cv-01020 and
25 1:18-cv-01050. (ECF No. 14.) Plaintiff asserts that the two cases are the same.

26 **II. DUPLICATIVE CASES**

27 “District courts retain broad discretion to control their dockets and ‘[i]n the exercise of
28 that power they may impose sanctions including, where appropriate, default or dismissal.’”

1 Adams v. California Dept. of Health Services, 487 F.3d 684, 688 (9th Cir. 2007) (quoting
2 Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir.1986) (per
3 curiam)). “After weighing the equities of the case, the district court may exercise its discretion
4 to dismiss a duplicative later-filed action, to stay that action pending resolution of the
5 previously filed action, to enjoin the parties from proceeding with it, or to consolidate both
6 actions.” Adams, 497 F.3d at 688 (citing see Curtis v. Citibank, N.A., 226 F.3d 133, 138–39
7 (2d Cir. 2000); Walton v. Eaton Corp., 563 F.2d 66, 70–71 (3d Cir. 1977) (en banc), cited with
8 approval in Russ v. Standard Ins. Co., 120 F.3d 988, 990 (9th Cir. 1997)).

9 “Plaintiffs generally have ‘no right to maintain two separate actions involving the same
10 subject matter at the same time in the same court and against the same defendant.’” Adams,
11 497 F.3d at 688 (quoting Walton, 563 F.2d at 70; see also Curtis, 226 F.3d at 138–39; Serlin v.
12 Arthur Andersen & Co., 3 F.3d 221, 223–24 (7th Cir. 1993)).

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

1 **III. PLAINTIFF’S CASES**

2 Plaintiff is correct that he has two civil rights cases pending before this court.

3 **Case #1 -- first case -- “18-1020”**

4 This first case was filed by Plaintiff on July 24, 2018, at the United States District Court
5 for the Central District of California. On July 26, 2018, the case was transferred to this court
6 and assigned case number 1:18-cv-01020-LJO-EPG-PC. (Court Docket.)

7 **Case #2 - this case -- “18-1050”**

8 The second case was filed by Plaintiff on July 27, 2018, at the United States District
9 Court for the Southern District of California. (ECF No. 1.) On August 6, 2018, the case was
10 transferred to this court and assigned case number 1:18-cv-01050-DAD-GSA-PC. (ECF No.
11 3.)

12 **IV. DISCUSSION**

13 The court has reviewed Plaintiff’s two cases described above and finds that both cases
14 are civil rights actions pursuant to 42 U.S.C. § 1983, and the parties, allegations, claims, and
15 requested relief are identical. The original complaints from both actions appear to be identical
16 copies of each other, except for some variation in the exhibits attached to the complaints, which
17 the court finds to be immaterial.¹ Based on these facts, the court finds the present case, 18-
18 01050, to be duplicative of case 18-01020. Because the present case was filed after case 18-
19 01020 was filed, the court shall recommend that the present case be dismissed.²

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24 ¹ Plaintiff’s exhibits consist of copies of his administrative appeals and an application to proceed
25 in forma pauperis. (Case 18-1020 at ECF No. 1, pp. 8-28; Case 18-1050 at ECF No. 1, pp. 8-18.)

26 ² Plaintiff is advised that he is obligated to pay the filing fees for both of his cases. The filing fee
27 is collected by the court as payment for filing the case, and Plaintiff filed two cases, one in the Central District of
28 California and one in the Southern District of California. The fact that both of the cases were transferred to the
Eastern District of California does not change the fact that Plaintiff filed two separate cases in two different
districts. Therefore, Plaintiff is required to pay the filing fee in full for both cases, notwithstanding dismissal of
one of the cases. 28 U.S.C. 1915(a)(2).

1 **V. CONCLUSION AND RECOMMENDATIONS**

2 The court finds that the present case is duplicative of case 1:18-cv-1020-LJO-EPG-PC.

3 Therefore, based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

- 4 1. This case be DISMISSED as duplicative of case 1:18-cv-01020-LJO-EPG-PC;
5 and
6 2. The Clerk be directed to CLOSE this case.

7 These Findings and Recommendations will be submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
9 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
10 file written objections with the court. The document should be captioned "Objections to
11 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
12 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
13 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
14 (9th Cir. 1991)).

15 IT IS SO ORDERED.

16 Dated: October 17, 2018

17 /s/ Gary S. Austin
18 UNITED STATES MAGISTRATE JUDGE