

1 of Court duplicated the action under a new case number, *Ford v. Trate*, Case No. 1:22-cv-01595-
2 CDB (“Case 22-01595”). In recognition of this oversight, on January 23, 2023, the Court ordered
3 the parties to make and caption all future filings in Case No. 22-01327 only and to cease making
4 any filings in this case (Case 22-01595).

5 On May 16, 2023, the Hon. District Judge Jennifer L. Thurston entered an order
6 dismissing Case No. 22-01327 and denying Petitioner’s motion for preliminary injunction. With
7 Petitioner’s claims resolved in Case No. 22-01327, the Court now issues these findings and
8 recommendations to terminate this pending, duplicative action (Case No. 22-01595).

9 **DUPLICATIVE CASES**

10 “District courts retain broad discretion to control their dockets and ‘[i]n the exercise of
11 that power they may impose sanctions including, where appropriate, default or dismissal.’”
12 *Adams v. California Dept. of Health Services*, 487 F.3d 684, 688 (9th Cir. 2007), *overruled on*
13 *other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008) (quoting *Thompson v. Hous. Auth. of*
14 *City of Los Angeles*, 782 F.3d 829, 831 (9th Cir. 1986) (per curiam)). “After weighing the equities
15 of the case, the district court may exercise its discretion to dismiss a duplicative-later filed action,
16 to stay that action pending resolution of the previously filed action, to enjoin the parties from
17 proceeding with it, or to consolidate both actions.” *Adams*, 497 F.3d at 688 (citing *Curtis v.*
18 *Citibank, N.A.*, 226 F.3d 133, 138-39 (2d Cir. 2000); *Walton v. Eaton Corp.*, 563 F.2d 66, 70-70
19 (3d Cir. 1977) (en banc), cited with approval by *Russ v. Standard Ins. Co.*, 120 F.3d 988, 990 (9th
20 Cir. 1997)).

21 Plaintiffs generally have “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*, 497
23 F.3d at 688 (citations and quotations omitted.) To determine whether a suit is duplicative, the
24 Court borrows the test used for claim preclusion. *Id.* “[T]he true test of the sufficiency of a plea of
25 ‘other suit pending’ in another forum [i]s the legal efficacy of the first suit, when finally disposed
26 of, as ‘the thing adjudged,’ regarding the matters at issue in the second suit.” *Id.* (quoting *The*
27 *Haytian Republic*, 154 U.S. 118, 124 (1894)). “Thus, in assessing whether the second action is
28 duplicative of the first, we examine whether the causes of action and relief sought, as well as the

1 parties or privies to the action, are the same.” *Adams*, 497 F.3d at 689 (citing *The Haytian*
2 *Republic*, 154 U.S. at 124 (“There must be the same parties, or, at least, such as represent the
3 same interests; there must be the same rights asserted and the same relief prayed for; the relief
4 must be founded upon the same facts, and the . . . essential basis, of the relief sought must be the
5 same.” (Internal quotation marks omitted).

6 DISCUSSION

7 The Court has reviewed the filings in this case and Case No. 22-01327 and finds that the
8 parties, facts, causes of action, and relief sought are the same. The petition is identical across
9 both actions. Thus, in both petitions, Petitioner contends he is “actually innocent” of a 96-month
10 sentence imposed following his conviction for brandishing a firearm during and in relation to a
11 Hobbs Act robbery. Further, the pending motion for preliminary injunction in this action (Doc. 5)
12 is a photocopy of the same motion filed and disposed of in Case No. 22-01327.

13 Both petitions assert that this Court has jurisdiction to consider Petitioner’s claims under
14 28 U.S.C § 2255(e), the “escape hatch,” which permits a federal prisoner to challenge the
15 constitutionality of his federal conviction or sentence under 28 U.S.C. § 2241. *Harrison v.*
16 *Ollison*, 519 F.3d 952, 956 (9th Cir. 2008). The court of conviction has jurisdiction to hear a
17 petition under the “escape hatch” of § 2255 when a petitioner (1) makes a claim of actual
18 innocence, and (2) has not had an unobstructed procedural shot at presenting that claim. *Stephens*
19 *v. Herrera*, 464 F.3d 895, 897 (9th Cir. 2006).

20 In Case No. 22-01327, the Court found that it lacked jurisdiction over the petition because
21 Petitioner cannot establish that he never had an unobstructed procedural shot at presenting his
22 actual innocence claim. *Ford v. Trate*, Case No. 1:22-cv-01327-JLT-CDB, 2023 WL 3483781, *1
23 (E.D. Cal. May 16, 2023). Petitioner did not lack an unobstructed procedural shot since the
24 Fourth Circuit authorized him to file a successive § 2255 petition challenging his 96-month
25 consecutive sentence. Furthermore, Petitioner did in fact file the successive § 2255 petition,
26 which is currently pending in the District of Maryland. *Id.* (citing *Lewis v. Salazar*, 829 Fed.
27 Appx. 239, 241 (9th Cir. 2020) (affirming district court’s dismissal of habeas petition brought
28 pursuant to escape hatch because petitioner was able to present the same claim in motions to

1 leave to file successive § 2255 petitions)).

2 The equities in this case do not justify any other action other than dismissal. Even if
3 Petitioner’s successive § 2255 motion reached a resolution in the District of Maryland, this Court
4 would still lack jurisdiction over this case. Indeed, “it is not enough that the petitioner is presently
5 barred from raising his claim of innocence by motion under § 2255. He must never have had the
6 opportunity to raise by motion.” *Ivy v. Pontesso*, 328 F.3d 1057, 1060 (9th Cir. 2003).

7 **CONCLUSION AND RECOMMENDATION**

8 For the forgoing reasons, the Clerk of Court is DIRECTED to assign United States District
9 Judge Jennifer L. Thurston to this action, noting that this case is related to Case No. 1:22-cv-01327-
10 JLT-CDB. See Local Rule 123; Local Rule 190(d).

11 Furthermore, the Court HEREBY RECOMMENDS that this case be dismissed with
12 prejudice as duplicative of Case No. 1:22-cv-01327-JLT-CDB.

13 The Court FURTHER RECOMMENDS that Petitioner’s motions for Preliminary
14 Injunction (Docs. 5, 11) and Declaratory Judgment (Doc. 12) be denied as moot.

15 These findings and recommendations will be submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after
17 being served with these findings and recommendations, Petitioner may file written objections with
18 the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
19 Recommendations.” Petitioner is advised that failure to file objections within the specified time
20 may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
21 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22 IT IS SO ORDERED.

23 Dated: May 31, 2023

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26 UNITED STATES MAGISTRATE JUDGE
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