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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE HOWELL,

Petitioner,

No. CIV S-08-1995 JAM GGH P

vs.

T. FELKER, et al.,

Respondents.

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se. He seeks relief pursuant to 42 U.S.C. § 1983. Petitioner has responded to the court’s October 24, 2008, order to show cause why this action should not be dismissed as duplicative of CIV S-08-1799 LKK KJM P¹. Plaintiff stated that he did not realize that both actions were the same and if one action had to be dismissed, “I respectfully request that my injunction for relief be withdrawn and my civil 1983 complaint not be dismissed.” Response (Doc. 13) at 3. As both cases are 42 U.S.C. § 1983, claims and seek injunctive relief, the court will recommend that the complaint be dismissed. Adams v. Cal. Dept. of Health Services, 487 F.3d 684, 688 (9th Cir. 2007).

_____ ¹ A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 In accordance with the above, IT IS HEREBY RECOMMENDED that this action
2 be dismissed without prejudice. See Fed. R. Civ. P. 41(b).

3 These findings and recommendations are submitted to the District Judge assigned
4 to this case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after being
5 served with these findings and recommendations, plaintiff may file written objections with the
6 court. The document should be captioned “Objections to Magistrate Judge’s Findings and
7 Recommendations.” Plaintiff is advised that failure to file objections within the specified time
8 may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th
9 Cir. 1991).

10 DATED: January 12, 2009

11 /s/ Gregory G. Hollows

12 _____
13 GREGORY G. HOLLOWES
14 UNITED STATES MAGISTRATE JUDGE

14 GGH:AB
15 howe1995