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

JOSE RAMIREZ,

Petitioner,

No. CIV S-08-2487 GEB EFB P

vs.

BEN CURRY, Warden,

Respondent.

ORDER AND
FINDINGS AND RECOMMENDATIONS

_____/

Petitioner is a state prisoner proceeding without counsel on a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He seeks leave to proceed *in forma pauperis*. See 28 U.S.C. § 1915(a).

Examination of the *in forma pauperis* affidavit reveals that petitioner is unable to afford the costs of suit. However, it appears that petitioner has filed duplicative petitions, and that this action should therefore be dismissed. A suit is duplicative if the “claims, parties, and available relief do not significantly differ between the two actions.” *Barapind v. Reno*, 72 F. Supp.2d 1132, 1145 (E.D. Cal. 1999) (quoting *Ridge Gold Standard Liquors, Inc. v. Joseph E. Seagram & Sons, Inc.*, 572 F. Supp. 1210, 1213 (N.D. Ill. 1983)). “When a complaint involving the same parties and issues has already been filed in another federal district court, the court has discretion to abate or dismiss the second action. *Id.* at 1144 (citation omitted). “Federal comity and

1 judicial economy give rise to rules which allow a district court to transfer, stay, or dismiss an
2 action when a similar complaint has already been filed in another federal court.” *Id.* at 1145
3 (citation omitted). “[I]ncreasing calendar congestion in the federal courts makes it imperative to
4 avoid concurrent litigation in more than one forum whenever consistent with the right of the
5 parties.” *Crawford v. Bell*, 599 F.2d 890, 893 (9th Cir. 1979).

6 On June 13, 2006, petitioner filed an application for a writ of habeas corpus challenging a
7 2003 conviction in the Sacramento County Superior Court for carjacking, robbery, assault with a
8 weapon, and evading a peace officer. *Ramirez v. Runnels*, No. Civ. 06-1312-GHW, Docket No.
9 1.¹ That conviction resulted in a sentence of 36 years in state prison. *Id.* Respondent filed an
10 answer on August 24, 2006, and the matter is submitted for decision. *Id.* at Docket No. 8. On
11 October 20, 2008, petitioner commenced this action by filing a second application, which also
12 challenges a 2003 conviction in the Sacramento County Superior Court for carjacking, robbery,
13 assault with a weapon and evading a peace officer. In each petition, petitioner contends he was
14 denied effective assistance of counsel. Due to the duplicative nature of the present action, this
15 action should be dismissed and petitioner should proceed on the action he initially commenced.

16 Accordingly, it is hereby ORDERED that petitioner’s request to proceed *in forma*
17 *pauperis* is granted.

18 It is further RECOMMENDED that this action be dismissed without prejudice.

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days
21 after being served with these findings and recommendations, any party may file written
22 objections with the court and serve a copy on all parties. Such a document should be captioned

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26 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 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
2 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
3 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: October 6, 2009.

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6 EDMUND F. BRENNAN
7 UNITED STATES MAGISTRATE JUDGE
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