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

LEE EDWARD HARRIS,

Plaintiff,

No. CIV S-10-1177 KJM EFB P

vs.

HIGH DESERT STATE PRISON, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). Plaintiff commenced this action on May 13, 2010. Dckt. No. 1. On March 21, 2011 the court dismissed plaintiff’s complaint for failure to state a claim after reviewing it pursuant to 28 U.S.C. § 1915A. Dckt. No. 19. Plaintiff has since filed a first amended complaint and a second amended complaint, which do not differ in any material respects. Dckt. Nos. 22, 24.

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which

1 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
2 relief.” *Id.* § 1915A(b).

3 In this action, plaintiff seeks compensation from defendant Sisson for his placement in  
4 the Security Housing Unit since September 16, 2008. Dckt. Nos. 22, 24. Having reviewed the  
5 first and second amended complaints in this action, the court finds this action should be  
6 dismissed as frivolous because it is duplicative of an earlier filed action that plaintiff is now  
7 litigating in this court. Dckt. No. 24. *See Harris v. High Desert State Prison*, No. Civ. S-10-  
8 1031 JAM EFB Dckt. Nos. 1 (April 15, 2010 original complaint), 12 (October 20, 2010 amended  
9 complaint regarding placement in Security Housing Unit on September 16, 2008), 32 (screening  
10 order allowing action to proceed on due process claim against defendant Sisson).<sup>1</sup> *See* 28 U.S.C.  
11 § 1915A(b)(1); *see also Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (A  
12 complaint that “merely repeats pending or previously litigated claims” may be dismissed as  
13 frivolous under the authority of 28 U.S.C. § 1915). A suit is duplicative if the “claims, parties,  
14 and available relief do not significantly differ between the two actions.” *Barapind v. Reno*, 72 F.  
15 Supp.2d 1132, 1145 (E.D. Cal. 1999) (quoting *Ridge Gold Standard Liquors, Inc. v. Joseph E.*  
16 *Seagram & Sons, Inc.*, 572 F. Supp. 1210, 1213 (N.D. Ill. 1983)). “When a complaint involving  
17 the same parties and issues has already been filed in another federal district court, the court has  
18 discretion to abate or dismiss the second action. *Id.* at 1144 (citation omitted). “Federal comity  
19 and judicial economy give rise to rules which allow a district court to transfer, stay, or dismiss an  
20 action when a similar complaint has already been filed in another federal court.” *Id.* at 1145  
21 (citation omitted). “[I]ncreasing calendar congestion in the federal courts makes it imperative to  
22 avoid concurrent litigation in more than one forum whenever consistent with the right of the  
23 parties.” *Crawford v. Bell*, 599 F.2d 890, 893 (9th Cir. 1979). Due to the duplicative nature of  
24 the present action, this action should be dismissed and plaintiff should proceed on the action he

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26 <sup>1</sup> A court may take judicial notice of court records. *See MGIC Indem. Co. v. Weisman*,  
803 F.2d 500, 504 (9th Cir. 1986); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

1 initially commenced.

2 Accordingly, it is hereby RECOMMENDED that this action be dismissed as duplicative  
3 and frivolous.

4 These findings and recommendations are submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
6 after being served with these findings and recommendations, any party may file written  
7 objections with the court and serve a copy on all parties. Such a document should be captioned  
8 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
9 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
10 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

11 Dated: November 8, 2011.

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13 EDMUND F. BRENNAN  
14 UNITED STATES MAGISTRATE JUDGE  
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