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

MELVIN LEE WILSON,

Petitioner,

No. CIV S-10-2284 GGH P

vs.

SANDRA LEE WEVER, et. al.,

Respondents.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se. Plaintiff’s complaint was filed with the court on August 25, 2010. The court’s own records reveal that on August 7, 2009, plaintiff filed a complaint containing virtually identical allegations against the same defendants. (No. Civ. S-09-02191 LKK CMK).¹

In light of the prior and pending complaints, this court finds that plaintiff, in filing the instant apparently duplicative action, has engaged in what appears to be an abuse of process. Sprouse v. Babcock, 870 F.2d 450, 452 (8th Cir. 1989)(“reasonable limitations may be placed on” litigants’ “access to the courts when they abuse the judicial process by repeatedly filing frivolous claims”); Glick v. Gutbrod, 782 F.2d 754, 757 (7th Cir. 1986) (court has discretion to dismiss

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 cases where “clear pattern of abuse of the judicial process” is demonstrated); Adams v. Cal.
2 Dept. of Health Services, 487 F.3d 684, 688 (9th Cir. 2007) (district court has discretion to
3 dismiss a duplicative action). On May 7, 2010, plaintiff’s prior complaint was dismissed without
4 leave to amend because he did not allege that any of the named defendants were state actors, and
5 the court concluded that the deficiencies in his complaint were too great to be cured. By filing a
6 nearly identical complaint within four months of the original complaint’s dismissal, plaintiff has
7 wasted the limited resources of this court. This case should be summarily dismissed.

8 In accordance with the above, IT IS HEREBY RECOMMENDED that this action
9 be dismissed with prejudice. See Fed. R. Civ. P. 41(b). The Clerk of Court is directed to assign
10 a district judge to this case.

11 These findings and recommendations are submitted to the District Judge assigned
12 to this case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being
13 served with these findings and recommendations, plaintiff may file written objections with the
14 court. The document should be captioned “Objections to Magistrate Judge’s Findings and
15 Recommendations.” Any response to the objections shall be filed and served within fourteen
16 days after service of the objections. Plaintiff is advised that failure to file objections within the
17 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
18 F.2d 1153 (9th Cir. 1991).

19 DATED: September 17, 2010

20
21 /s/ Gregory G. Hollows

22 UNITED STATES MAGISTRATE JUDGE

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