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

PETER GRAVES,

Plaintiff,

No. CIV S-11-0367 JAM GGH PS

vs.

RICHARD C. VISEK, et al.,

Defendants.

ORDER AND FINDINGS &
RECOMMENDATIONS

_____ /

Plaintiff is proceeding in this action pro se. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 72-302(c)(21).

Plaintiff has submitted the affidavit required by § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

The instant complaint was filed with the court on February 9, 2011. The court's own records reveal that plaintiff is proceeding with an action, filed on November 22, 2010, that

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1 is the subject of the instant complaint. (No. Civ. S-10-3156 MCE KJN PS).¹ The current
2 allegations are:

3 The State Department used the ‘Post Office’ to investigate a civil
4 rights matter, that effected the ‘plaintiffs’ ability to sue the State
5 Department in district court. The Post Office has not given
6 ‘plaintiff’ needed summons to serve on the defendant, while it has
7 been sent out by the court for over two weeks ago. The ‘Plaintiff’
8 believes that the ‘Defendant’ contracted with the post office in case
9 of this exact situation. According to the District Court the
10 summons was sent out on or about January 21, 2010.

11 (Compl. at 1.) The summons referred to by plaintiff was to be provided to him in case number
12 Civ.S. 10-CV-3156 MCE KJN PS. Plaintiff has attached the court order regarding service of
13 summons and the docket report from that case to his complaint. That order is dated January 21,
14 2011, approximately three weeks prior to the complaint filed in this case, and it directed the
15 Clerk of the Court to send summons forms to plaintiff.

16 All of the allegations in this case pertain to alleged misconduct by defendants in
17 the aforementioned 2010 case referenced by plaintiff. The proper manner for raising all of these
18 allegations is by filing a motion in the previously filed case. Due to the duplicative nature of the
19 present action, the court will recommend that the complaint be dismissed.

20 In accordance with the above, IT IS HEREBY ORDERED that: plaintiff’s request
21 for leave to proceed in forma pauperis is granted.

22 IT IS HEREBY RECOMMENDED that this action be dismissed without
23 prejudice. See Fed. R. Civ. P. 41(b).

24 These findings and recommendations are submitted to the District Judge assigned
25 to this case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after
26 being served with these findings and recommendations, plaintiff may file written objections with
the court. The document should be captioned “Objections to Magistrate Judge’s Findings and

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 Recommendations.” Plaintiff is advised that failure to file objections within the specified time
2 may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th
3 Cir. 1991).

4 DATED: March 18, 2011

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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