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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOE GALINDO OROSCO, JR.,
Petitioner,
v.
W. KNIPP, et al.,
Respondents.

No. 2:15-cv-958-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. As explained below, the petition filed in this action is duplicative of a petition filed in an earlier action. Accordingly, this action should be dismissed as duplicative.

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 judicial economy give rise to rules which allow a district court to transfer, stay, or dismiss an action when a similar complaint has already been filed in another federal court.” *Id.* at 1145 (citation omitted). “[I]ncreasing calendar congestion in the federal courts makes it imperative to avoid concurrent litigation in

1 more than one forum whenever consistent with the right of the parties.” *Crawford v. Bell*, 599
2 F.2d 890, 893 (9th Cir. 1979).

3 On April 27, 2015, petitioner filed an application for a writ of habeas corpus in this
4 district. *See Orosco v. Knipp*, No. 2:15-cv-902-MCE-DAD (E.D. Cal.), ECF No. 1. That petition
5 challenges the November 2, 2012 judgment of conviction imposed by the Sacramento County
6 Superior Court in Case No. 11F02194. The following day, petitioner commenced this action by
7 filing a petition that appears to be identical to the petition he filed in the first action. *See* ECF No.
8 1 (originally filed in the Fresno division of this court). Due to the duplicative nature of the
9 present action, this action should be dismissed and petitioner should proceed on the action he
10 initially commenced.

11 Accordingly, it is hereby ORDERED that the Clerk shall randomly assign a United States
12 District Judge to this case; and

13 Further, it is hereby RECOMMENDED that this action be dismissed without prejudice.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
19 shall be served and filed within fourteen days after service of the objections. Failure to file
20 objections within the specified time may waive the right to appeal the District Court’s order.
21 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
22 1991). In his objections petitioner may address whether a certificate of appealability should issue
23 in the event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing
24 Section 2254 Cases in the United States District Courts (the district court must issue or deny a
25 certificate of appealability when it enters a final order adverse to the applicant).

26 DATED: May 21, 2015.

27 
28 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE