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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT ALAN GIBBS,  
Petitioner,  
v.  
SHASTA COUNTY,  
Respondent.

No. 2:16-cv-1958 GGH P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner, a Shasta County inmate proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has neither paid the filing fee nor submitted an application to proceed in forma pauperis.

The court must now determine if the action is frivolous or malicious. In considering whether to dismiss an action as frivolous pursuant to § 1915(d), the court has especially broad discretion. Conway v. Fugge, 439 F.2d 1397 (9th Cir. 1971). The Ninth Circuit has held that an action is frivolous if it lacks arguable substance in law and fact. Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court’s determination of whether a complaint or claim is frivolous is based on “an assessment of the substance of the claim presented, i.e., is there a factual and legal basis, of constitutional dimension, for the asserted wrong, however inartfully pleaded.” Franklin, 745 F.2d at 1227 (citations omitted).

Petitioner’s petition was filed with the court on August 18, 2016. The court’s own records

1 reveal that on August 8, 2016, petitioner filed a petition containing virtually identical allegations  
2 against the same respondent. (2:16-cv-1869 JAM KJN).<sup>1</sup> Due to the duplicative nature of the  
3 present action, the court finds it frivolous and, therefore, will dismiss the petition. 28 U.S.C. §  
4 1915(d).

5 Accordingly, IT IS ORDERED that a district judge be assigned to this case.

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

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

15 DATED: August 25, 2016

16 /s/ Gregory G. Hollows  
17 UNITED STATES MAGISTRATE JUDGE

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22 GGH:076/gibb1958.123  
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<sup>1</sup> 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).