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

DONALD M. BIRD,

No. 2:17-cv-2018-TLN-CMK

Plaintiff,

vs.

FINDINGS AND RECOMMENDATION

SKILLMAN, et al.,

Defendants.

_____ /

Plaintiff, proceeding pro se, brings this civil action. Pending before the court is plaintiff's complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to screen complaints brought by litigants who have been granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and 1915A(b)(1), (2). Moreover, pursuant to Federal Rule of Civil Procedure 12(h), this court must

1 dismiss an action “[w]henver it appears . . . that the court lacks jurisdiction of the subject matter
2” Because plaintiff, who is not a prisoner, has been granted leave to proceed in forma
3 pauperis, the court will screen the complaint pursuant to § 1915(e)(2).

4 Duplicative lawsuits filed by a plaintiff proceeding in forma pauperis are subject
5 to dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e). See, e.g., Cato v. United
6 States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). An in forma pauperis complaint that merely
7 repeats pending or previously litigated claims may be considered abusive and dismissed under §
8 1915. See id. “Plaintiffs generally have ‘no right to maintain two separate actions involving the
9 same subject matter at the same time in the same court and against the same defendant.’” Adams
10 v. Cal. Dept. Of Health Services, 487 F.3d 684, 688 (9th Cir. 2007) (quoting Walton v. Eaton
11 Corp., 563 F.2d 66, 70 (3d Cir. 1977) (overruled on other grounds by Taylor v. Sturgell, 553 U.S.
12 880 (2008)).

13 Upon review of the complaint and the court’s docket, it appears this action is
14 identical to two other cases plaintiff has filed in this court, Bird v. County of Tehama, et al., case
15 number 2:13-cv-2549-MCE-CKD, and Bird v. Skillman, et al., case number 2:16-cv-2352-GEB-
16 CMK. The prior cases were dismissed on March 4, 2014, and March 30, 2017, respectively.
17 Plaintiff then filed this duplicative action on September 29, 2017. In all three cases, plaintiff is
18 challenging his citation for fishing without a license, and the consequences therefrom. The
19 complaints filed in the actions are nearly, if not actually, identical. Thus, this action should be
20 dismissed as duplicative.

21 In addition, as set forth in the prior decisions, plaintiff’s attempt to challenge his
22 conviction for unlawful fishing in an action under 42 U.S.C. § 1983 is barred by Heck v.
23 Humphrey, 512 U.S. 477 (1994). As the complaint filed in this case is essentially identical to the
24 complaint filed in his previous case, there is nothing to indicate he has successfully had his
25 conviction overturned. Instead, plaintiff includes an unclear argument regarding his standing,
26 which does not cure the defect in his case.

1 Based on the foregoing, the undersigned recommends that this action be dismissed
2 as duplicative of Bird v. County of Tehama, et al., case number 2:13-cv-2549-MCE-CKD, and
3 Bird v. Skillman, et al., case number 2:16-cv-2352-GEB-CMK.

4 These findings and recommendations are submitted to the United States District
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
6 after being served with these findings and recommendations, any party may file written
7 objections with the court. Responses to objections shall be filed within 14 days after service of
8 objections. Failure to file objections within the specified time may waive the right to appeal.
9 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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11 DATED: October 25, 2017

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13 **CRAIG M. KELLISON**
14 UNITED STATES MAGISTRATE JUDGE
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