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

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|----------------------------|---|---------------------------|
| NANCY ABSTON, |) | C 08-4125 MMC(PR) |
| |) | |
| Plaintiff, |) | ORDER OF DISMISSAL |
| |) | |
| vs. |) | |
| |) | (Docket No. 2) |
| THE PEOPLE OF THE STATE OF |) | |
| CALIFORNIA, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

On August 28, 2008, the instant action was opened when plaintiff, a California prisoner incarcerated at Valley State Prison for Women in Chowchilla, California, and proceeding pro se, filed an application to proceed in forma pauperis (“IFP”). Plaintiff did not file any other documents with the IFP application. That same date, the Court notified plaintiff in writing that the action was deficient due to plaintiff’s failure to submit either a complaint or petition. In said notice, plaintiff was advised that her failure to submit a complaint or petition within thirty days would result in dismissal of the action. Along with said notice, plaintiff was sent copies of the Court’s civil rights complaint and habeas petition forms, instructions for completing both forms, and a return envelope.

On September 17, 2008, plaintiff filed both a civil rights complaint and a habeas petition. The civil rights complaint was docketed in the above-titled action, and the habeas petition was opened as a separate action, Abston v. People of the State of California, C 08-4362 MMC (PR). In the civil rights complaint, the only information plaintiff has provided is

United States District Court
For the Northern District of California

1 that she filed a state habeas corpus petition or petitions, and that she is seeking the following
2 relief: "I would like to be taken back to court to get mid or low term. Also I would like the
3 not stopping to report an accident thrown out because I was unconscious." (Compl. at 2, 3.)
4 In the habeas petition, plaintiff has provided detailed information, explaining therein that she
5 is challenging the validity of her underlying state criminal conviction, which was obtained in
6 2007 in the Superior Court of Fresno County. (See C 08-4362 Pet.)

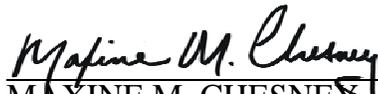
7 Based on the above, it appears that in response to the Court's notice informing
8 plaintiff she must file either a complaint or petition, plaintiff erroneously filed both a civil
9 rights complaint and a habeas petition, seeking the same relief in both. As it is clear that
10 plaintiff is attempting to challenge the validity of her conviction, and the proper way to do so
11 is by way of habeas corpus, the instant action is hereby DISMISSED as duplicative. By
12 separate order filed concurrently herewith, the Court has reviewed plaintiff's habeas petition
13 in C 08-4362 and ordered the petition transferred, on venue grounds, to the United States
14 District Court for the Eastern District of California.

15 In light of the above set of circumstances, no filing fee is due in the instant matter and
16 plaintiff's application to proceed IFP is hereby DISMISSED as moot. (Docket No. 2.)

17 This order terminates Docket No. 2.

18 IT IS SO ORDERED.

19 DATED: September 30, 2008

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22 MAXINE M. CHESNEY
23 United States District Judge
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