

1 1990).

2 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement
3 of the claim showing that the pleader is entitled to relief." "Specific facts are not
4 necessary; the statement need only "give the defendant fair notice of what the claim
5 is and the grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
6 (2007) (citations omitted). Although in order to state a claim a complaint "does not need
7 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
8 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
9 recitation of the elements of a cause of action will not do. . . . Factual allegations must
10 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
11 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
12 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
13 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
14 699 (9th Cir. 1990).

15 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
16 (1) that a right secured by the Constitution or laws of the United States was violated, and
17 (2) that the alleged violation was committed by a person acting under the color of state
18 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

19 LEGAL CLAIMS

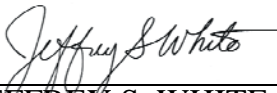
20 The complaint in this action is an identical copy of the in forma pauperis
21 complaint filed in Plaintiff's earlier case, *Padilla v. Cruz, et al.*, No. 09-5782 JSW (PR),
22 which case is currently pending. An in forma pauperis complaint that merely repeats
23 pending or previously litigated claims may be considered abusive and dismissed under
24 the authority of section 1915(e). *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir.
25 1995). An in forma pauperis complaint repeating the same factual allegations asserted in
26 an earlier case, as here, is therefore subject to dismissal as duplicative. *Bailey v.*
27 *Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). Accordingly, this case will be dismissed
28 as duplicative of those in his earlier case.

1 **CONCLUSION**

2 For the foregoing reasons, this action is DISMISSED. The Clerk shall close the
3 file and enter judgment in Defendants' favor.

4 IT IS SO ORDERED.

5 DATED: November 12, 2010

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8 JEFFREY S. WHITE
9 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 FIDEL PADILLA,

6 Plaintiff,

7 v.

8 CORRECTIONAL OFFICER CRUZ et al,

9 Defendant.
10 _____/

Case Number: CV10-00663 JSW

CERTIFICATE OF SERVICE

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on November 12, 2010, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 Fidel Padilla
18 V-72162
19 3234 Adeline Avenue
20 #1813
21 Berkeley, CA 94703

Dated: November 12, 2010



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk

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