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

MICHAEL ANTHONY LOCKHART,

No. C 10-5937 WHA (PR)

Plaintiff,

ORDER OF DISMISSAL

v.

MICHAEL GIAMALYO; R. BETZ;
RUI MARQUES, et al.,

Defendants.

_____ /

INTRODUCTION

This is a pro se civil rights complaint under 42 U.S.C. 1983 filed by a California prisoner proceeding pro se. He has been granted leave to proceed in forma pauperis in a separate order.

ANALYSIS

A. STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2).

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

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

17 **B. LEGAL CLAIMS**

18 Plaintiff contends that three Alameda County Sheriff's Deputies have fabricated
19 evidence against him, falsely arrested him, and participated in a malicious prosecution against
20 him.

21 These claims are duplicative of claims that plaintiff raised in an earlier case filed in this
22 court. *See Lockhart v. Giamalyo, et al.*, No. 10-5220 WHA (PR). Duplicative or repetitious
23 litigation of virtually identical causes of action is subject to dismissal under 28 U.S.C. 1915 as
24 malicious. *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). This is true even where the
25 new complaint repeats the same claims but against new defendants. *Ibid.* "Dismissal of the
26 duplicative lawsuit, more so than the issuance of a stay or the enjoinder of proceedings,
27 promotes judicial economy and the 'comprehensive disposition of litigation.'" *Adams v.*
28 *California*, 487 F.3d 684, 692-93, 694 (9th Cir. 2007) (citation omitted).

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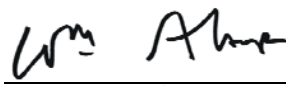
Plaintiff's prior case was dismissed without prejudice to refileing when plaintiff's criminal conviction is dismissed, expunged, vacated or overturned. The allegations in the complaint in the present case make clear that his criminal conviction is still in force. Consequently, and as plaintiff's claims are duplicative of claims that he raised in a prior action, the instant action will be dismissed.

CONCLUSION

For the reasons set out above, this action is **DISMISSED**.
The Clerk shall enter judgment and close the file.

IT IS SO ORDERED.

Dated: February 10, 2011.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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