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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

WILLIE MAURICE FLANIGAN,
Plaintiff,
v.
CITY AND COUNTY OF SAN
FRANCISCO, et al.,
Defendants.

Case No. [16-cv-00269-LB](#)
ORDER OF DISMISSAL
[Re: ECF No. 1]

Willie M. Flanigan, an inmate at the San Mateo County Jail in Redwood City, filed this *pro se* civil rights action under 42 U.S.C. § 1983 and applied to proceed *in forma pauperis*. He has consented to proceed before a magistrate judge. (ECF No. 1 at 4.)¹ His complaint is now before the court for review under 28 U.S.C. § 1915A.

The court must dismiss a prisoner's complaint if it determines that the action “is frivolous [or] malicious.” 28 U.S.C. § 1915A(b)(1). (Section 1915A(b)(1) is the prisoner analog to 28 U.S.C. § 1915(e), which allows the court to dismiss any pauper’s complaint if it is, among other things, “frivolous or malicious.”) The district court may dismiss a pauper or prisoner “complaint ‘that merely repeats pending or previously litigated claims.’” *Cato v. United States*, 70 F.3d 1103, 1105

¹ Citations are to the Electronic Case File (“ECF”); pin cites are to the ECF-generated page numbers at the tops of the documents.

1 n.2 (9th Cir. 1995); *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988) (duplicative or
2 repetitious litigation of virtually identical causes of action is subject to dismissal under 28 U.S.C.
3 § 1915 as malicious); *Van Meter v. Morgan*, 518 F.2d 366 (8th Cir. 1975) (dismissal of complaint
4 as frivolous was not an abuse of discretion where plaintiff had filed other similar complaints).

5 The complaint in this action repeats the excessive force claim Mr. Flanigan asserts in *Flanigan*
6 *v. San Francisco Police Department*, No. 16-cv-269 LB. Although the complaint in this action
7 does not provide any details of the use of force, both complaints are based on the force used
8 during Mr. Flanigan's arrest on October 31, 2014, and both complaints list the same five members
9 of the San Francisco Police Department as defendants. Mr. Flanigan does identify the municipal
10 defendant differently in the two actions -- here it is the City and County of San Francisco, and in
11 the earlier action it is the San Francisco Police Department -- but even an action against a new
12 defendant may be dismissed as duplicative. *Bailey*, 846 F.2d at 1021. If Mr. Flanigan believes he
13 needs both entities, he can include the City and County of San Francisco in his amended complaint
14 in the earlier-filed action. Mr. Flanigan cannot, however, pursue the same claim in two separate
15 cases.

16 This action is DISMISSED as frivolous because it is duplicative of *Flanigan v. San Francisco*
17 *Police Department*, No. 16-cv-269 LB. The clerk shall close the file.

18 **IT IS SO ORDERED.**

19 Dated: February 25, 2016

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21 LAUREL BEELER
22 United States Magistrate Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIE MAURICE FLANIGAN,
Plaintiff,
v.
CITY AND COUNTY OF SAN
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Case No. 3:16-cv-00269-LB

CERTIFICATE OF SERVICE


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

That on February 25, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Willie Maurice Flanigan ID: 1077777
Maguire Correctional Facility
300 Bradford Street
Redwood City, CA 94063

Dated: February 25, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
Lashanda Scott, Deputy Clerk to the
Honorable LAUREL BEELER