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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAURO GUMPAL,

Plaintiff,

v.

QUEEN OF THE VALLEY MEDICAL
CENTER, et al.,

Defendants.

Case No. [17-cv-05597-SI](#)

ORDER OF DISMISSAL

Re: Dkt. No. 1

Mauro Gumpal, an inmate at San Quentin State Prison, filed this *pro se* prisoner’s civil rights action pursuant to 42 U.S.C. § 1983. He complains that he became infected with several illnesses due to the use of contaminated medical instruments at a Napa hospital. He alleges that defendants violated his Eighth Amendment rights with their deliberate indifference to his serious medical needs and violated his state law rights.

Gumpal’s complaint is now before the court for review under 28 U.S.C. § 1915A, which requires the court to identify any cognizable claims, and dismiss any claims that 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.

The complaint in this action repeats claims made in *Gumpal v. Queen of the Valley Medical Center; et al.*, Case No. 16-cv-6611 SI. The complaints are not just sort of similar: one is a photocopy of the other, with the only difference being the signature date. The claims presented are identical, as are the defendants. The earlier action was dismissed for failure to state a federal claim upon which relief may be granted, and without prejudice to Gumpal pursuing his state law claims in state court. *See* Case No. 16-cv-6611 SI at Docket No. 10.

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The complaint in this action is frivolous because it is duplicative of the complaint filed in the earlier action. *See Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988) (duplicative or repetitious litigation of virtually identical causes of action is subject to dismissal under 28 U.S.C. § 1915 as malicious); *see also Adams v. California Dept. of Health Services*, 487 F.3d 684, 689 (9th Cir. 2007) (“Plaintiffs generally have ‘no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.’”) Having lost in federal court, Gumpal is not free to simply file a new action in federal court presenting the exact same claims again. (As mentioned in the order of dismissal in Case No. 16-cv-6611 SI, Gumpal remains free to pursue his state law claims in state court, but needs to act diligently to do so to avoid potential statute of limitations problems.)

Accordingly, this action is DISMISSED with prejudice because it is frivolous. The clerk shall close the file.

IT IS SO ORDERED.

Dated: October 5, 2017



SUSAN ILLSTON
United States District Judge