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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 PHILLIP MICHAEL OKONGO,

8 Plaintiffs,

9 v.

10 SANTA CLARA COUNTY SHERIFFS
11 OFFICE, et al.,

12 Defendants.

Case No. 23-cv-03576-EMC
24-cv-0105-EMC

ORDER GRANTING LEAVE TO AMEND
IN CASE NO. 23-CV-3576, AND
DISMISSING CASE NO. 24-CV-0105 AS
OPENED IN ERROR

13 Plaintiff Phillip Okongo filed a civil rights action complaining of conditions at Santa Clara
14 County Jail, where he is incarcerated. *See* Docket No. 1, Case No. 23-cv-3576. The complaint
15 was reviewed by United States Magistrate Judge Laurel Beeler pursuant to 28 U.S.C. § 1915A.
16 Judge Beeler identified deficiencies in the complaint, and instructed Mr. Okongo to amend in
17 order to correct those deficiencies. *See* Docket No. 5, Case No. 23-cv-3576.

18 Mr. Okongo filed a document entitled “Complaint.” Docket No. 1, Case No. 24-cv-0105.
19 Because nothing on the face of the document suggested it was intended as an amended complaint
20 in Case No. 23-cv-3576, the Clerk of the Court opened a new action.

21 Mr. Okongo subsequently filed an amended complaint in Case No. 23-cv-3576, and a
22 “motion for supplemental jurisdiction” in Case No. 24-cv-0105. Both actions were reassigned to
23 the undersigned.

24 Upon a review of the filings in both actions, they concern the same incidents and are
25 brought against the same defendants. The Court does not believe that Mr. Okongo intended to file
26 a “malicious” action in filing the second case. *See* 28 U.S.C. § 1915(g) (explaining that prisoners
27 incur a “strike” when they file a malicious action, and that accumulating three strikes bars
28 prisoners in perpetuity from proceeding *in forma pauperis*); *see also* *Cato v. United States*, 70

1 F.3d 1103, 1105 n.2 (9th Cir. 1995) (noting that an *in forma pauperis* complaint that “merely
2 repeats pending or previously litigated claims” is malicious under the PLRA). Rather, it appears
3 that Mr. Okongo intended to file an amended complaint in the first case as directed by Judge
4 Beeler, but because of his innocent mistake in not labeling the amended complaint as such, a
5 second action was erroneously opened.

6 Accordingly, Case No. 24-cv-0105 is DISMISSED as opened in error. No filing fee is due
7 for this erroneously opened case, so the *in forma pauperis* application that Mr. Okongo filed in
8 Case No. 24-cv-0105 is **DENIED** as moot. The Clerk shall terminate all pending motions in Case
9 No. 24-cv-0105, *see* Docket Nos. 4, 9, 12, and close the file.

10 Mr. Okongo’s filings suggest that he wishes to add to the claims pending before the Court.
11 The Court sua sponte grants Mr. Okongo an extension of time to amend the pleadings in Case No.
12 23-cv-3576 to set forth all of his claims.

13 Mr. Okongo must file an amended complaint in Case No. 23-cv-3576 no later than
14 **November 1, 2024**. To avoid the confusion which led to a second action being opened, Mr.
15 Okongo **must** write the caption and civil case number used in this order (Case No. 23-cv-3576-
16 EMC) and the words AMENDED COMPLAINT on the first page. Mr. Okongo is cautioned that
17 his amended complaint must be a complete statement of his claims. *See Lacey v. Maricopa*
18 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc) (“For claims dismissed with prejudice and
19 without leave to amend, we will not require that they be replied in a subsequent amended
20 complaint to preserve them for appeal. But for any claims voluntarily dismissed, we will consider
21 those claims to be waived if not replied.”) If Mr. Okongo does not file an amended complaint by
22 the deadline, the Court will conclude that he wishes to move forward only as to the claims raised
23 in the amended complaint currently pending at Docket No. 15, and will screen that pleading
24 accordingly.


25 This order closes Case No. 24-cv-0105, and disposes of Docket Nos. 4, 9, and 12 in that
26 action.

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IT IS SO ORDERED.

Dated: October 24, 2024



EDWARD M. CHEN
United States District Judge