

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

PAUL DAN SMITH, III,

Plaintiff,

v.

CASE NO. 5:10cv305-RH/GRJ

WALGREENS PHARMACY et al.,

Defendants.

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ORDER OF DISMISSAL

This case is before the court on the magistrate judge's report and recommendation, ECF No. 9. No objections have been filed. The recommendation is for dismissal of the complaint for failure to state a claim on which relief can be granted.

The complaint alleges that the plaintiff made successive purchases of pseudoephedrine at a drug store, that store employees reported this to law enforcement, and that as a result the plaintiff was arrested. The complaint names as defendants only the owner and employees of the drug store.

Pseudoephedrine is used to treat the common cold but also is used in the

manufacture of methamphetamine. Purchases of more than needed to treat a cold reasonably arouses suspicion. The complaint does not indicate whether the arrest was based solely on the purchase of pseudoephedrine or was based on additional information as well.

The complaint fails to allege facts plausibly suggesting that any defendant acted under color of law or acted in league with anyone who acted under color of law. The complaint thus fails to state a claim arising under the Constitution. As correctly set out in the report and recommendation, the plaintiff also has failed to allege facts plausibly supporting a claim based on any alleged violation of statutes or regulations governing the sale of pharmaceuticals. In short, the complaint fails to state a claim arising under federal law.

A person may be held liable on a state common-law claim of malicious prosecution if the person intentionally provides false information to a law-enforcement officer in order to bring about an arrest. Such a claim may be brought in federal court if the parties are citizens of different states and the amount in controversy exceeds \$75,000. But the plaintiff has failed to state a malicious-prosecution claim on which relief can be granted because he has not alleged that the defendants provided untrue information to a law-enforcement officer or otherwise engaged in conduct constituting malicious prosecution.

For these reasons and those set out in the report and recommendation,

IT IS ORDERED:

The report and recommendation is ACCEPTED and adopted as the court's further opinion. The clerk must enter judgment stating, "The complaint is dismissed under 28 U.S.C. § 1915(e)(2)(B)." The clerk must close the file.

SO ORDERED on February 2, 2011.

s/Robert L. Hinkle
United States District Judge