

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

JOHN GARRETT SMITH,  
Plaintiff,

Case No. 3:17-cv-01130-SI

ORDER TO DISMISS

v.

WASHINGTON STATE DEPARTMENT OF  
CORRECTIONS,

Defendant.

SIMON, District Judge.

Plaintiff, an inmate at the Stafford Creek Corrections Center, brings this civil rights action seeking monetary and injunctive relief based upon his allegedly unlawful incarceration. In a separate order, the court has granted plaintiff leave to proceed *in forma pauperis*. However, for the reasons set forth below, plaintiff's Complaint is summarily dismissed. See 28 U.S.C. § 1915(e)(2).

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**BACKGROUND**

Plaintiff alleges that defendant has unlawfully restrained him since March 2015 because there was never any probable cause against him such that the resulting criminal judgment is void. He seeks immediate release and more than \$14,000,000,000 in damages.

**STANDARDS**

Pursuant to 28 U.S.C. § 1915A(a), the court is required to screen prisoner complaints seeking relief against a governmental entity, officer, or employee and must dismiss a complaint if the action is frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). In order to state a claim, plaintiff's complaint must contain sufficient factual matter which, when accepted as true, gives rise to a plausible inference that defendants violated plaintiff's constitutional rights. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 556-57 (2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 129 S.Ct. at 1949.

Dismissal for failure to state a claim is proper if it appears beyond doubt that plaintiff can prove no set of facts in

support of his claims that would entitle him to relief. *Ortez v. Washington County*, 88 F.3d 804, 806 (9th Cir. 1996); *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993). Because plaintiff is proceeding *pro se*, the court construes his pleadings liberally and affords him the benefit of any doubt. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Ortez*, 88 F.3d at 806.

#### DISCUSSION

This is the third of six lawsuits plaintiff recently filed. His first two lawsuits sued the state-court judges who presided over his criminal case in Clark County under the theory that there was no probable cause in his case, thus the judges lacked jurisdiction.<sup>1</sup> As with the prior actions, the court finds this case to be frivolous and malicious where plaintiff has filed repeated lawsuits predicated upon the same legal theory, and sought money damages from a defendant who is immune from such a suit. See *Savage v. Glendale Union High School*, 343 F.3d 1036, 1040 (9th Cir. 2003) ("It is well established that agencies of the state are immune under the Eleventh Amendment from private

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<sup>1</sup> Plaintiff's prior actions were *Smith v. Lewis*, 3:17-cv-01017-SI and *Smith v. Collier*, 3:17-cv-01118-SI.

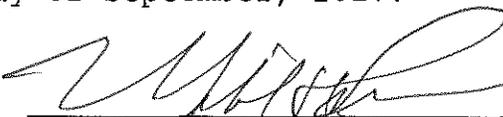
damages or suits for injunctive relief brought in federal court."). The court therefore summarily dismisses the Complaint.<sup>2</sup>

**CONCLUSION**

Based on the foregoing, IT IS ORDERED that plaintiff's Complaint (#1) is DISMISSED because it is frivolous and malicious. The dismissal is without leave to amend, and with prejudice, and shall constitute a "strike" for purposes of the Prison Litigation Reform Act. Additionally, this court certifies that any appeal from this order would not be taken in good faith. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A).

IT IS SO ORDERED.

DATED this 10 day of September, 2017.



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Michael H. Simon  
United States District Judge

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<sup>2</sup> Nothing in this Order prevents plaintiff from filing a federal habeas corpus petition once he has exhausted his state court remedies, or from seeking damages from a proper defendant should he successfully invalidate his conviction in the future.