UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of October, two thousand eighteen.

Damilola Animashaun,

Plaintiff - Appellant,

v.

Detective William Schmidt, Detective Alex Arty, Detective Perez, Detective Viggiano, Lisa Nugent, District Attorney's Office, New York Police Department, New York Police Department's 73rd Precinct, Sergeant Sandhu Jaspreet, Detective Joseph, Jr., Sergeant DePestre, Sergeant Matthews, District Attorney Charles J. Hynes,

Defendants - Appellees.

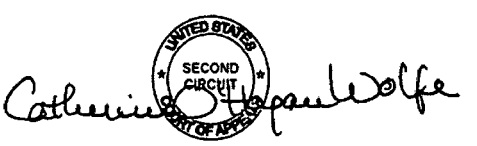
ORDER

Docket No: 18-562

Appellant, Damilola Animashaun, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



E.D.N.Y. - Bklyn
17-cv-4297
Matsumoto, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 26th day of July, two thousand eighteen.

Present:

Robert A. Katzmann,
Chief Judge,
José A. Cabranes,
Rosemary S. Pooler,
Circuit Judges.

Damilola Animashaun,

Plaintiff-Appellant,

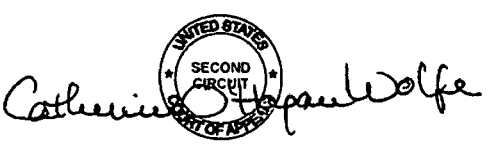
v. 18-562

Detective William Schmidt, et al.,

Defendants-Appellees.

Appellant, pro se, moves for in forma pauperis status, "summary judgment," and a "declaration" of reversal. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DAMILOLA ANIMASHAUN,

Plaintiff,

-against-

DETECTIVE WILLIAM SCHMIDT; DETECTIVE ALEX ARTY; DETECTIVE PEREZ; DETECTIVE VIGGIANO; LISA NUGENT; DISTRICT ATTORNEY'S OFFICE; NEW YORK POLICE DEPARTMENT (BROOKLYN NORTH WARRANTS); NEW YORK POLICE DEPARTMENT (73rd PRECINCT); SERGEANT SANDHU JASPREET (73rd PRECINCT); DETECTIVE JOSEPH; SERGEANT DEPESTRE (73rd PRECINCT); SERGEANT MATTHEWS (73rd PRECINCT),[1]

Defendants.

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Not for Publication

MEMORANDUM & ORDER

17-CV-4297(KAM)

MATSUMOTO, United States District Judge:

In April 2017, Damilola Animashaun ("plaintiff"), commenced four actions pursuant to 42 U.S.C. § 1983 within an eight-day period by filing four substantially duplicative complaints in the Western District of New York (the "Western District"), each alleging violations of plaintiff's constitutional rights arising from his March 28, 2011 arrest, and his subsequent prosecution in the Supreme Court of New York, Kings County. By order dated May 1, 2017, the Western District transferred one of the four cases commenced in the Western

[1] The spelling of the words "Sergeant" and "Precinct" has been corrected in the caption of this order.

District to the Eastern District of New York, where it was docketed as case no. 17-CV-3026. (Order Transferring and Dismissing Cases ("Transfer Order"), *Animashaun v. Schmidt, et al.*, No. 17-CV-3026 (E.D.N.Y.) ("*Animashaun I*"), ECF/*Animashaun I* No. 3, at 3-5.)[2] The Western District also dismissed the remaining three "largely duplicative" complaints, including *Animashaun v. Schmidt et al.*, No. 17-CV-6233 (DGL) (W.D.N.Y.), without prejudice. (Transfer Order at 4-5). On June 12, 2017, this court dismissed the *Animashaun I* complaint, (the "Animashaun I Complaint," ECF/*Animashaun I* No. 1), without prejudice and granted plaintiff leave to amend his complaint. (Memorandum & Order Dismissing Complaint ("*Animashaun I* June Order"), ECF/*Animashaun I* No. 8.) After plaintiff submitted a document styled as an "amended complaint" and certain supplemental papers, this court issued an order dated October 25, 2017, dismissing plaintiff's amended complaint with prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A for failure to state a claim upon which relief may be granted. (Memorandum & Order Dismissing Amended Complaint ("*Animashaun I* October Order"), ECF/*Animashaun I* No. 13, at 8-9.)

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[2] References to "ECF/*Animashaun I* No. __" are to documents filed in case no. 17-CV-3026 (E.D.N.Y.). References to "ECF/*Animashaun II* No. __" are to documents filed in the instant action, case no. 17-CV-4297 (E.D.N.Y.). For purposes of clarity, the court notes that the Western District entered the Transfer Order, and it was docketed in both the Western District and in this district.

On June 29, 2017, plaintiff commenced the instant action ("*Animashaun II*," case no. 17-CV-4297), by filing a complaint ("Compl." or the "complaint"), (ECF/*Animashaun II* No. 1), in this court.[3] On August 31, 2017, plaintiff filed a motion for leave to amend the complaint in the instant action. (ECF/*Animashaun II* No. 4.) As set forth below, the instant action, *Animashaun II*, asserts claims that are duplicative of *Animashaun I*, and even if they were not duplicative, they are not claims upon which relief can be granted. The court therefore dismisses the instant complaint as duplicative of the complaint in *Animashaun I*, and plaintiff's motion for leave to amend the complaint is denied because amendment would be futile.

Background

Plaintiff is presently incarcerated at Southport Correctional Facility. (*Animashaun I* October Order at 1.) In *Animashaun I*, plaintiff asserted nine claims, each in the amount of $100 million, against seven defendants,[4] based on alleged violations of his constitutional rights arising from his March 28, 2011 arrest in Brooklyn, New York, and subsequent state

[3] The court notes that the complaint in this action is substantially identical to the complaint in *Animashaun v. Schmidt, et al.*, No. 17-CV-6233 (DGL) (W.D.N.Y.). (*Compare* Compl. (setting forth claims and relief sought in the instant action), *with* Complaint, *Animashaun v. Schmidt, et al.*, No. 17-CV-6233 (DGL) (W.D.N.Y.), ECF No. 1 (setting forth claims and relief sought in the dismissed Western District action).)

[4] In *Animashaun I*, plaintiff identified the defendants as "Detective William Schmidt," "Detective Alex Arty," "Detective Perez," "Detective Viggiano," "New York Police Department 73rd Precin[c]t," "Detective Jeffrey Haffenden," and "New York Police Department's Brooklyn [N]orth [W]arrants."

prosecution. (*Animashaun I* Complaint at 1-2, 7-15; see also *Animashaun I* October Order at 1-2.) Plaintiff had been the subject of two prosecutions: a robbery prosecution that was dismissed and a sexual assault prosecution that resulted in plaintiff's conviction. (*Animashaun I* June Order at 8.) The *Animashaun I* Complaint contended that the absence of a warrant in his robbery case "led [him] to believe that no warrant existed" for his March 28, 2011 arrest in connection with the sexual assault. (*Animashaun I* June Order at 8 (citing *Animashaun I* Complaint at 19).) Plaintiff further asserted that even if a warrant did exist, it would have been issued in error because there was no probable cause to search his apartment and/or to arrest him. (*Id.* (citing *Animashaun I* Complaint at 19).)

After the court dismissed the *Animashaun I* Complaint with leave to amend, plaintiff filed an amended complaint and two letters that contained supplemental documents and argument. (*Animashaun I* October Order at 2-3 (citations omitted).) The court found that the amended complaint and letters "essentially reassert[ed] and [sought] reconsideration of his original claims, while attaching additional documentation pertaining to his state court prosecution, including a letter from his attorney, an investigative report from the District Attorney, and a police report." (*Id.* at 5 (citations omitted).) In

analyzing the amended complaint and supplemental documents, the court noted that plaintiff's state court conviction had not been invalidated.

The court also found that the statute of limitations to bring plaintiff's claims had expired and that plaintiff had not demonstrated that he "could not have uncovered his alleged injury during the limitations period through 'reasonable diligence.'" (*Id.* at 5-7 (citations omitted).) The court also noted that to the extent plaintiff's claims were based on a lack of probable cause, such claims would have been available to him within the limitations period regardless of whether there was a warrant. (*Id.* at 7-8.) Consequently, the court concluded that plaintiff's amended complaint failed to cure the deficiencies of the original complaint as set forth in the *Animashaun I* June Order and dismissed the complaint with prejudice. (*Id.* at 8.) Consistent with the *Animashaun I* October Order, the clerk of court entered judgment against plaintiff on October 26, 2017. (ECF/*Animashaun I* No. 14.)

In *Animashaun II*, plaintiff asserts fifteen claims, each in the amount of $100 million, against twelve defendants. (Compl. at 1-5, 8-18.) "Detective Jeffrey Haffenden" is the only defendant named in *Animashaun I* who is not named in *Animashaun II*, though *Animashaun II* names several defendants not

named in *Animashaun I*, specifically, Lisa Nugent,[5] the "District Attorney's Office," Sergeants Sandhu Jaspreet, Depestre, and Matthews of the 73rd Precinct, and Detective Joseph of the 73rd Precinct. As in *Animashaun I*, the *Animashaun II* complaint alleges various violations of plaintiff's constitutional rights in connection with his arrest on March 28, 2011 and subsequent prosecution. (Compl. at 8-18.)

Notably, the complaint here also includes an "Affidavit by Plaintiff," which details plaintiff's account of the acts and occurrences giving rise to this action, particularly plaintiff's March 28, 2011 arrest (which plaintiff alleges was warrantless) and subsequent prosecution, and requests that the court review various documents, some of which are attached to the complaint. (Compl. at 24-27.) This "Affidavit by Plaintiff" is substantially identical to an "Affidavit by Claimant (Plaintiff)" that plaintiff included in the *Animashaun I* Complaint. (*Compare id.*, with *Animashaun I* Complaint at 18-21.)

Legal Standard

Upon review, a district court shall dismiss a prisoner's complaint *sua sponte* if the complaint is "frivolous, malicious, or fails to state a claim upon which relief may be

[5] Lisa Nugent is an Assistant District Attorney in the Kings County District Attorney's Office.

granted;" or if it "seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A; *see also Liner v. Goord*, 196 F.3d 132, 134 & n.1 (2d Cir. 1999) (noting that *sua sponte* dismissal of frivolous prisoner complaints is mandatory under the Prison Litigation Reform Act). At the pleadings stage, the court must assume the truth of "all well-pleaded, nonconclusory factual allegations" in the complaint. *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 124 (2d Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009)). A complaint must plead sufficient facts to "state a claim for relief that is plausible on its face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007), and although the court must read *pro se* complaints liberally and interpret a claim as raising the strongest arguments it suggests, *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007), even with a *pro se* plaintiff, "threadbare recitals of the elements of a cause of action" supported by conclusory statements are insufficient to state a claim. *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (quoting *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009)).

Additionally, "[a]s part of its general power to administer its docket, a district court may stay or dismiss a suit that is duplicative of another federal court suit." *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138 (2d Cir. 2000) (citations omitted); *see also Colorado River Water Conservation Dist. v.*

United States, 424 U.S. 800, 817 (1976) ("As between federal district courts, . . . though no precise rule has evolved, the general principle is to avoid duplicative litigation."). "The power to dismiss a duplicative lawsuit is meant to foster judicial economy and the 'comprehensive disposition of litigation,'" *Curtis*, 226 F.3d at 138 (quoting *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 186 (1952)), as well as to "protect parties from 'the vexation of concurrent litigation over the same subject matter.'" *Id.* (quoting *Adam v. Jacobs*, 950 F.2d 89, 93 (2d Cir. 1991)).

In determining whether an action is duplicative of another, the court should, borrowing from claim preclusion (or *res judicata*) principles, examine whether the causes of action and relief sought, as well as the parties or privies to the action, are the same. *See The Haytian Republic*, 154 U.S. 118, 124 (1894) (noting that "[w]hen the pendency of . . . a suit is set up to defeat another, the case must be the same," meaning that the parties must be the same or represent the same interests, the same rights must be asserted, the same relief must be sought on the same facts, and the "essential basis[] of the relief must be the same" (quoting *Watson v. Jones*, 80 U.S. 679, 715 (1871))); *see also Curtis*, 226 F.3d at 140 (holding that the trial court did not abuse its discretion in dismissing "*Curtis II* claims arising out of the same events as those

alleged in *Curtis I*," which claims "would have been heard if plaintiffs had timely raised them").

Further borrowing from claim preclusion analysis, the court should determine whether the actions arise from the same "nucleus of operative fact," even if they are not identical in all aspects. *Davis v. Norwalk Economic Opportunity*, 534 F. App'x 47, 48 (2d Cir. 2013) (summary order) (quoting *Waldman v. Vill. of Kiryas Joel*, 207 F.3d 105, 108 (2d Cir. 2000)). Actions arise from the same nucleus of operative fact by considering "whether the underlying facts are related in time, space, origin or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations." *Waldman*, 207 F.3d at 108 (citations omitted); *accord Interoceanica Corp. v. Sound Pilots, Inc.*, 107 F.3d 86, 90 (2d Cir. 1997) (citations omitted).

Discussion

The claims asserted in the complaint are duplicative of those in *Animashaun I*. As discussed above, *Animashaun I* involved the same events and occurrences and asserted substantially the same claims as those raised here. The actions therefore arise out of the same "nucleus of operative facts." *Waldman*, 207 F.3d at 108 (citations omitted); *Interoceanica Corp.*, 107 F.3d at 90 (citations omitted).

Further, all parties to the instant action either were

parties in *Animashaun I*, or are in privity with the *Animashaun I* parties. The plaintiff is the same and six of the seven defendants named in *Animashaun I* are also named here.[6] The remaining six defendants in this action are in privity with the *Animashaun I* defendants. Privity for purposes of a claim preclusion analysis,[7] and by extension for purposes of determining whether an action is duplicative of another, is a flexible principle. *Amalgamated Sugar Co. v. NL Industries, Inc.*, 825 F.2d 634, 640 (2d Cir. 1987) (citation omitted). The focus of the privity inquiry is whether a newly-named defendant was "known by [the] plaintiff at the time of the first suit" and "has a sufficiently close relationship to the original defendant to justify preclusion." *Cent. Hudson Gas & Elec. Corp. v. Empresa Naviera Santa S.A.*, 56 F.3d 359, 367-68 (2d Cir. 1995); *accord Amalgamated Sugar*, 825 F.2d at 640. Privity can arise as a result of formal representation, or control of representation, in an earlier action, as well as "when the interests involved in the prior litigation are virtually identical to those in later litigation." *Chase Manhattan Bank, N.A. v. Celotex Corp.*, 56

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[6] The common defendants between the instant action and *Animashaun I*, as identified in the *Animashaun I* Complaint, are "Detective William Schmidt," "Detective Alex Arty," "Detective Perez," "Detective Viggiano," "New York Police Department 73rd Precin[c]t," and "New York Police Department's Brooklyn [N]orth [W]arrants."

[7] Privity for purposes of claim preclusion, and by extension, for purposes of determining whether a suit is duplicative of another, is "broader" than traditional privity. *Waldman v. Village of Kiryas Joel*, 39 F. Supp. 2d 370, 380 (S.D.N.Y. 1999).

F.3d 343, 345 (2d Cir. 1995); *see also The Haytian Republic*, 154 U.S. at 124 ("When the pendency of such a suit is set up to defeat another, . . . [t]here must be the same parties, or, at least, [parties] represent [ing] the same interests." (quoting *Watson*, 80 U.S. at 715)).

Here, the defendants who were not named in *Animashaun I* are officers of the precinct that arrested plaintiff, as well as the district attorney's office and the employee of that office responsible for plaintiff's subsequent prosecution. (*See Complaint* at 14-15, 18-21). Their relevant interests and relationships to the "nucleus of operative facts" at issue here are, therefore, effectively identical to those of the *Animashaun I* defendants. Similarly, the newly-named defendants' relationship to the *Animashaun I* defendants is sufficiently close as the police officers named here were involved in the events giving rise to both *Animashaun I* and *Animashaun II* in the exact same capacity as the police officers named in *Animashaun I*, and the prosecutor and District Attorney's office were involved in a highly related capacity. The claims against the newly-named defendants are therefore duplicative of the claims asserted in *Animashaun I*. *Cf. Waldman v. Vill. of Kiryas Joel*, 39 F. Supp. 2d 370, 381-82 (concluding that "*[r]es judicata* is available to a newly named defendant with a close or significant relationship to a defendant previously sued, when the claims in

the new action are essentially the same as those in the prior action and the defendant's existence and participation in the relevant events was known to the plaintiff" and collecting cases).

Alternatively, even if this action were not duplicative of *Animashaun I*, it would be dismissed for failure to state a claim on which relief may be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A on the same bases as discussed in the *Animashaun I* June Order and *Animashaun I* October Order. Specifically, this action would be dismissed because (1) the complaint fails to state a claim of constitutional violation in connection with the March 28, 2011 search and subsequent arrest; and (2) the claims are barred by the favorable termination rule of *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) and *Edwards v. Balisok*, 520 U.S. 641 (1997). This action must also be dismissed because plaintiff's section 1983 claims are time-barred, as discussed in the *Animashaun I* October Order. *Milan v. Wertheimer*, 808 F.3d 961, 963 (2d Cir. 2015).

As to plaintiff's request for leave to amend, the court recognizes that leave to amend should generally be granted liberally to *pro se* plaintiffs unless amendment would be futile, *Terry v. Inc. Vill. of Patchogue*, 826 F.3d 631, 633 (2d Cir. 2016) (citation omitted), and a *pro se* plaintiff should

generally be given at least one opportunity to re-plead "when a liberal reading of the complaint gives any indication that a valid claim might be stated." *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir.1999).

Plaintiff has now sought to plead the claims underlying the instant complaint in three separate complaints before this court, two in *Animashaun I*, and again here. In his motion for leave to amend, plaintiff states that he seeks to "include additional claims that are related to the complaint filed in this case," to "include more defendants that are also parties to this lawsuit," and to increase the damages he seeks. (Motion for Leave to Amend, ECF/*Animashaun II* No. 4, at 1.) Plaintiff filed a proposed amended complaint, (ECF/*Animashaun II* No. 6), the substance of which was consistent with plaintiff's stated intent in his motion for leave to amend. The proposed amended complaint suffers the same infirmities as the complaint the court dismisses in this order. The proposed amended complaint asserts claims based on the same "nucleus of operative facts" as *Animashaun I*, *see Interoceanica Corp.*, 107 F.3d at 90, these claims are against defendants whose "existence and participation in the relevant events [were] known to the plaintiff," *Waldman*, 39 F. Supp. 2d at 381, and the claims fail to state a constitutional violation and are time-barred. The court therefore concludes that amendment would be futile and

there is no indication that a valid claim might be stated. Accordingly, plaintiff's motion for leave to amend is denied.

Conclusion

For the reasons set forth above, the instant action is dismissed as duplicative of *Animashaun I*. In the alternative, the instant action is dismissed because it fails to state a claim on which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A. Additionally, the court reminds plaintiff that filing duplicative actions may result in entry of an order barring the acceptance of any future *in forma pauperis* complaints without first obtaining leave of the court. *See, e.g., In re Martin-Trigona*, 9 F.3d 226, 228-29 (2d Cir. 1993) (noting that courts may take restrictive measures with respect to vexatious litigants and discussing such measures); *Iwachiw v. N.Y. State Dep't of Motor Vehicles*, 396 F.3d 525, 529 (2d Cir. 2005) (affirming district court's issuance of a filing injunction); *Lau v. Meddaugh*, 229 F.3d 121, 123 (2d Cir. 2000) (per curiam) (noting that a district court has the authority to issue a filing injunction when faced with "meritless, frivolous, vexatious or repetitive . . . proceedings.") (internal quotations and citations omitted); *see also* 28 U.S.C. § 1651(a) ("The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and

principles of law.").

The Court certifies pursuant to 28 U.S.C. 1915(a)(3) that any appeal from this order would not be taken in good faith and, therefore, *in forma pauperis* status is denied for purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). The Clerk of Court is respectfully directed to enter judgment dismissing this action, serve plaintiff with a copy of this Memorandum and Order, the judgment, and an appeals packet, at his updated address of record, note service on the docket, and close the case.

SO ORDERED.

Dated: February 13, 2018
Brooklyn, New York

/S/
Kiyo A. Matsumoto
United States District Judge

Additional material from this filing is available in the Clerk's Office.