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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES TROTTER,
Plaintiff,
vs.
ARNOLD SCHWARZENEGGER, et al.,
Defendants.

Case No. 1:10-cv-01971 LJO JLT (PC)
**FINDINGS AND RECOMMENDATION
ORDER DISMISSING FOURTH
AMENDED COMPLAINT FOR
FAILURE TO STATE A CLAIM**
(Doc. 36)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983.

I. Screening Requirement

When an individual seeks to proceed *in forma pauperis*, the Court is required to review the complaint and identify “cognizable claims.” See 28 U.S.C § 1915(a)-(b). The Court must dismiss a complaint, or portion of the complaint, if it is “frivolous, malicious or fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A claim is frivolous “when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992).

1 To state a claim on which relief may be granted, plaintiff must set forth “sufficient factual
2 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal,
3 129 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)).
4 A district court must liberally construe a pleading filed by a self-represented litigant to determine
5 if it states a claim and, before dismissal, outline the deficiencies in the complaint and give the
6 plaintiff an opportunity to amend unless the deficiencies cannot be cured. See Lopez v. Smith,
7 203 F.3d 1122, 1130-31 (9th Cir. 2000).

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
10 Cir. 1984). Accordingly, the court may dismiss a claim as frivolous where it is based on an
11 indisputably meritless legal theory. Neitzke, 490 U.S. at 327.

12 In order to sustain a cause of action under 42 U.S.C. § 1983, a plaintiff must show (i) that
13 he suffered a violation of rights protected by the Constitution or created by federal statute, and (ii)
14 that the violation was proximately caused by a person acting under color of state law. See
15 Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991). The causation requirement of § 1983 is
16 satisfied only if a plaintiff demonstrates that a defendant did an affirmative act, participated in
17 another's affirmative act, or omitted to perform an act which he was legally required to do that
18 caused the deprivation complained of. Arnold v. IBM, 637 F.2d 1350, 1355 (9th Cir. 1981)
19 (quoting Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978)).

20 To plead under § 1983, Plaintiff must comply with Federal Rule of Civil Procedure
21 8(a)(2), which requires only “‘a short and plain statement of the claim showing that the pleader is
22 entitled to relief,’ in order to ‘give the defendant fair notice of what the . . . claim is and the
23 grounds upon which it rests[.]’” Twombly, 550 U.S. at 555 (quoting Conley v. Gibson, 355 U.S.
24 41, 47 (1957)). Nevertheless, Plaintiff’s obligation to provide the grounds of entitlement to relief
25 under Rule 8(a)(2) requires more than “naked assertions,” “labels and conclusions,” or “formulaic
26 recitation[s] of the elements of a cause of action.” Twombly, 550 U.S. at 555-57. The complaint
27 “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
28 on its face.’” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 883 (2009) (quoting

1 Twombly, 550 U.S. at 570) (emphasis added).

2 **II. The fourth amended complaint**

3 Plaintiff initiated this action in the Sacramento Division of this Court on August 4, 2010.
4 (Doc. 1) He filed his “amended complaint” on October 12, 2012 (Doc. 6) and his “Second
5 Amended Complaint” on October 25, 2010. (Doc. 11) On November 8, 2010, Plaintiff lodged
6 his Third Amended Complaint on November 8, 2010. (Doc. 13) After this, he has filed
7 “supplemental” complaints (Doc. 15) and a “supplemental pleading.” (Doc. 15.) Because the
8 supplemental complaint and the supplemental pleadings did not appear to be complaints, the
9 Court screened the Third Amended Complaint (Doc. 13). (Doc. 35)

10 In that screening order, the Court advised Plaintiff that due to the dearth of factual
11 allegations, it had no way of determining what claims he was asserting and found that the
12 “complaint is virtually unintelligible. It appears to be a recitation of various quotes from legal
13 authorities but without any showing of how these authorities apply to his claims.” (Doc. 35 at 3)
14 Moreover, the Court advised Plaintiff that it could not make sense of the 65 pages of attachments
15 to the complaint because he failed to explain their pertinence to it. Id. As a result, on June 6,
16 2012, the Court ordered the complaint dismissed but permitted Plaintiff to file a fourth amended
17 complaint. Id.

18 Now before the Court is another document entitled, “Third Amended Complaint With
19 Leave to Amend.” (Doc. 36) Thus, once again, the Court screens this complaint but, refers to it
20 as the fourth amended complaint, given the third amended complaint was dismissed. (Doc. 35)

21 **III. Analysis**

22 In his most current amended complaint, Plaintiff continues in his “stream-of-
23 consciousness” manner of writing. In doing so, he seems to assert various wrongful actions by
24 the prison officials including stealing property, holding inmates beyond their release date, failing
25 to provide adequate electrical outlets and to provide for the inmates to watch the news on
26 television. (Doc. 36 at 2) However, these assertions are not made in complete, comprehensible
27 sentences and, once again, the Court cannot discern what, exactly, Plaintiff claims happened. The
28 complaint is unintelligible. It is a series of “thoughts” without any linear connection and, though

1 he refrains from quoting legal authorities this time, he mentions legal authorities without showing
2 how they apply.

3 Once again, because the complaint fails to state any causes of action or set forth the facts
4 upon which Plaintiff seeks to impose liability, the Court recommends the complaint be
5 **DISMISSED.**

6 **IV. Conclusion**

7 In its earlier order, it advised Plaintiff that it would grant him “one final opportunity” to
8 address the deficiencies set forth in its order; he has not done so. As a result, the Court may only
9 conclude that he lacks factual support for a cognizable claim. Thus, the Court finds that granting
10 Plaintiff further leave to amend would be futile. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th
11 Cir. 2000) (en banc) (requiring leave to be granted to the extent deficiencies can be cured by
12 amendment).

13 **V. Findings and Recommendations**

14 For the reasons set forth above, the Court **HEREBY RECOMMENDS** Plaintiff’s Fourth
15 Amended Complaint be **DISMISSED.**

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the
18 Local Rules of Practice for the United States District Court, Eastern District of California. Within
19 21 days after being served with these findings and recommendations, Plaintiff may file written
20 objections with the Court. Such a document should be captioned “Objections to Magistrate
21 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within
22 the specified time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951
23 F.2d 1153 (9th Cir. 1991).

24
25 **IT IS SO ORDERED.**

26 Dated: **December 13, 2012**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE