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

WILLIAM SOTO,

Plaintiff,

No. CIV S-07-1459 GEB GGH P

vs.

BOARD OF PRISON TERM, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se. He seeks relief pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). An initial partial filing fee of \$3.20 will be assessed by this order. 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff’s trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the

1 preceding month's income credited to plaintiff's prison trust account. These payments will be
2 forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's
3 account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

4 The court is required to screen complaints brought by prisoners seeking relief
5 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
6 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
7 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
8 granted, or that seek monetary relief from a defendant who is immune from such relief. 28
9 U.S.C. § 1915A(b)(1),(2).

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
12 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
13 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
14 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
15 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
16 Cir. 1989); Franklin, 745 F.2d at 1227.

17 A complaint, or portion thereof, should only be dismissed for failure to state a
18 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set
19 of facts in support of the claim or claims that would entitle him to relief. See Hishon v. King &
20 Spalding, 467 U.S. 69, 73 (1984), citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also
21 Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing
22 a complaint under this standard, the court must accept as true the allegations of the complaint in
23 question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the
24 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor.
25 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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1 Named as defendants are The Board of Prison Terms (BPT), California
2 Department of Corrections and Rehabilitation (CDCR) and Commissioner Cater. Plaintiff
3 alleges that he was arrested on June 30, 2007, for a parole violation. Plaintiff alleges that he did
4 not receive the process he was entitled to pursuant to the Valdivia¹ case regarding this violation.
5 As relief, plaintiff seeks money damages and a court order directing that the violation be
6 dismissed.

7 The Eleventh Amendment bars suits brought by private parties against a state or
8 state agency unless the state or the agency consents to such suit. See Quern v. Jordan, 440 U.S.
9 332, 99 S. Ct. 1139 (1979); Alabama v. Pugh, 438 U.S. 781, 98 S. Ct. 3057 (1978) (per curiam);
10 Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982). Although the Eleventh
11 Amendment is not jurisdictional, the court may raise the defect on its own. Wisconsin
12 Department of Corrections v. Schacht, 524 U.S. 381, 389, 118 S. Ct. 2047, 2052 (1998);
13 Edelman v. Jordan, 415 U.S. 651, 677-78, 94 S. Ct. 1347, 1362-1363 (1974). In the instant case,
14 the State of California has not consented to suit. Accordingly, plaintiff's claims against the BPT
15 and CDCR are frivolous and must be dismissed.

16 Plaintiff does not allege how defendant Cater was involved in the alleged
17 deprivation. The Civil Rights Act under which this action was filed provides as follows:

18 Every person who, under color of [state law] . . . subjects, or causes
19 to be subjected, any citizen of the United States . . . to the
20 deprivation of any rights, privileges, or immunities secured by the
Constitution . . . shall be liable to the party injured in an action at
law, suit in equity, or other proper proceeding for redress.

21 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
22 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
23 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
24 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the
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26 ¹ Valdivia, et al. v. Schwarzenegger, et al., CIV S-94-0671 LKK GGH P.

1 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
2 omits to perform an act which he is legally required to do that causes the deprivation of which
3 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

4 Moreover, supervisory personnel are generally not liable under § 1983 for the
5 actions of their employees under a theory of respondeat superior and, therefore, when a named
6 defendant holds a supervisory position, the causal link between him and the claimed
7 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
8 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
9 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
10 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
11 Cir. 1982).

12 Because plaintiff has failed to link defendant Cater to the alleged deprivation, the
13 claims for damages against this defendant must be dismissed. Even if plaintiff did link defendant
14 Cater to the alleged violation of his rights pursuant to Valdivia, his claim for damages would be
15 barred pursuant to Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364 (1994). In Heck, an
16 Indiana state prisoner brought a civil rights action under § 1983 for damages. Claiming that state
17 and county officials violated his constitutional rights, he sought damages for improprieties in the
18 investigation leading to his arrest, for the destruction of evidence, and for conduct during his trial
19 (“illegal and unlawful voice identification procedure”). Convicted on voluntary manslaughter
20 charges, and serving a fifteen year term, plaintiff did not seek injunctive relief or release from
21 custody. The United States Supreme Court affirmed the Court of Appeal’s dismissal of the
22 complaint and held that:

23 in order to recover damages for allegedly unconstitutional
24 conviction or imprisonment, or for other harm caused by actions
25 whose unlawfulness would render a conviction or sentence invalid,
26 a § 1983 plaintiff must prove that the conviction or sentence has
been reversed on direct appeal, expunged by executive order,
declared invalid by a state tribunal authorized to make such
determination, or called into question by a federal court’s issuance

1 of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages
2 bearing that relationship to a conviction or sentence that has not
been so invalidated is not cognizable under 1983.

3 Heck, 512 U.S. at 486, 114 S. Ct. at 2372. The Court expressly held that a cause of action for
4 damages under § 1983 concerning a criminal conviction or sentence cannot exist unless the
5 conviction or sentence has been invalidated, expunged or reversed. Id.

6 Plaintiff's claims implicate the validity of his confinement. Therefore, plaintiff
7 cannot proceed on his claim for money damages because the parole violation has obviously not
8 been invalidated, expunged or reversed.

9 Assuming defendant Cater is a proper defendant for injunctive relief, in a civil
10 rights action, the court cannot order the dismissal of a parole violation as relief. Plaintiff must
11 file a habeas corpus petition pursuant to 28 U.S.C. § 2254 to obtain the dismissal of the parole
12 violation. For this reason, this claim for relief must be dismissed.

13 Because it is clear that plaintiff cannot cure the pleading defects discussed above,
14 the court recommends that this action be dismissed.

15 In accordance with the above, IT IS HEREBY ORDERED that:

16 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

17 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

18 Plaintiff is assessed an initial partial filing fee of \$3.20. All fees shall be collected and paid in
19 accordance with this court's order to the Director of the California Department of Corrections
20 and Rehabilitation filed concurrently herewith.

21 IT IS HEREBY RECOMMENDED that this action be dismissed.

22 These findings and recommendations are submitted to the United States District
23 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
24 days after being served with these findings and recommendations, plaintiff may file written
25 objections with the court. The document should be captioned "Objections to Magistrate Judge's

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1 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
2 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
3 F.2d 1153 (9th Cir. 1991).

4 DATED: 8/7/07

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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