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

CHARLES G. REECE,

Plaintiff,

No. CIV-S-10-1475 WBS KJM P

vs.

KIMBERLY A. SMITH,

Defendant.

ORDER AND

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 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). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments shall be

1 collected and forwarded by the appropriate agency to the Clerk of the Court each time the  
2 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
3 § 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  
8 be 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  
11 fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-  
12 28 (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.  
14 Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however  
15 inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d  
16 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

17           In order to avoid dismissal for failure to state a claim a complaint must contain  
18 more than "naked assertions," "labels and conclusions" or "a formulaic recitation of the elements  
19 of a cause of action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other  
20 words, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
21 statements do not suffice." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a  
22 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.  
23 "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to  
24 draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 129  
25 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be  
26 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200

1 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.  
2 Rhodes, 416 U.S. 232, 236 (1974).

3 Plaintiff asserts that defendant provided a false psychological evaluation of  
4 plaintiff to plaintiff's parole board. Plaintiff alleges this violated his right to due process under  
5 the Fourteenth Amendment. Plaintiff seeks both damages and injunctive relief. To the extent  
6 plaintiff seeks damages his claims are barred, as defendant is immune from suit under the  
7 doctrine of "quasi judicial immunity" for actions taken in her role as a psychologist appointed by  
8 the parole board. See Burkes v. Callion, 433 F.3d 318, 319 (9th Cir. 1970) (court appointed  
9 psychiatrist is immune from suit for damages from pre-sentence report drafted for court use). In  
10 any case, plaintiff fails to point to any federal law indicating that defendant, by drafting a false  
11 psychological evaluation for use at a parole hearing, violated plaintiff's rights arising under  
12 federal law and the court is not aware of any such law. To the extent plaintiff believes the  
13 evaluation led to plaintiff's being denied parole inappropriately, plaintiff may be able to pursue a  
14 challenge to the appropriate parole proceedings by filing an application for writ of habeas corpus  
15 under 28 U.S.C. § 2254.

16 For these reasons, plaintiff's complaint should be dismissed for failure to state a  
17 claim upon which relief can be granted and this case be closed.

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

- 19 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 20 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

21 The fee shall be collected and paid in accordance with this court's order to the Director of the  
22 California Department of Corrections and Rehabilitation filed concurrently herewith.

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1 IT IS HEREBY RECOMMENDED that:

- 2 1. Plaintiff's complaint be dismissed; and  
3 2. This case be closed.

4 These findings and recommendations are submitted to the United States District  
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-  
6 one days after being served with these findings and recommendations, plaintiff may file written  
7 objections with the court and serve a copy on all parties. Such a document should be captioned  
8 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
9 within the specified time may waive the right to appeal the District Court's order. Martinez v.  
10 Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 DATED: December 19, 2010.

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14 U.S. MAGISTRATE JUDGE  
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