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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEITH ANDERSON FOX,
Plaintiff,
v.
HONORABLE ASHTON B. CARTER,
Defendant.

CASE NO. 1:16-cv-00223-DAD-MJS (PC)
**FINDINGS AND RECOMMENDATION TO
DISMISS ACTION FOR FAILURE TO
STATE A CLAIM**
(ECF No. 13)
**FOURTEEN (14) DAY OBJECTION
DEADLINE**

Plaintiff Keith Anderson Fox initiated this action on February 18, 2016. (ECF No. 1.) On August 25, 2016, his complaint was dismissed for failure to comply with Federal Rule of Civil Procedure 8 and failure to state a claim. (ECF No. 6.) On February 16, 2017, he filed a first amended complaint. (ECF No. 7.) On July 14, 2017, that first amended complaint was dismissed on the same grounds as the original complaint. (ECF No. 8.) Plaintiff was advised of detailed legal standards applicable to his claims and again given leave to amend.

On August 25, 2017, Plaintiff filed a letter stating, in its entirety: "I Keith Fox would like to continue with case base on a ruling that for me that I was [illegible] for desiability

1 on Jun 2014 and [illegible] and on the EEO report” (ECF No. 9.) Because the letter failed
2 to address applicable pleading standards, the undersigned issued findings and
3 recommendations to dismiss the action without further leave to amend. (ECF No. 10.)
4 Plaintiff filed objections. (ECF No. 11.)

5 In his objections, Plaintiff stated that there was an “agreement” at an EEO hearing
6 that he was discriminated against based on disability, and he was awarded “back pay
7 work” and an opportunity for retraining and reinstatement. (ECF No. 11.) Considering
8 that such allegations suggested a possibility Plaintiff might be able to state a cognizable
9 claim, the Court vacated its prior findings and recommendation and granted Plaintiff an
10 opportunity to file a second amended complaint. (ECF No. 12.)

11 Plaintiff filed his second amended complaint on December 21, 2017. (ECF No.
12 13.)

13 **I. Screening Requirement**

14 Pursuant to 28 U.S.C. § 1915(e)(2), the Court must conduct an initial review of the
15 complaint to determine if it states a cognizable claim. The Court must dismiss a
16 complaint or portion thereof if it determines that the action has raised claims that are
17 legally "frivolous or malicious," "fails to state a claim upon which relief may be granted,"
18 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.
19 § 1915(e)(2)(B). "Notwithstanding any filing fee, or any portion thereof, that may have
20 been paid, the court shall dismiss the case at any time if the court determines that . . .
21 the action or appeal . . . fails to state a claim on which relief may be granted." 28 U.S.C.
22 § 1915(e)(2)(B)(ii).

23 **II. Pleading Standard**

24 Section 1983 “provides a cause of action for the deprivation of any rights,
25 privileges, or immunities secured by the Constitution and laws of the United States.”
26 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
27 Section 1983 is not itself a source of substantive rights, but merely provides a method for
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1 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94
2 (1989).

3 To state a claim under § 1983, a plaintiff must allege two essential elements:
4 (1) that a right secured by the Constitution or laws of the United States was violated and
5 (2) that the alleged violation was committed by a person acting under the color of state
6 law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d
7 1243, 1245 (9th Cir. 1987).

8 A complaint must contain “a short and plain statement of the claim showing that
9 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
10 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
11 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.
12 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
13 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim to relief
14 that is plausible on its face.” Id. Facial plausibility demands more than the mere
15 possibility that a defendant committed misconduct and, while factual allegations are
16 accepted as true, legal conclusions are not. Id. at 677-78.

17 **III. Plaintiff’s Allegations**

18 Plaintiff’s allegations, in their entirety, are as follows:

19 I was terminated Jan 2015 an investigation was done DLAR-
20 0015-0091 and I was found not guilty of all charges and was
21 amitted [sic] on record I was discrimination based on
22 deisiability. [sic]

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23 The relief was for me to get back pay, retraining, return back
24 to work.

(ECF No. 13 at 5-6.)

25 **IV. Discussion**

26 Plaintiff has been advised of the legal standards and pleading requirements
27 applicable to what appear to be his intended or potential claims. (ECF No. 8.) He further
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1 has been advised on multiple occasions that he must provide some facts to support his
2 claim. “Threadbare recitals of the elements of a cause of action, supported by mere
3 conclusory statements, do not suffice.” Ashcroft, 556 U.S. at 678 (2009). Here, the Court
4 has no facts before it to suggest who discriminated against Plaintiff, in what way, and
5 why Plaintiff believes the discrimination was based on disability. Notwithstanding
6 Plaintiff’s claim that the decision in DLAR-0015-0091 was in his favor, a previously
7 presented a copy of that decision shows a result not in his favor. Indeed, the hearing
8 officer concluded Plaintiff had failed to show he was discriminated against. (ECF No. 7 at
9 11.) Moreover, the decision does not provide sufficient detail regarding Plaintiff’s
10 allegations to allow the Court to divine a factual basis for his claim. The decision
11 ultimately does not aid the Court in determining whether Plaintiff has a cognizable claim.

12 Once again, the Court concludes that Plaintiff has failed to meet the requirements
13 of Federal Rule of Procedure 8(a) and has failed to state a claim. Plaintiff has been
14 given the applicable pleading standards and multiple opportunities to cure identified
15 defects. He has failed to do so. Further leave to amend appears futile and should be
16 denied.

17 **V. Conclusion and Recommendation**

18 It is HEREBY RECOMMENDED that the action be dismissed with prejudice for
19 failure to comply with Rule 8(a) and failure to state a claim.

20 The findings and recommendation will be submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
22 Within fourteen (14) days after being served with the findings and recommendation, the
23 parties may file written objections with the Court. The document should be captioned
24 “Objections to Magistrate Judge’s Findings and Recommendation.” A party may respond
25 to another party’s objections by filing a response within fourteen (14) days after being
26 served with a copy of that party’s objections. The parties are advised that failure to file
27 objections within the specified time may result in the waiver of rights on appeal.
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1 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
2 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: January 3, 2018

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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