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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA

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9 JOHN RAY GHOLAR, ) Case No. 1:16-cv-00648-LJO-BAM  
10 Plaintiffs, )  
11 v. ) FINDINGS AND RECOMMENDATIONS  
12 DEPARTMENT OF VETERAN ) RECOMMENDING DISMISSAL FOR  
13 ADMINISTRATION AFFAIR, ) LACK OF SUBJECT MATTER  
14 Defendants. ) JURISDICTION WITHOUT PREJUDICE  
 ) ORDER VACATING SCHEDULING  
 ) CONFERENCE  
 )  
 ) FOURTEEN-DAY DEADLINE

15 **Findings and Recommendations**

16 Plaintiff John Gholar (“Plaintiff”), a state prisoner, proceeding pro se, commenced this  
17 action by filing a complaint and paying the required filing fee on June 2, 2016. Plaintiff’s  
18 pleading challenges the Defendant Department of Veteran Affairs (“VA”) management of his  
19 veteran’s disability benefits. (Doc. 1). Because this Court lacks the jurisdiction to provide the  
20 relief Plaintiff seeks, it is recommended that Plaintiff’s complaint be DISMISSED WITHOUT  
21 PREJUDICE.

22 **Screening Requirement**

23 Though a filing fee was paid, under 28 U.S.C. § 1915(e)(2)(B), the Court is obligated to  
24 dismiss any case at any time if the action “(i) is frivolous or malicious; (ii) fails to state a claim  
25 upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is  
26 immune from such relief.” In addition, the Court may dismiss an action *sua sponte* if it lacks  
27 jurisdiction over the matter. *Fiedler v. Clark*, 714 F.2d 77, 78 (9th Cir. 1983) (court must dismiss  
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1 action whenever it determines that it lacks subject matter jurisdiction).

2 A complaint must contain “a short and plain statement of the claim showing that the  
3 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
4 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
5 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937,  
6 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65  
7 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge  
8 unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)  
9 (internal quotation marks and citation omitted).

10 Pro se litigants are entitled to have their pleadings liberally construed and to have any  
11 doubt resolved in their favor, *Wilhelm v. Rotman*, 680 F.3d 1113, 1121-1123 (9th Cir. 2012),  
12 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010), but to survive screening, Plaintiff’s claims  
13 must be facially plausible, which requires sufficient factual detail to allow the Court to  
14 reasonably infer that each named defendant is liable for the misconduct alleged, *Iqbal*, 556 U.S.  
15 at 678, 129 S.Ct. at 1949 (quotation marks omitted); *Moss v. United States Secret Service*, 572  
16 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not  
17 sufficient, and mere consistency with liability falls short of satisfying the plausibility standard.  
18 *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); *Moss*, 572 F.3d at 969.

19 **Plaintiff’s Allegations**

20 Plaintiff alleges that he is a veteran of the United States military who applied but was  
21 initially denied for service connected compensation. Plaintiff later underwent surgery on his left  
22 knee in 1998 and the Social Security Administration granted Plaintiff supplemental disability  
23 benefits.

24 Plaintiff then alleges that in February 2012, the Department of Veteran Affairs reopened  
25 his claim for a service connected injury. The VA sent a physician to the Pleasant Valley State  
26 Prison, where Plaintiff is incarcerated, to perform a physical examination of his left knee and  
27 lower back. The VA physician awarded Plaintiff service connected compensation and the VA  
28 began mailing Plaintiff payments to his prison inmate veteran account.

1 At some time after being awarded service connected benefits, Plaintiff claims he received  
2 notice that he owed over \$15,000.00 in “overpayment.” Plaintiff alleges that he was initially  
3 receiving \$587.36 a month, but due to his incarceration he was only entitled to receive a reduced  
4 benefit of \$133.17 a month. Plaintiff claims that the VA was well aware of his incarceration at  
5 all times during his request for benefits.

6 Plaintiff filed this current lawsuit claiming that he is not obligated to reimburse the VA  
7 for the overpayment because the Veteran Act specifies that no recovery shall occur when the  
8 overpayment is not the fault of the veteran. Plaintiff further asks this Court to waive his  
9 overpayment; grant benefits for the time period before his incarceration; and award retroactive  
10 benefits for his knee injury.

### 11 **Jurisdiction Over Plaintiff’s Claims**

12 Plaintiff’s claims arise under the laws administered by the Department of Veterans  
13 Affairs. 38 U.S.C. 301, *et seq.* The Veterans’ Judicial Review Act of 1988 provides the exclusive  
14 means for appealing benefit decisions made by the Department of Veterans Affairs. The claimant  
15 must first appeal to the Board of Veterans’ Appeals. 38 U.S.C. § 7104(a). An adverse decision  
16 by the Board may be appealed to the Court of Appeals for Veterans Claims. 38 U.S.C. § 7252(a)  
17 (“The Court of Appeals for Veterans Claims shall have exclusive jurisdiction to review decisions  
18 of the Board of Veterans’ Appeals.”). In the limited circumstances specified by statute, the  
19 claimant may seek review by the United States Court of Appeals for the Federal Circuit. 38  
20 U.S.C. § 7292. Federal district courts are not included in the congressional scheme for judicial  
21 review of veterans’ benefit determinations.

22 A federal district court may dismiss an action *sua sponte* if jurisdiction is lacking.  
23 *Fiedler*, 714 F.2d at 78; *see also Bell v. Hood*, 327 U.S. 678, 682-83, 66 S. Ct. 773, 90 L. Ed.  
24 939 (1946) (recognizing that a claim is subject to dismissal for want of jurisdiction where it is  
25 “wholly insubstantial and frivolous” and so patently without merit as to justify dismissal for lack  
26 of jurisdiction); *Hagans v. Lavine*, 415 U.S. 528, 543 (1974) (acknowledging that a claim may be  
27 dismissed for lack of jurisdiction if it is “so insubstantial, implausible, . . . or otherwise  
28 completely devoid of merit as not to involve a federal controversy within the jurisdiction of the



