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

WILBUR PITTMAN,

Plaintiff,

No. CIV S-08-2809 DAD P

vs.

J. BLINDZIUS,

Defendant.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner at the California Rehabilitation Center at Norco, California which is in Riverside County. He has filed a civil rights action pursuant to 42 U.S.C. § 1983, naming correctional counselor Blindzius as a defendant. Plaintiff failed to submit the filing fee or an application requesting leave to proceed in forma pauperis.

The court has determined that rather than transfer this case to the U.S. District Court for the Central District of California, this action should be dismissed for failure to state a claim. Plaintiff's complaint is a series of fragmented and disjointed phrases, and the court is unable to comprehend the nature of plaintiff's claims. However, it is clear that venue is not with this court since defendant does not reside in this judicial district and the action arose at the California Rehabilitation Center. Therefore, should plaintiff choose to file a new action with the

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1 U.S. District Court for the Central District of California, he should keep in mind the following
2 legal standards.

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

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

16 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
17 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
18 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
19 Corp. v. Twombly, 550 U.S. 544, ___, 127 S. Ct. 1955, 1964 (2007) (quoting Conley v. Gibson,
20 355 U.S. 41, 47 (1957)). However, in order to survive dismissal for failure to state a claim a
21 complaint must contain more than “a formulaic recitation of the elements of a cause of action;” it
22 must contain factual allegations sufficient “to raise a right to relief above the speculative level.”
23 Bell Atlantic, 127 S. Ct. at 1965.

24 Plaintiff must demonstrate how the conditions complained of resulted in a
25 deprivation of plaintiff’s federal constitutional or statutory rights. See Ellis v. Cassidy, 625 F.2d
26 227 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant was

1 involved in the deprivation of plaintiff's rights. There can be no liability under 42 U.S.C. § 1983
2 unless there is some affirmative link or connection between a defendant's actions and the
3 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167
4 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory
5 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
6 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

7 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed to
8 randomly assign a United States District Judge to this action.

9 Also, IT IS HEREBY RECOMMENDED that this action be dismissed for failure
10 to state a claim. See 28 U.S.C. § 1915A(b)(1).

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
13 days after being served with these findings and recommendations, plaintiff may file written
14 objections with the court. The document should be captioned "Objections to Magistrate Judge's
15 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
16 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
17 F.2d 1153 (9th Cir. 1991).

18 DATED: April 3, 2009.

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21 _____
22 DALE A. DROZD
23 UNITED STATES MAGISTRATE JUDGE

22 DAD:4
23 pit2809.56