

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

JOHN EFFRAIN BRACAMONTE,

Plaintiff,

No. CIV S-09-0171 MCE DAD P

vs.

KIMZEY,

Defendant.

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s amended complaint.

**SCREENING REQUIREMENT**

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

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28

1 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
2 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
3 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
4 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
5 Cir. 1989); Franklin, 745 F.2d at 1227.

6 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and  
7 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
8 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic  
9 Corp. v. Twombly, 550 U.S. 544, \_\_\_, 127 S. Ct. 1955, 1965 (2007) (quoting Conley v. Gibson,  
10 355 U.S. 41, 47 (1957)). However, in order to survive dismissal for failure to state a claim a  
11 complaint must contain more than “a formulaic recitation of the elements of a cause of action;” it  
12 must contain factual allegations sufficient “to raise a right to relief above the speculative level.”  
13 Bell Atlantic, 127 S. Ct. at 1965. In reviewing a complaint under this standard, the court must  
14 accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital  
15 Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the  
16 plaintiff, and resolve all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421  
17 (1969).

18 The Civil Rights Act under which this action was filed provides as follows:

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

24 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
25 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
26 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
(1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or

1 omits to perform an act which he is legally required to do that causes the deprivation of which  
2 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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

#### 10 **PLAINTIFF’S AMENDED COMPLAINT**

11 In his amended complaint, plaintiff identifies as the sole defendant Correctional  
12 Counselor Kimzey. Plaintiff alleges that, on October 2, 2008, he was asking defendant Kimzey  
13 questions about his classification when she left his cell without answering all of his questions.  
14 Plaintiff alleges that he told defendant Kimzey that he would be filing an inmate appeal about her  
15 alleged conduct. She responded that, since plaintiff could explain himself in such a manner, he  
16 had no mental illness and did not belong in the Enhanced Outpatient Program. Plaintiff claims  
17 that defendant Kimzey’s actions violated his right to equal treatment and scarred him  
18 emotionally. Plaintiff requests monetary relief for his emotional injuries. (Am. Compl. at 5.)

#### 19 **ANALYSIS**

20 Plaintiff’s amended complaint should be dismissed without leave to amend. See  
21 Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990) (“It is not an abuse of discretion  
22 to deny leave to amend when any proposed amendment would be futile.”). On April 23, 2009,  
23 the court dismissed plaintiff’s original complaint with leave to amend and advised him of the  
24 legal standards governing his potential claims under the Eighth and Fourteenth Amendments and  
25 the Americans with Disabilities Act. Nevertheless, in his amended complaint, plaintiff has again  
26 failed to state a cognizable claim for relief against defendant Kimzey.

1 In general, pro se pleadings are held to a less stringent standard than those drafted  
2 by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). The court has an obligation to construe  
3 such pleadings liberally. Bretz v. Kelman, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc).  
4 However, the court’s liberal interpretation of a pro se complaint may not supply essential  
5 elements of the claim that are not pled. Ivey, 673 F.2d at 268; see also Pena v. Gardner, 976 F.2d  
6 469, 471 (9th Cir. 1992).

7 Here, at most, plaintiff alleges that he had a disagreement with defendant Kimzey  
8 about his classification and about whether he suffers from a mental illness. Such a disagreement,  
9 however, does not rise to the level of a constitutional violation. Moreover, although plaintiff  
10 alleges that the defendant’s actions scarred him emotionally, under the law he may not recover  
11 damages for purely mental or emotional injuries. See 42 U.S.C. § 1997e(e) (no federal civil  
12 action may be brought by a prisoner confined in a jail, prison or other correctional facility for  
13 mental or emotional injury suffered while in custody without a prior showing of physical injury).  
14 Accordingly, the court concludes that leave to amend would be futile in this case, and this action  
15 should be dismissed with prejudice.

16 **CONCLUSION**

17 For the reasons discussed above, IT IS HEREBY RECOMMENDED that this  
18 action be dismissed due to plaintiff’s failure to state a cognizable claim. See 28 U.S.C. § 1915A.

19 These findings and recommendations are submitted to the United States District  
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
21 days after being served with these findings and recommendations, plaintiff may file written  
22 objections with the court. The document should be captioned “Objections to Magistrate Judge’s  
23 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the

24 ////

25 ////

26 ////

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
2 F.2d 1153 (9th Cir. 1991).

3 DATED: July 17, 2009.

4  
5   
6 \_\_\_\_\_  
7 DALE A. DROZD  
8 UNITED STATES MAGISTRATE JUDGE

7 DAD:9  
8 brac0171.56

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26