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

LARNELL CROSBY,

Plaintiff,

No. CIV S-09-1244 JAM DAD P

vs.

M. KEATING, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. In accordance with the court’s May 18, 2009 order, plaintiff has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to the undersigned magistrate judge in accordance with Local Rule 72-302 and 28 U.S.C. § 636(b)(1).

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

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1 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28
2 U.S.C. § 1915A(b)(1) & (2).

3 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
4 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
5 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
6 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
7 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
8 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
9 Cir. 1989); Franklin, 745 F.2d at 1227.

10 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
11 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
12 defendant fair notice of what the . . . claim is and the grounds upon which it rests.”” Bell Atlantic
13 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
14 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must
15 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain
16 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell
17 Atlantic, 550 U.S. 555. In reviewing a complaint under this standard, the court must accept as
18 true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees,
19 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and
20 resolve all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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

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

25 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
26 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See

1 to acknowledge government agencies and veteran service organizations as legitimate legal
2 service providers. Plaintiff notes that he has an active claim with the United States Department
3 of Veterans Affairs and also has a case pending in the United States Court of Appeals for
4 Veterans Claims. In communicating with these two entities, plaintiff has transmitted sensitive
5 personal information that is necessary for the proper and effective processing of his claims.
6 (Compl. at 6-11.)

7 Plaintiff claims that the defendants have violated his constitutional rights under
8 the First Amendment, Sixth Amendment, and Fourteenth Amendment. In terms of relief,
9 plaintiff seeks damages as well as declaratory and injunctive relief. (Compl. at 3-11.)

10 DISCUSSION

11 Plaintiff's complaint fails to state a cognizable claim for relief. Plaintiff is
12 advised that, in contrast to mail from a prisoner's attorney, mail from a public agency, a public
13 official, recognized civil rights groups, or the news media is not "legal mail." See Mann v.
14 Adams, 846 F.2d 589 (9th Cir. 1988). Similarly, mail from a court is not "legal mail." See
15 Keenan v. Hall 83 F.3d 1084, 1094 (9th Cir. 1996). In this regard, prisoners do not have a
16 constitutional right to have mail from these entities or individuals or similar entities or
17 individuals opened in their presence.

18 In this case, plaintiff's allegations and the exhibits attached to his complaint
19 indicate that he has received mail from the Department of Veterans Affairs and the United States
20 Court of Appeals for Veterans Claims. However, even assuming that prison officials opened
21 mail directed to him from these entities outside of his presence, plaintiff has no cognizable cause
22 of action against prison officials them because the mail was not "legal mail." Rather, the mail
23 was from either a federal agency or a court. Moreover, nowhere in plaintiff's complaint does he
24 allege that he received mail from his attorney that was opened outside of his presence.

25 Finally, to the extent that plaintiff has named certain prison officials as defendants
26 in this action because of their role in denying his inmate appeal, plaintiff is advised that "inmates

1 lack a separate constitutional entitlement to a specific prison grievance procedure.” Ramirez v.
2 Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir.
3 1988)).

4 For the reasons discussed above, the court concludes that plaintiff’s complaint
5 should be dismissed. Although leave to amend is generally to be freely granted, particularly
6 where the plaintiff is proceeding pro se, under the circumstances of this case the granting of
7 leave to amend would be futile. See Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir.
8 1990) (“It is not an abuse of discretion to deny leave to amend when any proposed amendment
9 would be futile.”).

10 OTHER MATTERS

11 On the same day that plaintiff filed his civil rights complaint he filed a motion for
12 preliminary injunctive relief. Therein, plaintiff seeks a court order allowing him to communicate
13 confidentially with United States government agencies, the United States Department of Veterans
14 Affairs, and his choice of veterans service organizations. (Pl.’s Mot. for Prelim. Inj. at 1-4 &
15 Mem. of P. & A. at 5-10.)

16 For the same reasons discussed above, plaintiff’s motion fails to state a cognizable
17 claim for relief nor does it demonstrate that plaintiff is entitled to the requested court order. See
18 Stormans v. Selecky, 571 F.3d 960, 978 (9th Cir. 2009) (“The proper legal standard for
19 preliminary injunctive relief requires a party to demonstrate ‘that he is likely to succeed on the
20 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
21 balance of equities tips in his favor, and that an injunction is in the public interest.’”) (quoting
22 Winter v. Natural Res. Def. Council, ___ U.S. ___, 129 S. Ct. 365, 374 (2008)). Accordingly,
23 the court concludes that plaintiff’s motion for preliminary injunctive relief should be denied.

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1 **CONCLUSION**

2 Accordingly, IT IS HEREBY RECOMMENDED that:

- 3 1. Plaintiff's June 5, 2009 motion to proceed in forma pauperis (Doc. No. 8) be
4 denied;
- 5 2. Plaintiff's complaint be dismissed for failure to state a claim;
- 6 3. Plaintiff's May 6, 2009 motion for preliminary injunctive relief (Doc. No. 2)
7 be denied; and
- 8 4. This action be closed.

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

16 DATED: October 30, 2009.

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19 DALE A. DROZD
20 UNITED STATES MAGISTRATE JUDGE

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