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

JAMES MORRIS JACKSON, JR.,

Plaintiff,

No. CIV S-09-2370 DAD P

vs.

MATTHEW CATE, et al.,

ORDER AND

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and 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 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1) & (2).

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

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

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

20 Every person who, under color of [state law] . . . subjects, or causes
21 to be subjected, any citizen of the United States . . . to the
22 deprivation of any rights, privileges, or immunities secured by the
23 Constitution . . . shall be liable to the party injured in an action at
24 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
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

1 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
2 omits to perform an act which he is legally required to do that causes the deprivation of which
3 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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

11 **PLAINTIFF’S COMPLAINT**

12 In the present case, plaintiff has identified Matthew Cate and the California
13 Department of Corrections and Rehabilitation as the defendants. In his complaint, plaintiff
14 alleges that he wishes to commence a class action lawsuit on behalf of 58,000 state prisoners
15 because the defendants have failed to release them in accordance with the court’s order in
16 Coleman v. Schwarzenegger, Case No. CIV S-90-0520 LKK JFM. Plaintiff also requests one
17 million dollars for each of those 58,000 prisoners. (Compl. at 1-2.)

18 **ANALYSIS**

19 Plaintiff is advised that the three-judge panel in Coleman did not order the release
20 of any prisoners in its order. Rather, the court ordered the defendants in that case to submit an
21 inmate “population reduction plan that would in no more than two years reduce the population of
22 CDCR’s adult institutions to 137.5 % of their combined capacity design.” (Opinion & Order
23 Filed Aug. 4, 2009). Accordingly, plaintiff’s complaint is frivolous and should be dismissed.
24 See Neitzke, 490 U.S. at 327-28 (in forma pauperis statute accords judges the authority to
25 dismiss those claims whose factual contentions are clearly baseless).

26 ////

1 **CONCLUSION**

2 IT IS HEREBY ORDERED that the Clerk of the Court is directed to randomly
3 assign a United States District Judge to this action.

4 IT IS HEREBY RECOMMENDED that:

- 5 1. Plaintiff's August 25, 2009 motion to proceed in forma pauperis (Doc. No. 2)
6 be denied;
- 7 2. All pending motions be denied as moot; and
- 8 3. This action be dismissed as frivolous.

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: September 14, 2009.

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18 _____
19 DALE A. DROZD
20 UNITED STATES MAGISTRATE JUDGE

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