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

JOHN CROSSWHITE,

Plaintiff,

No. CIV S-10-409 JAM KJM PS

vs.

ARNOLD SCHWARZENEGGER,

Defendant.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is proceeding in this action pro se and in forma pauperis. Plaintiff has filed an amended complaint. The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(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 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327.

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1 A complaint, or portion thereof, should only be dismissed for failure to state a
2 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set
3 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &
4 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer
5 v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
6 complaint under this standard, the court must accept as true the allegations of the complaint in
7 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the
8 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor,
9 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

10 In this action, plaintiff seeks damages for an allegedly wrongful incarceration. In
11 Heck v. Humphrey, 512 U.S. 477 (1994), the United States Supreme Court held that a suit for
12 damages on a civil rights claim concerning an allegedly unconstitutional conviction or
13 imprisonment cannot be maintained absent proof "that the conviction or sentence has been
14 reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal
15 authorized to make such determination, or called into question by a federal court's issuance of a
16 writ of habeas corpus, 28 U.S.C. § 2254." Heck, 512 U.S. at 486.

17 Under Heck, the court is required to determine whether a judgment in plaintiff's
18 favor in this case would necessarily invalidate his conviction or sentence. Id. If it would, the
19 complaint must be dismissed unless the plaintiff can show that the conviction or sentence has
20 been invalidated. This court finds that plaintiff's action implicates the validity of plaintiff's
21 conviction. To the extent plaintiff may be challenging a civil commitment, plaintiff's action is
22 also barred under Heck. See Huftile v. Miccio-Fonseca, 410 F.3d 1136, 1137, 1139 (9th Cir.
23 2005).

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1 In the July 22, 2010 order dismissing plaintiff's complaint with leave to amend,
2 plaintiff was advised that in any amended complaint, plaintiff must show that his conviction has
3 been invalidated. Plaintiff has failed to do so. This action is therefore barred under Heck and
4 should be dismissed.

5 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed.

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

13 DATED: September 28, 2010.

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17 U.S. MAGISTRATE JUDGE
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