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

PHILLIP CARY PAPPAS,

Plaintiff,

No. CIV-10-1211 LKK KJM P

vs.

BLACKWELL, et al.,

Defendants.

ORDER

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding pro se with an action under 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 1441, all defendants who had been served removed this case from Santa Clara County Superior Court to the U.S. District Court for the Northern District of California. The Northern District transferred the case to this court on May 17, 2010.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 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. 28 U.S.C. § 1915A(b)(1), (2).

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1 A claim is legally frivolous when it lacks an arguable basis either in law or in  
2 fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-  
3 28 (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.  
5 Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however  
6 inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d  
7 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

8 When considering whether a complaint states a claim upon which relief can be  
9 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200  
10 (2007), and construe the complaint in the light most favorable to the plaintiff. See Scheuer v.  
11 Rhodes, 416 U.S. 232, 236 (1974). Pro se pleadings are held to a less stringent standard than  
12 those drafted by lawyers. See Haines v. Kerner, 404 U.S. 519, 520 (1972). Still, to survive  
13 dismissal for failure to state a claim, a pro se complaint must contain more than “naked  
14 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of  
15 action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other words,  
16 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
17 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a  
18 claim upon which the court can grant relief must have facial plausibility. Twombly, 550 U.S. at  
19 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the  
20 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
21 Iqbal, 129 S. Ct. at 1949. Attachments to a complaint are considered to be part of the complaint  
22 for purposes of a motion to dismiss for failure to state a claim. Hal Roach Studios v. Richard  
23 Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990).

24 Although the Federal Rules adopt a flexible pleading policy, a complaint must  
25 give fair notice and state the elements of a claim plainly and succinctly. Jones v. Community  
26 Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some

1 degree of particularity overt acts in which defendants engaged that, if proven, would support  
2 liability for plaintiff's claim. Id.

3           The court finds that, for limited purposes of screening under 28 U.S.C. § 1915A,  
4 the complaint states a claim against defendants Blackwell, Zuniga, Valadez, Clayton, Torres and  
5 Soria. Plaintiff has not met the screening requirements of § 1915A with respect to defendants  
6 Eck, Griggs, Holyfield, Jones, Keeley, Kiehlmeier, Lopez, Ruiz, Stubbs, Tews, Viera, Yehuda  
7 and Zander.

8           As to this latter group of defendants, plaintiff's allegations, though lengthy and at  
9 times very detailed, do not describe any acts that, if proved, would subject those defendants to  
10 liability under 42 U.S.C. § 1983. There can be no liability under § 1983 unless there is some  
11 affirmative link or connection between an individual defendant's actions and the claimed  
12 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.  
13 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Although plaintiff alleges that each  
14 of these defendants either was present at the time of an alleged deprivation or knew about it in  
15 some way, he does not describe any affirmative steps those defendants took to deprive him of a  
16 constitutional right. The court will recommend, therefore, that defendants Eck, Griggs,  
17 Holyfield, Jones, Keeley, Kiehlmeier, Lopez, Ruiz, Stubbs, Tews, Viera, Yehuda and Zander be  
18 dismissed from this action.

19           According to defendants' notice of removal, defendants Blackwell, Zuniga,  
20 Torres and Soria were properly served in state court. It appears, however, that at the time of  
21 removal defendants Valadez and Clayton had not been served, nor is there any indication on the  
22 court's record that they have been served since removal. Therefore the court will order plaintiff  
23 to complete the attached service documents to effectuate service on defendants Valadez and  
24 Clayton. Defendants Blackwell, Zuniga, Torres and Soria will have thirty days after the entry of  
25 this order in which to respond to the complaint.

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1           Accordingly, IT IS HEREBY ORDERED that:

2           1. Service is appropriate for the following defendants: Valadez and Clayton.

3           2. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons,  
4 an instruction sheet and a copy of the complaint filed on December 2, 2009.

5           3. Within thirty days from the date of this order, plaintiff shall complete the  
6 attached Notice of Submission of Documents and submit the following documents to the court:

7                   a. The completed Notice of Submission of Documents;

8                   b. One completed summons;

9                   c. One completed USM-285 form for each defendant listed in number 1  
10 above; and

11                   d. Three copies of the endorsed complaint filed December 2, 2009.

12           4. Plaintiff need not attempt service on defendants and need not request waiver of  
13 service. Upon receipt of the above-described documents, the court will direct the United States  
14 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4  
15 without payment of costs.

16           5. Defendants Blackwell, Zuniga, Torres and Soria have thirty days after the  
17 entry of this order in which to respond to the complaint.

18           IT IS HEREBY RECOMMENDED that defendants Eck, Griggs, Holyfield,  
19 Jones, Keeley, Kiehlmeier, Lopez, Ruiz, Stubbs, Tews, Viera, Yehuda and Zander be dismissed  
20 from this action.

21           These findings and recommendations are submitted to the United States District  
22 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-  
23 one days after being served with these findings and recommendations, any party may file written  
24 objections with the court and serve a copy on all parties. Such a document should be captioned  
25 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
26 shall be served and filed within twenty-one days after service of the objections. The parties are

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

3 DATED: July 2, 2010.

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6 U.S. MAGISTRATE JUDGE

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