

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

ELIJAH M. SMITH,

Plaintiff,

No. CIV S-10-1241 LKK DAD P

vs.

JONNY TAYLOR, et al.,

Defendants.

ORDER AND

FINDINGS & 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 302 and 28 U.S.C. § 636(b)(1).

**PLAINTIFF’S IN FORMA PAUPERIS APPLICATION**

Plaintiff has submitted an in forma pauperis application that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, plaintiff will be granted leave to proceed in forma pauperis.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. See 28 U.S.C. §§ 1914(a) & 1915(b)(1). Plaintiff has been without funds for the last six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. See

1 28 U.S.C. § 1915(b)(1). Plaintiff will, however, be obligated to make monthly payments of  
2 twenty percent of the preceding month's income credited to plaintiff's prison trust account.  
3 These payments shall be collected and forwarded by the appropriate agency to the Clerk of the  
4 Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in  
5 full. See 28 U.S.C. § 1915(b)(2).

### 6 **SCREENING REQUIREMENT**

7 The court is required to screen complaints brought by prisoners seeking relief  
8 against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C.  
9 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised  
10 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be  
11 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28  
12 U.S.C. § 1915A(b)(1) & (2).

13 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
14 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
15 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
16 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
17 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
18 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
19 Cir. 1989); Franklin, 745 F.2d at 1227.

20 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and  
21 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
22 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
23 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47  
24 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must  
25 contain more than "a formulaic recitation of the elements of a cause of action;" it must contain  
26 factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic,

1 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
2 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
3 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
4 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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

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

11 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
12 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
13 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
14 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
15 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or  
16 omits to perform an act which he is legally required to do that causes the deprivation of which  
17 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

#### 18 **PLAINTIFF’S COMPLAINT**

19 In his complaint, plaintiff has named the following musicians as defendants: (1)  
20 Jonny Taylor; (2) Snoop Dog; and (3) New Edition. Plaintiff makes the following incoherent  
21 allegation:

22 I’m stated of an attach sheet of copies of reports what had been  
23 wrighten over the computer see over written names over lyrics  
24 reports has been done inside the shop of work resource center  
25 downtown Los Angeles California. [Also] I have song the lyrics as  
26 well in an good stards way on the outside walking district an all  
27 song was song by Elijah M. Smith Junior first in Pine Bluff,  
28 Arkansas an Los Angeles California an Muncif [Indiana] location  
29 of pick up my voi[c]e.

30 Attached to plaintiff’s complaint are: (1) a copy of the play “Ride with Me”; (2) a track list for  
31 “Better of Life Dreams for Every My Lady,” a compilation of songs by plaintiff; and (3) lyrics for

1 songs written by various popular culture artists. Plaintiff’s request for relief in his complaint is  
2 likewise unintelligible.

3 **DISCUSSION**

4 As stated above, the Civil Rights Act under which this action was filed provides  
5 as follows:

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

11 In this case, plaintiff has failed to allege any facts that suggest a violation of the Constitution or  
12 the laws of the United States. Plaintiff has not provided “a short and plain statement of [his]  
13 claim showing that [he] is entitled to relief.” Bell Atlantic Corp. v. Twombly, 550 U.S. at 555.  
14 Nor does plaintiff’s complaint give defendants fair notice of what the claim is and the grounds  
15 upon which it rests. See Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).  
16 Accordingly, because plaintiff has failed to comply with the requirements of Fed. R. Civ. P.  
17 8(a)(2), plaintiff’s complaint must be dismissed.

18 The court will not grant plaintiff leave to file an amended complaint. Plaintiff’s  
19 complaint not only lacks merit, but it is also completely unintelligible and “cannot possibly be  
20 saved.” Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (“Under Ninth Circuit case law,  
21 district courts are only required to grant leave to amend if a complaint can possibly be saved.  
22 Courts are not required to grant leave to amend if a complaint lacks merit entirely.”); see also  
23 Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995) (“[A] district court should grant leave to  
24 amend even if no request to amend the pleading was made, unless it determines that the pleading  
25 could not be cured by the allegation of other facts.”).

26 ////

////

////

1 **CONCLUSION**

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. Plaintiff's May 20, 2010 application to proceed in forma pauperis (Doc. No. 2)  
4 is granted; and

5 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.  
6 The fee shall be collected and paid in accordance with this court's order to the Director of the  
7 California Department of Corrections and Rehabilitation filed concurrently herewith.

8 Also, IT IS HEREBY RECOMMENDED that this case be dismissed with  
9 prejudice due to plaintiff's failure to state a claim upon which relief may be granted.

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

17 DATED: June 22, 2010.

18  
19   
20 \_\_\_\_\_  
21 DALE A. DROZD  
22 UNITED STATES MAGISTRATE JUDGE

21 DAD:sj  
22 smit1241.56