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

QUINCY SIMS,

Plaintiff,

No. CIV S-10-1893 LKK DAD P

vs.

D. RIOS, 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 six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. See 28

1 U.S.C. § 1915(b)(1). Plaintiff will be obligated to make monthly payments of twenty percent of
2 the preceding month's income credited to plaintiff's prison trust account. These payments shall
3 be collected and forwarded by the appropriate agency to the Clerk of the Court each time the
4 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. See 28 U.S.C.
5 § 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 Moreover, supervisory personnel are generally not liable under § 1983 for the
19 actions of their employees under a theory of respondeat superior and, therefore, when a named
20 defendant holds a supervisory position, the causal link between him and the claimed
21 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
22 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory
23 allegations concerning the involvement of official personnel in civil rights violations are not
24 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

25 **PLAINTIFF'S COMPLAINT**

26 In his complaint, plaintiff identifies the following defendants: J. Walker, D. Rios,
A. Masuret, and E. Sanchez. (Compl. at 2-3.) Plaintiff alleges that on September 24, 2010, the
defendants unassigned plaintiff from a rehabilitation program without proper documentation or a

1 hearing.¹ (Id. at 3.) In addition, plaintiff alleges that on January 27, 2010 and March 3, 2010, the
2 defendants attempted to “illegally transfer” him to another institution. (Id.) Based on these
3 allegations, plaintiff claims that the defendants violated his right to procedural due process. (Id.)
4 In terms of relief, plaintiff seeks injunctive relief and monetary damages. (Id.)

5 **DISCUSSION**

6 The Due Process Clause of the Fourteenth Amendment prohibits state action that
7 deprives a person of life, liberty, or property without due process of law. See U.S. Const. amend
8 XIV. A plaintiff alleging a procedural due process violation must first demonstrate that he was
9 deprived of a liberty or property interest protected by the Due Process Clause and then show that
10 the procedures attendant upon the deprivation were not constitutionally sufficient. Ky. Dep’t of
11 Corr. v. Thompson, 490 U.S. 454, 459-60 (1989); McQuillion v. Duncan, 306 F.3d 895, 900 (9th
12 Cir. 2002). A protected liberty interest may arise under the Due Process Clause itself or under a
13 state statute or regulation. See Wilkinson v. Austin, 545 U.S. 209, 221-22 (2005). In the prison
14 context, a state statute or regulation may give rise to a protected liberty interest if the prisoner is
15 imposed with an “atypical and significant hardship in relation to the ordinary incidents of prison
16 life.” Sandin v. Conner, 515 U.S. 472, 484 (1995).

17 Here, plaintiff alleges that he was unassigned from a rehabilitation program and
18 transferred to another institution without a hearing or being afforded other procedural guarantees.
19 However, a prisoner does not have a protected liberty interest in prison educational, vocational,
20 or rehabilitative programs. See Toussaint v. McCarthy, 801 F.3d 1080, 1092 (9th Cir. 1986); see
21 also Hoptowitz v. Ray, 682 F.2d 1237, 1254-55 (9th Cir. 1982) (“There is no constitutional right
22 to rehabilitation [programs].”). Nor does a prisoner have a constitutional right to be incarcerated
23 at a particular correctional facility. See Meachum v. Fano, 427 U.S. 215, 224-25 (1976); Rizzo

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26 ¹ The court presumes that plaintiff intended to allege that he was unassigned from the
rehabilitation program on September 24, 2009 and not September 24, 2010.

1 v. Dawson, 778 F.2d 527, 530 (9th Cir. 1985). Accordingly, because plaintiff fails to allege facts
2 demonstrating that defendants deprived him of a protected liberty interest, his complaint fails to
3 state a cognizable due process claim.

4 **CONCLUSION**

5 In accordance with the above, IT IS HEREBY ORDERED that:

6 1. Plaintiff's July 19, 2010 application to proceed in forma pauperis (Doc. No. 2)
7 is granted.

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

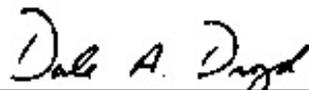
11 Also, for the reasons set forth above, IT IS HEREBY RECOMMENDED that:

12 1. The complaint be dismissed without leave to amend for failure to state a
13 cognizable claim; and

14 2. This action be dismissed.

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

22 DATED: September 2, 2010.

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25 _____
26 DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

25 DAD:sj
26 sims1893.56