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

JOEL CASTRO-GAXIOLA,

Plaintiff,

No. 2:10-cv-2041 KJN P

vs.

G. WOODFORD,

Defendant.

ORDER AND

FINDINGS & RECOMMENDATIONS

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Plaintiff is a federal prisoner proceeding without counsel with an action filed pursuant to 28 U.S.C. §§ 1331 or 1346. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

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

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly

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

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

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

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and  
19 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
21 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47  
22 (1957)). In order to survive dismissal for failure to state a claim, a complaint must contain more  
23 than "a formulaic recitation of the elements of a cause of action;" it must contain factual  
24 allegations sufficient "to raise a right to relief above the speculative level." Id. However,  
25 "[s]pecific facts are not necessary; the statement [of facts] need only 'give the defendant fair  
26 notice of what the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551

1 U.S. 89, 93 (2007) (quoting Bell Atlantic Corp., 550 U.S. at 555) (citations and internal  
2 quotations marks omitted). In reviewing a complaint under this standard, the court must accept  
3 as true the allegations of the complaint in question, id., and construe the pleading in the light  
4 most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

5 In the complaint, plaintiff claims that his due process rights were violated in  
6 disciplinary proceedings wherein he lost fourteen days of good time credits. In Heck v.  
7 Humphrey, 512 U.S. 477 (1994), the United States Supreme Court held that a suit for damages  
8 on a civil rights claim concerning an allegedly unconstitutional conviction or imprisonment  
9 cannot be maintained absent proof "that the conviction or sentence has been reversed on direct  
10 appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such  
11 determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28  
12 U.S.C. § 2254." Heck, 512 U.S. at 486. Under Heck, the court is required to determine whether  
13 a judgment in plaintiff's favor in this case would necessarily invalidate his conviction or  
14 sentence. Id.

15 In Edwards v. Balisok, 520 U.S. 641 (1997), the United States Supreme Court  
16 extended the rule of Heck v. Humphrey, 512 U.S. 477 (1994), to prison disciplinary proceedings.  
17 Specifically, challenges to prison disciplinary proceedings are not cognizable under 42 U.S.C.  
18 § 1983 if "the nature of the challenge to the procedures [is] such as necessarily to imply the  
19 invalidity of the judgment.' If the court concludes that the challenge would necessarily imply the  
20 invalidity of the judgment or continuing confinement, then the challenge must be brought as a  
21 petition for a writ of habeas corpus, not under § 1983." Butterfield v. Bail, 120 F.3d 1023, 1024  
22 (9th Cir. 1997) (quoting Balisok, at 645).

23 This court finds that this action implicates the validity of a disciplinary conviction  
24 for which plaintiff lost good time credits. The court further finds that plaintiff has made no  
25 showing that the disciplinary conviction has been invalidated.

26 On August 2, 2010, plaintiff filed a motion for leave to file points and authorities.

1 In light of the above, plaintiff's motion will be denied without prejudice.

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

- 3 1. Plaintiff's request for leave to proceed in forma pauperis is granted.  
4 2. The Clerk of the Court is directed to assign a district judge to this case.  
5 3. Plaintiff's August 2, 2010 motion (dkt. no. 3) is denied.

6 IT IS RECOMMENDED that this action be dismissed without prejudice. See  
7 Heck v. Humphrey, 512 U.S. at 486-87.

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

15 DATED: September 7, 2010

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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