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

RICHARD DARNELL WALLACE,

Plaintiff,

No. CIV S-10-2252 WBS KJM P

vs.

CALIFORNIA MEDICAL FACILITY,
et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed October 13, 2010, plaintiff's complaint was dismissed with leave to file an amended complaint. Plaintiff has now filed an amended complaint.

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 In order to avoid dismissal for failure to state a claim a complaint must contain
9 more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements
10 of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other
11 words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
12 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a
13 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.
14 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
15 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129
16 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be
17 granted, the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007),
18 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes,
19 416 U.S. 232, 236 (1974).

20 The amended complaint has not cured the deficiencies noted in the court’s
21 original screening order: Its conclusory allegations raise issues not cognizable in a civil rights
22 action and fail to provide any detail concerning plaintiff’s failure to protect claim. Giving
23 plaintiff another opportunity to amend is not likely to result in a properly pleaded complaint.
24 Vasquez v. Los Angeles County, 487 F.3d 1246, 1258 (9th Cir.), cert. denied, 552 U.S. 1062
25 (2007).

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1 The court finds the allegations in plaintiff's amended complaint so vague and
2 conclusory that it fails to state a claim upon which relief can be granted. Although the Federal
3 Rules of Civil Procedure adopt a flexible pleading policy, a complaint must give fair notice and
4 state the elements of the claim plainly and succinctly. Jones v. Community Redev. Agency, 733
5 F.2d 646, 649 (9th Cir. 1984). Plaintiff has failed to allege with at least some degree of
6 particularity overt acts which defendants engaged in that support plaintiff's claim. Id. Plaintiff's
7 amended complaint must be dismissed.

8 In accordance with the above, IT IS HEREBY RECOMMENDED that plaintiff's
9 amended complaint be dismissed without leave to file an amended complaint and that the case be
10 closed.

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

18 DATED: November 19, 2010.

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21 U.S. MAGISTRATE JUDGE

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