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

RITA N. FLOYD,

Plaintiff,

No. CIV S-11-0834 DAD P

vs.

CDCR, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

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).

**SCREENING REQUIREMENT**

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

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

8 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and  
9 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
10 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell Atlantic  
11 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47  
12 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must  
13 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain  
14 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,  
15 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
16 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
17 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
18 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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

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

25 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
26 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
(1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the



1 of her constitutional claims in state court. See Wilkinson v. Dotson, 544 U.S. 74, 81-82 (2005)  
2 (“a state prisoner’s § 1983 action is barred (absent prior invalidation) - no matter the relief sought  
3 (damages or equitable relief), no matter the target of the prisoner’s suit (state conduct leading to  
4 conviction or internal prison proceedings) - *if* success in that action would necessarily  
5 demonstrate the invalidity of confinement or its duration.”) (emphasis in original); Heck v.  
6 Humphrey, 512 U.S. 477, 486-87 (1994) (a state prisoner may not recover damages under § 1983  
7 for allegedly unconstitutional imprisonment, or for any other harm caused by “actions whose  
8 unlawfulness would render the imprisonment invalid,” unless he can prove that the conviction or  
9 other basis for confinement has been reversed on direct appeal, expunged by executive order,  
10 declared invalid by a state tribunal authorized to make such a determination, or called into  
11 question by a federal court’s issuance of a writ of habeas corpus). See also Nelson v. Lucas, No.  
12 99-36127, 2000 WL 1411181 at \*2 (9th Cir. Sept. 26, 2000) (affirming district court’s dismissal  
13 of plaintiff’s claims concerning his extradition from Nevada to Washington as Heck barred)<sup>1</sup>;  
14 Scott v. Director of Corrs., No. C02-3507CRB(PR), 2002 WL 1767415 at \*1 (N.D. Cal. July 29,  
15 2002) (dismissing civil rights complaint alleging extradition from Ohio to California was illegal  
16 without prejudice to the proper filing of a petition for writ of habeas corpus).

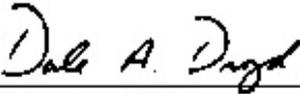
17 **CONCLUSION**

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff’s motion to proceed in forma pauperis (Doc. No. 2) is denied; and  
20 2. This civil rights action is dismissed without prejudice to plaintiff’s proper  
21 pursuit of habeas corpus relief.

22 DATED: April 7, 2011.

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24 \_\_\_\_\_  
25 DALE A. DROZD  
26 UNITED STATES MAGISTRATE JUDGE

25 \_\_\_\_\_  
26 <sup>1</sup> Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth  
Circuit Rule 36-3(b).