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

KENNETH A. SMITH,

Plaintiff,

No. CIV S-11-1305 LKK DAD PS

v.

GLINDA PAGE, et al.,

Defendants.

ORDER AND FINDINGS AND
RECOMMENDATIONS

_____ /

This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Plaintiff has submitted an in forma pauperis application that makes the showing required by 28 U.S.C. § 1915(a)(1). Plaintiff’s request for leave to proceed in forma pauperis will therefore be granted.

The determination that plaintiff may proceed in forma pauperis does not complete the inquiry required by the statutes. Under 28 U.S.C. § 1915(e)(2), the court is required to dismiss an in forma pauperis case at any time if the plaintiff’s allegations of poverty is untrue or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. To state a claim on which relief may be

1 granted, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its
2 face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim is frivolous when it lacks
3 an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989);
4 Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).

5 In considering whether a complaint states a cognizable claim, the court accepts as
6 true the material allegations in the complaint and construes the allegations in the light most
7 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co.
8 v. Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
9 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
10 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as
11 true conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
12 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

13 The minimum requirements for a civil complaint in federal court are as follows:

14 A pleading which sets forth a claim for relief . . . shall contain (1) a
15 short and plain statement of the grounds upon which the court’s
16 jurisdiction depends . . . , (2) a short and plain statement of the
claim showing that the pleader is entitled to relief, and (3) a
demand for judgment for the relief the pleader seeks.

17 Fed. R. Civ. P. 8(a).

18 The court find the allegations in plaintiff’s complaint too vague and conclusory to
19 state a claim upon which relief can be granted. Although the Federal Rules of Civil Procedure
20 adopt a flexible pleading policy, a complaint must give the defendant fair notice of the plaintiff’s
21 claims and must allege facts that state the elements of each claim plainly and succinctly. Fed. R.
22 Civ. P. 8(a)(2); Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). “A
23 pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of cause of
24 action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertions’ devoid of
25 ‘further factual enhancements.’” Ashcroft v. Iqbal, --- U.S.---, ---, 129 S. Ct. 1937, 1949 (2009)
26 (quoting Twombly, 550 U.S. at 555, 557. A plaintiff must allege with at least some degree of

1 particularity overt acts which the defendants engaged in that support the plaintiff's claims.
2 Jones, 733 F.2d at 649. A complaint must also contain "a short and plain statement of the
3 grounds for the court's jurisdiction" and "a demand for the relief sought." Fed. R. Civ. P. 8(a)(1)
4 & 8(a)(3).

5 Here, plaintiff's complaint is largely incomprehensible. It appears that plaintiff is
6 complaining that in February of 2001, Glinda Page, Niggat Zaka and a parole agent by the name
7 of Williams sexually harassed plaintiff and forced him to take medication. (Compl. (Doc. No. 1)
8 at 1-2.) Nevertheless, the court finds the allegations found in plaintiff's complaint so vague and
9 conclusory that it is unable to determine whether the current action is frivolous or fails to state a
10 claim for relief.

11 To the extent plaintiff is attempting to bring a civil rights action pursuant to 42
12 U.S.C. § 1983, his complaint fails for two reasons. First, plaintiff does not allege how the
13 conduct complained of has resulted in a deprivation of a right, privilege or immunity secured by
14 the Constitution or federal law by a person acting under color of state law. L.W. v. Grubbs, 974
15 F.2d 119, 120 (9th Cir. 1992); Lopez v. Dept. of Health Serv., 939 F.2d 881, 883 (9th Cir. 1991).
16 Title 42 U.S.C. § 1983 provides as follows:

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

20 The statute requires that there be an actual connection or link between the actions of the
21 defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v.
22 Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A
23 person 'subjects' another to the deprivation of a constitutional right, within the meaning of §
24 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform
25 an act which he is legally required to do that causes the deprivation of which complaint is made."
26 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

1 Second, the court notes that the incident complained of by plaintiff in his
2 complaint apparently took place in 2002, over nine years prior to the filing of the pending
3 complaint in this court. The statute of limitations for the bringing of a § 1983 action is governed
4 by the forum state’s statute of limitations for personal injury torts. Wilson v. Garcia, 471 U.S.
5 261, 276 (1985); Fink v. Shelder, 192 F.3d 911, 914 (9th Cir. 1999). Prior to January 1, 2003,
6 the statute of limitations for personal injury torts in California was one year. See former Cal.
7 Civ. Proc. Code § 340(c). Thus, any § 1983 claim related to an event that occurred in 2002
8 would appear to be barred by that one-year statute of limitations.

9 Finally, plaintiff’s complaint does not contain a short and plain statement of the
10 grounds upon which the court’s jurisdiction depends, a short and plain statement of the claim
11 showing that the plaintiff is entitled to relief, or a demand for judgment for the relief plaintiff
12 seeks. Thus, plaintiff’s complaint fails to satisfy the minimum requirements for a civil complaint
13 in federal court and does not state a cognizable claim. Accordingly, plaintiff’s complaint will be
14 dismissed for failure to state a claim.

15 The undersigned has carefully considered whether plaintiff may amend his
16 complaint to state a claim upon which relief can be granted. “Valid reasons for denying leave to
17 amend include undue delay, bad faith, prejudice, and futility.” California Architectural Bldg.
18 Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988). See also Klamath-Lake
19 Pharm. Ass’n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that
20 while leave to amend shall be freely given, the court does not have to allow futile amendments).

21 The court notes that plaintiff has filed at least two previous complaints in this
22 court making essentially the same allegations that are set forth in the complaint now filed in this
23 action.¹ See Smith v. Page, et al., Case No. 06-cv-1860 LKK DAD; Smith v. Sacramento Metro
24 Parole Division, et al., Case No. 07-cv-1654 GEB CMK. Plaintiff’s original complaint in each of

25 ¹ A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman,
26 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 those cases was also dismissed for failure to state a cognizable claim for reasons similar to those
2 cited here. See Smith v. Page, et al., Case No. 06-cv-1860 LKK DAD, Doc. No. 4; Smith v.
3 Sacramento Metro Parole Division, et al., Case No. 07-cv-1654 GEB CMK, Doc. No. 7. In light
4 of this history, and the obvious deficiencies noted above, the undersigned finds that it would be
5 futile to grant plaintiff leave to amend.

6 Accordingly, IT IS HEREBY ORDERED that plaintiff's May 16, 2011
7 application to proceed in forma pauperis (Doc. No. 2) is granted.

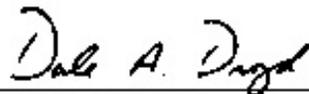
8 IT IS RECOMMENDED that:

9 1. Plaintiff's May 16, 2011 complaint (Doc. No. 1) be dismissed without leave to
10 amend; and

11 2. This action be dismissed.

12 These findings and recommendations will be submitted to the United States
13 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
14 fourteen (14) days after being served with these findings and recommendations, plaintiff may file
15 written objections with the court. A document containing objections should be titled "Objections
16 to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
17 objections within the specified time may, under certain circumstances, waive the right to appeal
18 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: May 18, 2011.

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22 _____
23 DALE A. DROZD
24 UNITED STATES MAGISTRATE JUDGE

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