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

RONALD LLAMAS GALINDEZ,

Plaintiff,

No. CIV S-11-2702 LKK CKD P

vs.

SOLANO PUBLIC GARDEN, et al.

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

On December 22, 2011, the court recommended that this action be dismissed without prejudice for plaintiff's failure to submit an application to proceed in forma pauperis (IFP) or pay the filing fee, as required by its order of November 17, 2011. See Findings and Recommendations (Docket No. 10). Plaintiff has filed objections, claiming he submitted an application within the time required. However, the court has no record of receiving an application from him.

The court's ordinary practice is to give considerable leeway to pro se litigants in assessing whether they have attempted in good faith to meet the procedural requirements for proceeding with their claims. Even accepting plaintiff's representation about his attempt to comply with the court's November 17 order as true, the court is of the opinion that allowing plaintiff to re-submit an IFP application would be futile because the allegations of the complaint

1 cannot pass the scrutiny the court must give them under 28 U.S.C. § 1915A(a). Under that
2 statute, the court must dismiss a complaint or portion thereof if the prisoner has raised claims that
3 are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
4 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
5 § 1915A(b)(1),(2).

6 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
7 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
8 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
9 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
10 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
11 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
12 Cir. 1989); Franklin, 745 F.2d at 1227.

13 When considering whether a complaint states a claim upon which relief can be
14 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200
15 (2007), and construe the complaint in the light most favorable to the plaintiff. See Scheuer v.
16 Rhodes, 416 U.S. 232, 236 (1974). Pro se pleadings are held to a less stringent standard than
17 those drafted by lawyers. See Haines v. Kerner, 404 U.S. 519, 520 (1972). Still, to survive
18 dismissal for failure to state a claim, a pro se complaint must contain more than “naked
19 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
20 action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other words,
21 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
22 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a
23 claim upon which the court can grant relief must have facial plausibility. Twombly, 550 U.S. at
24 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the
25 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
26 Iqbal, 129 S. Ct. at 1949. Attachments to a complaint are considered to be part of the complaint

1 for purposes of a motion to dismiss for failure to state a claim. Hal Roach Studios v. Richard
2 Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990).

3 Plaintiff's allegations are rambling, mostly incoherent and, to the extent they are
4 understandable, patently implausible. Under 28 U.S.C. § 1915A(a) and Iqbal, the complaint
5 should be dismissed without leave to amend.

6 Accordingly, IT IS HEREBY ORDERED that the findings and recommendations
7 of December 22, 2011, are vacated.

8 IT IS RECOMMENDED that the complaint be dismissed without leave to amend
9 and this case closed.

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

18 Dated: February 27, 2012

19 
20 CAROLYN K. DELANEY
21 UNITED STATES MAGISTRATE JUDGE