

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY BRYAN TILLMAN,  
Plaintiff,  
v.  
BOARD OF PAROLE HEARINGS, et al.,  
Defendants.

No. 2:14-cv-0613 KJM CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and is proceeding in forma pauperis. This proceeding was referred to this court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

On April 23, 2014, plaintiff’s complaint was dismissed with leave to file an amended complaint. The court construes the document filed by plaintiff on April 30, 2014 as 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).

////

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 (9th  
3 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 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon  
9 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in  
10 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467  
11 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt  
12 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under  
13 this standard, the court must accept as true the allegations of the complaint in question, Hospital  
14 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light  
15 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.  
16 McKeithen, 395 U.S. 411, 421 (1969).

17 In his amended complaint, plaintiff seeks a new parole hearing because he was appointed  
18 an "A.D.A. attorney" at his last parole hearing, not an "A.D.H. attorney." The court assumes  
19 plaintiff is making some reference to the terms of settlement in Armstrong v. Davis, No. cv-94-  
20 2307 CW, a case heard in the United States District Court for Northern California concerning  
21 access by disabled persons to parole hearings. In any case, plaintiff has not stated a valid claim  
22 for relief in this court as it is not clear what an "A.D.H. attorney"<sup>1</sup> is, or how his federal rights  
23 were violated by the representation provided.

24 Because it does not appear plaintiff can state a claim upon which relief could be granted in  
25 this court, this court will recommend that this action be dismissed. Plaintiff is informed that if he

---

27 <sup>1</sup> Perhaps plaintiff is referencing an attorney with a specialized understanding of Attention  
28 Deficit and Hyperactivity Disorder. In any case, plaintiff fails to show how federal law would  
require that an attorney representing him at parole proceedings have such specialized knowledge.


1 believes the terms of settlement in Armstrong v. Davis are not being complied with in some  
2 respect as they pertain to plaintiff, he should seek relief in that case.

3 In accordance with the above, IT IS HEREBY RECOMMENDED that:

- 4 1. Plaintiff's amended complaint be dismissed; and
- 5 2. This case be closed.

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

13 Dated: October 15, 2014

  
\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

14  
15  
16  
17  
18 1  
19 till0613.14  
20  
21  
22  
23  
24  
25  
26  
27  
28