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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK BLACKSHIRE,  
Plaintiff,  
v.  
SACRAMENTO COUNTY SHERIFF,  
Defendant.

No. 2:15-cv-1123 MCE CKD PS

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in this action pro se and in forma pauperis. Plaintiff has filed a third amended complaint.

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327.

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1           In order to avoid dismissal for failure to state a claim a complaint must contain more than  
2 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause  
3 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,  
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
5 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a claim  
6 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A  
7 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
8 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct.  
9 at 1949. When considering whether a complaint states a claim upon which relief can be granted,  
10 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),  
11 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416  
12 U.S. 232, 236 (1974).

13           In this action, plaintiff alleges only state law claims against the Sacramento County  
14 Sheriff arising out of an allegedly delayed release from custody. Plaintiff was previously advised  
15 of the standards for stating a claim under 42 U.S.C. § 1983. ECF Nos. 5, 7. The third amended  
16 complaint does not cure the pleading deficiencies evident in the original complaint, first or second  
17 amended complaints. Plaintiff fails to demonstrate how the conduct of the named defendant  
18 resulted in a deprivation of plaintiff’s federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir.  
19 1980).

20           Plaintiff has now filed four complaints in this action. The third amended complaint still  
21 fails to state a claim under section 1983 and, at best, alleges only a state law claim for negligence.  
22 Despite repeated opportunities to cure the deficiencies in his complaints, plaintiff has failed to do  
23 so. Moreover, it appears that further amendment would be futile.

24           Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed.

25           These findings and recommendations are submitted to the United States District Judge  
26 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
27 after being served with these findings and recommendations, any party may file written  
28 objections with the court and serve a copy on all parties. Such a document should be captioned

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
2 within the specified time may waive the right to appeal the District Court’s order. Martinez v.  
3 Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: July 24, 2015



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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