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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CURTIS RENEE JACKSON,  
  
Plaintiff,  
  
v.  
  
D. GIBBS, et al.  
  
Defendants.

No. 2:16-cv-685-KJM-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On October 5, 2017, the court dismissed plaintiff’s complaint with leave to amend after finding that it failed to state a viable claim upon which relief could be granted. ECF No. 6. Plaintiff has filed an amended complaint (ECF No. 11) which is before the court for screening. 28 U.S.C. § 1915A(a).

Screening Requirements

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).

A claim “is [legally] frivolous where 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

1 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
2 meritless legal theories or whose factual contentions are clearly baseless.” *Jackson v. Arizona*,  
3 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), *superseded by statute*  
4 *on other grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000); *Neitzke*, 490  
5 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,  
6 has an arguable legal and factual basis. *Id.*

7 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
8 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
9 what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S.  
10 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

11 However, in order to survive dismissal for failure to state a claim, a complaint must contain more  
12 than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
13 allegations sufficient “to raise a right to relief above the speculative level.” *Id.* (citations  
14 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that  
15 merely creates a suspicion [of] a legally cognizable right of action.” *Id.* (alteration in original)  
16 (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* 1216 (3d  
17 ed. 2004)).

18 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
19 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
20 *Corp.*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content  
21 that allows the court to draw the reasonable inference that the defendant is liable for the  
22 misconduct alleged.” *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 556). In reviewing a complaint  
23 under this standard, the court must accept as true the allegations of the complaint in question,  
24 *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), as well as construe the pleading  
25 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, *Jenkins v.*  
26 *McKeithen*, 395 U.S. 411, 421 (1969).

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1 amendments previously allowed is another valid reason for a district court to deny a party leave  
2 to amend.”).

3 Conclusion

4 Accordingly, it is RECOMMENDED that plaintiff’s amended complaint (ECF No. 11) be  
5 DISMISSED without leave to amend for failure to state a cognizable claim and that the Clerk be  
6 directed to close the case.

7 These findings and recommendations are submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
9 after being served with these findings and recommendations, any party may file written  
10 objections with the court and serve a copy on all parties. Such a document should be captioned  
11 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
12 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
13 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: October 11, 2018.

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16 EDMUND F. BRENNAN  
17 UNITED STATES MAGISTRATE JUDGE  
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