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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RHONDA IREDIA-ORTEGA,
Plaintiff,
v.
BAKER RESIDENTIAL ACADEMIC
PROGRAM UNIVERSITY OF CAL, et
al.,
Defendants.

No. 2:17-cv-00843 MCE CKD PS

ORDER &
FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in this action pro se and in forma pauperis. Plaintiff has filed a document that appears to seek amendment of a judgment. (ECF No. 8.) No judgment has yet been entered in this matter. Plaintiff’s motion will therefore be denied as moot. To the extent plaintiff seeks habeas relief, plaintiff must file a separate habeas action.

Plaintiff has also filed a second amended complaint. (ECF No. 10.) 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

1 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
2 490 U.S. at 327.

3 Plaintiff was previously advised of the standards for pleading a federal claim. The second
4 amended complaint does not cure the pleading deficiencies evident in the original complaint or
5 the first amended complaint. Plaintiff fails to demonstrate how the conduct of each defendant
6 resulted in a deprivation of plaintiffs' federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir.
7 1980). Nor does the second amended complaint contain a short and plain statement of the claim
8 as required by Fed. R. Civ. P. 8(a)(2). Plaintiff has now filed three complaints in this action.
9 Like the prior complaints, the second amended complaint still fails to state a claim or comply
10 with the Rule 8 pleading requirements.

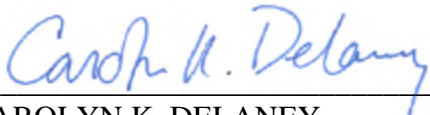
11 Despite repeated opportunities to cure the deficiencies in her complaints, plaintiff has
12 failed to do so. Moreover, it appears that further amendment would be futile. Thus the
13 undersigned will recommend dismissal of this action.

14 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion to amend judgment (ECF
15 No. 8) is denied as moot.

16 IT IS HEREBY RECOMMENDED that this action be dismissed.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
19 after being served with these findings and recommendations, any party may file written
20 objections with the court and serve a copy on all parties. Such a document should be captioned
21 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
22 within the specified time may waive the right to appeal the District Court's order. Martinez v.
23 Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 Dated: May 31, 2017

25 
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE

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