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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAMONT SAPP,  
Plaintiff,  
v.  
STEFANI JOANNE GERMANOTTA,  
Defendant.

No. 2:17-cv-0863 JAM KJN P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff’s trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly payments of twenty percent of the preceding month’s income credited to plaintiff’s trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
2 § 1915(b)(2).

3 The court is required to screen complaints brought by prisoners seeking relief against a  
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
5 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
6 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek  
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
10 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an  
11 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
12 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
13 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
14 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
15 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
16 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at  
17 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
19 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
21 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
22 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a  
23 formulaic recitation of the elements of a cause of action;" it must contain factual allegations  
24 sufficient "to raise a right to relief above the speculative level." Id. at 555. However, "[s]pecific  
25 facts are not necessary; the statement [of facts] need only 'give the defendant fair notice of what  
26 the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93  
27 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted).  
28 In reviewing a complaint under this standard, the court must accept as true the allegations of the

1 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most  
2 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other  
3 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

4 The only named defendant in this action is Stefani Joanne Germanotta, aka Lady Gaga.  
5 Plaintiff alleges that he and Lady Gaga engaged in a series of “tweets.” Plaintiff alleges that  
6 defendant Lady Gaga became unhappy with their communication, and caused plaintiff to be  
7 banned from Facebook. Plaintiff is suing defendant Lady Gaga for allegedly causing him to be  
8 banned from Facebook.

9 Plaintiff is an inmate incarcerated in Pennsylvania. Plaintiff alleges that defendant Lady  
10 Gaga resides in New York. Plaintiff alleges that he has brought this action in California, because  
11 this is where his alleged injury occurred.

12 Whether jurisdiction is appropriate in this court is not entirely clear. However, it is clear  
13 that plaintiff has not stated a potentially cognizable federal claim. Plaintiff’s claims are legally  
14 frivolous and cannot be cured to state potentially cognizable claims. For this reason, the  
15 undersigned recommends that this action be dismissed.

16 In accordance with the above, IT IS HEREBY ORDERED that:

17 1. Plaintiff’s request for leave to proceed in forma pauperis is granted.

18 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
19 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.

20 § 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the  
21 Mahoney State Correctional Institution filed concurrently herewith

22 IT IS HEREBY RECOMMENDED that this action be dismissed.

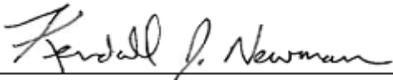
23 These findings and recommendations are submitted to the United States District Judge  
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
25 after being served with these findings and recommendations, plaintiff may file written objections  
26 with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

27 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that

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1 failure to file objections within the specified time may waive the right to appeal the District  
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: May 17, 2017

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KENDALL J. NEWMAN  
6 UNITED STATES MAGISTRATE JUDGE

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