

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

RINESON CURTIS ADAMS,

Plaintiff,

v.

CALIFORNIA HEALTH CARE
FACILITY,

Defendant.

No. 2:17-cv-1817-MCE-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, has filed an application to proceed in forma pauperis (ECF No. 2). For the reasons stated hereafter, plaintiff’s application will be granted but his complaint must be dismissed without leave to amend.

I. Application to Proceed in Forma Pauperis

Plaintiff’s application (ECF No. 2) and his prisoner trust fund account statement (ECF No. 5) make the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

///

///

1 II. Screening Requirements

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

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11 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), *superseded by statute*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

15 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
16 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
17 what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S.
18 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).
19 However, in order to survive dismissal for failure to state a claim, a complaint must contain more
20 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
21 allegations sufficient “to raise a right to relief above the speculative level.” *Id.* (citations
22 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that
23 merely creates a suspicion [of] a legally cognizable right of action.” *Id.* (alteration in original)
24 (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, 1216 (3d
25 ed. 2004)).

26 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
27 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
28 *Corp.*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content

1 that allows the court to draw the reasonable inference that the defendant is liable for the
2 misconduct alleged.” *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 556). In reviewing a complaint
3 under this standard, the court must accept as true the allegations of the complaint in question,
4 *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), as well as construe the pleading
5 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, *Jenkins v.*
6 *McKeithen*, 395 U.S. 411, 421 (1969).

7 III. Analysis

8 Plaintiff alleges that he “made a new frequency” and that it was stolen by unidentified
9 captains of the California Health Care Facility. ECF No. 1 at 3. He offers no elaboration on this
10 claim. His request relief demands “451,000,000,000,000,000,000 plus exclusive patent rights and
11 royalties that are included or affiliated with [his] product.” *Id.* at 6.

12 The Supreme Court has held that a claim is frivolous “when the facts alleged arise to the
13 level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts
14 available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992); *see also Neitzke v.*
15 *Williams*, 490 U.S. 319, 325 (1989) (holding that “§ 1915(d)'s term ‘frivolous,’ when applied to a
16 complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual
17 allegation.”). The court concludes that petitioner’s allegation that he created a “frequency” which
18 correctional staff subsequently stole is fanciful and, therefore, frivolous. As such, the claim
19 should be dismissed without leave to amend. *See Lopez v. Smith*, 203 F.3d 1122, 1127 n.8 (9th
20 Cir. 2000) (“When a case may be classified as frivolous or malicious, there is, by definition, no
21 merit to the underlying action and so no reason to grant leave to amend.”).

22 IV. Conclusion

23 Accordingly, it is ORDERED that:

- 24 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) is granted; and
- 25 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
26 in accordance with the notice to the California Department of Corrections and Rehabilitation filed
27 concurrently herewith.

28 /////

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

Further, it is RECOMMENDED that plaintiff’s complaint (ECF No. 1) be dismissed without leave to amend as frivolous and the Clerk be directed to close the case.

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

DATED: June 28, 2018.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE