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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRODERICK WARFIELD,

Plaintiff,

v.

HEATHER McCOUGH, et al.,

Defendants.

No. 2:17-cv-2620 DB 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.

Plaintiff has 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 for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison 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 **I. Screening Requirement**

4 The in forma pauperis statute provides, "Notwithstanding any filing fee, or any portion
5 thereof, that may have been paid, the court shall dismiss the case at any time if the court
6 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
7 granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

8 **II. Pleading Standard**

9 Section 1983 "provides a cause of action for the deprivation of any rights, privileges, or
10 immunities secured by the Constitution and laws of the United States." Wilder v. Virginia Hosp.
11 Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of
12 substantive rights, but merely provides a method for vindicating federal rights conferred
13 elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

14 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
15 right secured by the Constitution or laws of the United States was violated and (2) that the alleged
16 violation was committed by a person acting under the color of state law. See West v. Atkins, 487
17 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

18 A complaint must contain "a short and plain statement of the claim showing that the
19 pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
20 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
21 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
22 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth "sufficient factual
23 matter, accepted as true, to state a claim to relief that is plausible on its face." Id. Facial
24 plausibility demands more than the mere possibility that a defendant committed misconduct and,
25 while factual allegations are accepted as true, legal conclusions are not. Id. at 677-78.

26 **III. Plaintiff's Allegations**

27 Plaintiff brings this "class action" against an array of defendants, including "Mike P.
28 Solano County Nurse County Jail (Asian)," "rich inmate Vacaville Resident (Meth user)," ("Guy

1 in I-#14 before moved to H-#4,” “Suisun Homeless church suspect cowboy hat trenchcoat,”
2 “Solano County Nurse Claudine 1st-2nd generations and siblings x husbands and husband if any
3 step-children,” and “others castrated.”

4 Plaintiff accuses the defendants, collectively, of “illegal criminal activity that range from
5 first degree murder, second degree murder, conspiracy to commit murder, capital case murder,
6 and as well statutory rape, rape and child molestation committed by pedophiles and other sexual
7 offenses, sexual trafficking, pimping and pandering adults and minors, money laundering,
8 extortion [sic] illegal possessions of firearms automatic weapons, racketeering incorporated
9 corrupt organizations by arbitrary contract forgery and fraud all crimes of either state or federal
10 violations of law.” Compl. at 3.

11 By way of relief, plaintiff seeks “full retirement benefits,” a transfer to a military
12 retirement facility, the issuance of arrest warrants for the defendants, castration, lobotomies, and
13 the death penalty.

14 **IV. Discussion**

15 Rule 8 of the Federal Rules of Civil Procedure mandates that a complaint include a “short
16 and plain statement of the claim,” Fed. R. Civ. P. 8(a)(2), and that each allegation “be simple,
17 concise, and direct.” Fed. R. Civ. P. 8(d)(1). A complaint that is so confusing that its “true
18 substance, if any, is well disguised” may be dismissed for failure to satisfy Rule 8. Hearns v. San
19 Bernardino Police Dep’t, 530 F.3d 1124, 1131 (9th Cir. 2008) (quoting Gillibeau v. City of
20 Richmond, 417 F.2d 426, 431 (9th Cir. 1969)); see also McHenry v. Renne, 84 F.3d 1172, 1180
21 (9th Cir. 1996) (“Something labeled a complaint but written ... prolix in evidentiary detail, yet
22 without simplicity, conciseness and clarity as to whom plaintiffs are suing for what wrongs, fails
23 to perform the essential functions of a complaint.”); Nevijel v. N. Coast Life Ins. Co., 651 F.2d
24 671, 673-74 (9th Cir. 1981) (affirming a dismissal with prejudice for failure to comply with Rules
25 8(a) and 8(e), finding that both the original complaint and an amended complaint were “verbose,
26 confusing and conclusory”).

1 Plaintiff's complaint does not comply with the standards of Rule 8. It is confusing and
2 fails to set forth the facts in a comprehensible manner. It also fails to clearly articulate the facts
3 giving rise to any claim. For this reason, it is must be dismissed.

4 In addition, a complaint will be considered frivolous, and therefore subject to dismissal
5 under § 1915(e)(2)(B), "where it lacks an arguable basis either in law or in fact." Nietzke v.
6 Williams, 490 U.S. 319, 325 (1989); see also Denton v. Hernandez, 504 U.S. 25, 32-33 (1992).
7 As demonstrated above, plaintiff's allegations are fanciful rather than merely unlikely. Although
8 in some cases it may be difficult to judge whether a plaintiff's factual allegations are truly
9 "fanciful," "fantastic," or "delusional" as opposed to merely "unlikely," this is not such a case.
10 See Denton, 504 U.S. at 33. Plaintiff's allegations "rise[] to the level of irrational or the wholly
11 incredible." Id. Accordingly, the complaint must be dismissed as frivolous. See Lopez v. Smith,
12 203 F.3d 1122, 1127 n.8 (9th Cir. 2000) (*en banc*).

13 **V. Conclusion**

14 Based on the foregoing, IT IS HEREBY ORDERED that:


- 15 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted;
- 16 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
17 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
18 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order
19 to the Director of the California Department of Corrections and Rehabilitation filed
20 concurrently herewith;
- 21 3. The Clerk of Court shall assign a district judge to this case; and

22 IT IS HEREBY RECOMMENDED that this action be DISMISSED without leave to
23 amend as frivolous.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
26 after being served with these findings and recommendations, plaintiff may file written objections
27 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
28 and Recommendations." Any response to the objections shall be filed and served within fourteen

1 days after service of the objections. Plaintiff is advised that failure to file objections within the
2 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
3 F.2d 1153 (9th Cir. 1991).

4 Dated: October 29, 2018

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7 DEBORAH BARNES
8 UNITED STATES MAGISTRATE JUDGE
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