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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JON HUMES,

 Plaintiff,

 v.

SCOTT JONES, et al.,

 Defendants.

No. 2:18-cv-0912 AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a county prisoner proceeding pro se, 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.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF Nos. 14, 15. Accordingly, the requests to proceed in forma pauperis will be granted. Because the declaration is accompanied by the required trust account statement, plaintiff’s motion for a preliminary injunction requiring the Sacramento County Jail to provide him with a trust account statement (ECF No. 11) will be denied as moot.

For prisoners, leave to proceed in forma pauperis means that they do not have to pay the entire filing fee up front and can instead pay in installments. 28 U.S.C. § 1915(b)(1). They are still required to pay filing fees in full for civil actions they file. Id. Therefore, while plaintiff will be permitted to proceed in forma pauperis, he will be required to pay the statutory filing fee of

1 \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be
2 assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1).
3 By separate order, the court will direct the appropriate agency to collect the initial partial filing
4 fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff
5 will be obligated for monthly payments of twenty percent of the preceding month's income
6 credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate
7 agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until
8 the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

9 II. Statutory Screening of Prisoner Complaints

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

15 A claim "is [legally] frivolous where it lacks an arguable basis either in law or in fact."
16 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
17 Cir. 1984). "[A] judge may dismiss . . . claims which are 'based on indisputably meritless legal
18 theories' or whose 'factual contentions are clearly baseless.'" Jackson v. Arizona, 885 F.2d 639,
19 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as
20 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a
21 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.
22 Franklin, 745 F.2d at 1227-28 (citations omitted).

23 "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the
24 claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of
25 what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550
26 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
27 "Failure to state a claim under § 1915A incorporates the familiar standard applied in the context
28 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)." Wilhelm v. Rotman,

1 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure
2 to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a
3 cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the
4 speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain
5 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally
6 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur
7 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

8 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
9 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
10 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
11 content that allows the court to draw the reasonable inference that the defendant is liable for the
12 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
13 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
14 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976), as well as construe the pleading in the
15 light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, Jenkins v.
16 McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

17 III. Complaint

18 The complaint names as defendants Sacramento County, the City of Sacramento, Sheriff
19 Scott Jones, and the Sacramento County Police Department. ECF No. 1 at 1-2. Specifically,
20 plaintiff alleges that he had an unspecified number of sex offense convictions expunged in 2012
21 under California Penal Code § 1203.4, but the city, county, and police department have continued
22 to report the convictions and have a “policy to slander/defame people.” Id. at 4-15. Plaintiff
23 further alleges that his due process rights were violated by the multiple arrests he has suffered for
24 failing to register as a sex offender as required by California Penal Code § 290, and that the
25 violation was a result of the defendants’ policies. Id.

26 IV. Failure to State a Claim

27 Prior to 1982, sex offenders in California were required to register as such only until their
28 convictions were expunged. United States v. Hardeman, 704 F.3d 1266, 1267 (9th Cir. 2013)

1 (citing Cal. Penal Code §§ 290, 1203.4 (1980)). In 1982, “the California legislature amended its
2 laws so that a felony sex conviction required ongoing registration, regardless of expungement.”
3 Id. (citing Cal. Penal Code § 290.1 (1982)). “In 1994, the California legislature amended its laws
4 so that any sex conviction—felony or misdemeanor—required continuous registration, regardless
5 of expungement.” Id. (citing Cal. Penal Code § 290.1 (1994)).

6 Plaintiff asserts that under California Penal Code § 1203.4 and Kelly v. Municipal Court
7 of City and County of San Francisco, 160 Cal. App. 2d 38 (Cal. Ct. App. 1958), he is no longer
8 required to register as a sex offender or have his sex offenses reported because they were
9 expunged. ECF No. 1 at 4-5. However, plaintiff misunderstands § 1203.4 and his reliance on
10 Kelly is misplaced. Section 1203.4 specifically provides that “in any subsequent prosecution of
11 the defendant for any other offense, the prior conviction may be pleaded and proved and shall
12 have the same effect as if probation had not been granted or the accusation or information
13 dismissed.” Cal. Penal Code § 1203.4(a)(1). California law also expressly requires sex offender
14 registration regardless of expungement under § 1203.4 except in a few very limited circumstances
15 where other requirements have been met. Cal. Penal Code § 290.007 (“Any person required to
16 registered . . . shall register . . . regardless of whether the person’s conviction has been dismissed
17 pursuant to Section 1203.4, unless the person obtains a certificate of rehabilitation and is entitled
18 to relief from registration pursuant to Section 290.5, or is exonerated pursuant to subdivision (e)
19 of Section 3007.05 . . . and the person is not otherwise required to register.”); Cal. Penal Code
20 § 290.5 (providing that for a number of sex offenses a full pardon is required in addition to a
21 certificate of rehabilitation in order to be relieved of reporting requirement). Furthermore, Kelly,
22 which held that the duty to register terminates upon release from probation as outlined in
23 § 1203.4, was decided long before the amendments requiring continued registration and “is no
24 longer good law.” People v. Hamdon, 225 Cal. App. 4th 1065, 1073 (Cal. Ct. App. 2014).

25 Accordingly, the fact that plaintiff’s sex offenses have been expunged does not mean that
26 the defendants are prohibited from reporting those convictions or that plaintiff has been relieved
27 of his duty to register as a sex offender. His claims related to the continued reporting of his sex
28 offenses and his arrests for failing to register therefore fail to state a claim and must be dismissed.

1 V. No Leave to Amend

2 Leave to amend should be granted if it appears possible that the defects in the complaint
3 could be corrected, especially if a plaintiff is pro se. Lopez v. Smith, 203 F.3d 1122, 1130-31
4 (9th Cir. 2000) (en banc); Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se
5 litigant must be given leave to amend his or her complaint, and some notice of its deficiencies,
6 unless it is absolutely clear that the deficiencies of the complaint could not be cured by
7 amendment.” (citing Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987))). However, if, after
8 careful consideration, it is clear that a complaint cannot be cured by amendment, the court may
9 dismiss without leave to amend. Cato, 70 F.3d at 1005-06.

10 The undersigned finds that, as set forth above, the complaint fails to state a claim upon
11 which relief may be granted and that amendment would be futile. The complaint should therefore
12 be dismissed without leave to amend.

13 VI. Plain Language Summary of this Order for a Pro Se Litigant

14 Your request to proceed in forma pauperis is granted and you are not required to pay the
15 entire filing fee immediately. Your motion for a preliminary injunction is denied because the
16 court has received your trust account statement.

17 It is being recommended that the complaint be dismissed without leave to amend because
18 the things you are complaining about do not violate your constitutional rights. Kelly is no longer
19 good law because the law has been changed and even if your sex offenses have been expunged,
20 you still have to register as a sex offender.

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

- 22 1. Plaintiff’s requests for leave to proceed in forma pauperis (ECF No. 14, 15) are
23 granted.
- 24 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
25 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
26 § 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the
27 Sacramento County Jail filed concurrently herewith.
- 28 3. Plaintiff’s motion for a preliminary injunction (ECF No. 11) is denied as moot.

1 4. The Clerk of the Court shall randomly assign a United States District Judge to this
2 action.

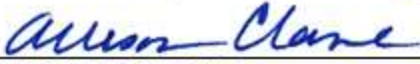
3 IT IS FURTHER RECOMMENDED that the complaint be dismissed without leave to
4 amend for failure to state a claim.

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
7 after being served with these findings and recommendations, plaintiff may file written objections
8 with the court and serve a copy on all parties. Such a document should be captioned “Objections
9 to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
10 objections within the specified time may waive the right to appeal the District Court’s order.

11 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 IT IS SO ORDERED.

13 DATED: March 25, 2019

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15 ALLISON CLAIRE
16 UNITED STATES MAGISTRATE JUDGE
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