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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL MITCHELL,  
  
                                Plaintiff,  
  
                  v.  
  
PIFFER,  
  
                                Defendant.

No. 2:18-cv-2949-WBS-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On March 28, 2019, the court screened plaintiff’s complaint, deemed it deficient, and dismissed it with leave to amend. ECF No. 10. He has filed an amended complaint (ECF No. 11) and the court must screen it.

Screening

I. Legal Standards

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

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1 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”  
2 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th  
3 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
4 meritless legal theories or whose factual contentions are clearly baseless.” *Jackson v. Arizona*,  
5 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), *superseded by statute*  
6 *on other grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000); *Neitzke*, 490  
7 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,  
8 has an arguable legal and factual basis. *Id.*

9 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
10 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
11 what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S.  
12 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).  
13 However, in order to survive dismissal for failure to state a claim, a complaint must contain more  
14 than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
15 allegations sufficient “to raise a right to relief above the speculative level.” *Id.* (citations  
16 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that  
17 merely creates a suspicion [of] a legally cognizable right of action.” *Id.* (alteration in original)  
18 (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1216 (3d  
19 ed. 2004)).

20 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
21 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
22 *Corp.*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content  
23 that allows the court to draw the reasonable inference that the defendant is liable for the  
24 misconduct alleged.” *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 556). In reviewing a complaint  
25 under this standard, the court must accept as true the allegations of the complaint in question,  
26 *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), as well as construe the pleading  
27 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, *Jenkins v.*  
28 *McKeithen*, 395 U.S. 411, 421 (1969).

1 II. Analysis

2 The allegations of the amended complaint do not materially differ from those in the  
3 original. Plaintiff again alleges that defendant assured plaintiff's former cellmate he would ship  
4 plaintiff's personal property to plaintiff but instead stole the property and claimed that plaintiff's  
5 cellmate had donated it. ECF No. 11. Like the original allegations, the amended allegations are  
6 not sufficient to survive screening. A deprivation of personal property is not actionable as a due  
7 process claim under section 1983 where the deprivation is the result of random and unauthorized  
8 action (as opposed to an established state procedure), and the state provides an adequate post-  
9 deprivation remedy. *Hudson v. Palmer*, 468 U.S. 517, 532-33 (1984). California provides an  
10 adequate post-deprivation remedy through its Government Claims Act. *Barnett v. Centoni*, 31  
11 F.3d 813, 816-17 (9th Cir. 1994) (per curiam). As there is no cognizable federal claim, the  
12 amended complaint cannot survive screening and must be dismissed.

13 Leave to Amend

14 The court has already afforded plaintiff a chance to amend his complaint and, having done  
15 so, he is no closer to stating a cognizable claim. Consequently, it declines to offer him further  
16 opportunity to amend. *See McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 809-10 (9th Cir.  
17 1988) ("Repeated failure to cure deficiencies by amendments previously allowed is another valid  
18 reason for a district court to deny a party leave to amend.").

19 Conclusion

20 Accordingly, it is RECOMMENDED that plaintiff's amended complaint (ECF No. 11) be  
21 DISMISSED without leave to amend for failure to state a cognizable claim and the Clerk be  
22 directed to close the case.

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, any party may file written  
26 objections 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." Failure to file objections

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1 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: November 19, 2019.

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5 EDMUND F. BRENNAN  
6 UNITED STATES MAGISTRATE JUDGE  
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