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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALAN M. BARTLETT,

Plaintiff,

v.

STATE BAR OF CALIFORNIA and
PHILLIP TREVINO,

Defendants.

No. 2:19-cv-00330-MCE-AC

ORDER and
FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, 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).

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 No. 2. 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

1 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.
2 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time
3 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
4 § 1915(b)(2).

5 II. Statutory Screening of Prisoner Complaints

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

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15 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as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

19 "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the
20 claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of
21 what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550
22 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
23 "Failure to state a claim under § 1915A incorporates the familiar standard applied in the context
24 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)." Wilhelm v. Rotman,
25 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure
26 to state a claim, a complaint must contain more than "a formulaic recitation of the elements of a
27 cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the
28 speculative level." Twombly, 550 U.S. at 555 (citations omitted). "[T]he pleading must contain

1 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally
2 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur
3 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

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

13 III. Complaint

14 Plaintiff’s complaint seeks to challenge an “administrative decision of the State Bar of
15 California.” ECF No. 1 at 1. Plaintiff alleges the State Bar improperly decided to close out the
16 investigation into his complaint of criminal and ethical misconduct against his attorney, co-
17 defendant Phillip Trevino, on June 23, 2017. Id. Plaintiff alleges he has already appealed the
18 State Bar’s decision to the Supreme Court of California and the United States Supreme Court, and
19 both petitions for review were denied. Id. at 2. Plaintiff also states he previously filed this claim
20 in this court and provided case number 2:18-cv-2598-TLN-DMC. Id. In that case, which was
21 filed as a Petition for Writ of Habeas Corpus, findings and recommendations are pending that
22 recommend the case be summarily dismissed. See Bartlett v. Penzone, 2:18-cv-2598-TLN-DMC,
23 at ECF No. 12. Plaintiff alleges his rights against cruel and unusual punishment and deliberate
24 indifference under the Eighth Amendment were violated. ECF No. 1 at 5. Plaintiff further
25 alleges his rights under the Due Process Clause under the Fourteenth Amendment were violated.
26 Id. at 8.

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1 IV. Failure to State a Claim

2 The California State Bar Association’s administrative decision to close a misconduct
3 investigation into an attorney cannot be the basis of an Eighth Amendment claim or a Fourteenth
4 Amendment Due Process claim, or any other claim of which the court is aware, and therefore
5 plaintiff has failed to state a claim under Fed. R. Civ. P. 12(b)(6).

6 A. Eighth Amendment Prohibition on Cruel and Unusual Punishment

7 The unnecessary and wanton infliction of pain constitutes cruel and unusual punishment
8 prohibited by the Eighth Amendment. Whitley v. Albers, 475 U.S. 312, 319 (1986); Ingraham v.
9 Wright, 430 U.S. 651, 670 (1977); Estelle v. Gamble, 429 U.S. 97, 105-06 (1976). In order to
10 prevail on a claim of cruel and unusual punishment, a prisoner must allege and prove that
11 objectively he suffered a sufficiently serious deprivation and that subjectively prison officials
12 acted with deliberate indifference in allowing or causing the deprivation to occur. Wilson v.
13 Seiter, 501 U.S. 294, 298-99 (1991). The California Bar Association’s administrative decision to
14 close a claim against an attorney can in no way violate the Eighth Amendment’s prohibition on
15 cruel and unusual punishment.

16 B. Eighth Amendment Protection Against Deliberate Indifference

17 The State has an obligation “to provide medical care for those whom it is punishing by
18 incarceration.” Estelle v. Gamble, 429 U.S. 97, 103 (1976). Accordingly, “deliberate
19 indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton
20 infliction of pain’ proscribed by the Eighth Amendment.” Id., 429 U.S. 104. Such “deliberate
21 indifference” to a prisoner’s serious medical needs “states a cause of action under § 1983.” Id.,
22 429 U.S. at 105. In order to state a § 1983 claim for violation of the Eighth Amendment based on
23 inadequate medical care, plaintiff must allege “acts or omissions sufficiently harmful to evidence
24 deliberate indifference to serious medical needs.” Id., 429 U.S. at 106. To prevail, plaintiff must
25 show both that his medical needs were objectively “serious,” Hudson v. McMillian, 503 U.S. 1, 9
26 (1992), and that defendants possessed a sufficiently culpable state of mind. Wilson v. Seiter, 501
27 U.S. 294, 299 (1991). The California Bar Association’s administrative decision to close a claim

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1 against an attorney can in no way violate the Eighth Amendment’s protection against harm
2 caused by deliberate indifference.

3 C. Fourteenth Amendment Due Process Clause

4 Under the Due Process Clause of the Fourteenth Amendment, the state cannot “deprive
5 any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, §
6 1. A due process claim requires a constitutionally protected liberty or property interest.

7 Ingraham v. Wright, 430 U.S. 651, 672 (1977). “Constitutionally protected liberty interests can
8 arise under either state law or the Due Process Clause.” Duffy v. Riveland, 98 F.3d 447, 456-57
9 (9th Cir. 1996) (citing Hernandez v. Johnston, 833 F.2d 1316, 1318 (9th Cir. 1987)). The
10 California Bar Association’s administrative decision to close a claim against an attorney does not
11 impact, in any way, any of plaintiff’s constitutionally protected liberty or property interests.

12 V. No Leave to Amend

13 Leave to amend should be granted if it appears possible that the defects in the complaint
14 could be corrected, especially if a plaintiff is pro se. Lopez v. Smith, 203 F.3d 1122, 1130-31
15 (9th Cir. 2000) (en banc); Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se
16 litigant must be given leave to amend his or her complaint, and some notice of its deficiencies,
17 unless it is absolutely clear that the deficiencies of the complaint could not be cured by
18 amendment.” (citing Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987))). However, if, after
19 careful consideration, it is clear that a complaint cannot be cured by amendment, the court may
20 dismiss without leave to amend. Cato, 70 F.3d at 1005-06.

21 The undersigned finds that, as set forth above, plaintiff cannot allege any set of facts that
22 would support a federal claim based on the California State Bar Association’s administrative
23 decision to close an administrative complaint against plaintiff’s attorney. This case therefore
24 should be dismissed without leave to amend.

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

26 Your request to proceed in forma pauperis is granted and you are not required to pay the
27 entire filing fee immediately. It is recommended that your case be dismissed without leave to

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1 amend because the facts you allege cannot support any cause of action over which this court has
2 jurisdiction.

3 VII. Conclusion

4 In accordance with the above, IT IS HEREBY ORDERED that plaintiff's request for
5 leave to proceed in forma pauperis (ECF No. 2) is granted.

6 IT IS FURTHER RECOMMENDED that this case be dismissed without leave to amend
7 for failure to state a claim upon which relief can be granted.

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

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

15 DATED: April 1, 2019

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17 ALLISON CLAIRE
18 UNITED STATES MAGISTRATE JUDGE
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