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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROLAND THOMAS KOCH,
Plaintiff,
v.
SCOTT JONES, et al.,
Defendants.

No. 2:19-cv-1535 JAM CKD P

ORDER

Plaintiff is a California civil detainee 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. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

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.

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th

1 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
2 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
3 490 U.S. at 327.

4 In order to avoid dismissal for failure to state a claim a complaint must contain more than
5 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
6 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
7 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
8 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
9 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
10 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
11 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
12 at 678. When considering whether a complaint states a claim upon which relief can be granted,
13 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and
14 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
15 U.S. 232, 236 (1974).

16 The court has conducted the required screening and finds that plaintiff may proceed on the
17 challenges to his conditions of confinement under the Fourteenth Amendment against defendant
18 Jones. Accordingly, the court will order that he be served with process. The court will
19 recommend dismissal of defendant Sacramento County because defendant Jones is sued in his
20 individual and official capacity as the Sheriff of Sacramento County. See Kentucky v. Graham,
21 473 U.S. 159, 166 (1985) (stating that an official capacity suit is to be treated as a suit against the
22 governmental entity itself). To the extent plaintiff asserts violations of the Eighth Amendment,
23 the court will recommend that those claims will be dismissed as the Eighth Amendment only
24 applies to prisoners and not civil detainees such as plaintiff. E.g. Jones v. Blanas, 393 F.3d 918,
25 931 (9th Cir. 2004).

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

- 27 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2) is granted.
- 28 2. Service is appropriate for defendant Scott Jones.

1 3. The Clerk of the Court shall send plaintiff one USM-285 form, one summons, an
2 instruction sheet and a copy of the complaint.

3 4. Within thirty days from the date of this order, plaintiff shall complete the attached
4 Notice of Submission of Documents and submit the following documents to the court:

- 5 a. The completed Notice of Submission of Documents;
- 6 b. One completed summons;
- 7 c. One completed USM-285 form; and
- 8 d. Two copies of the complaint.

9 5. Plaintiff need not attempt service on Defendant Jones and need not request waiver of
10 service. Upon receipt of the above-described documents, the court will direct the United States
11 Marshal to serve the above-named defendant pursuant to Federal Rule of Civil Procedure 4
12 without payment of costs.

13 IT IS HEREBY RECOMMENDED that all claims other than claims arising under the
14 Fourteenth Amendment against Scott Jones in his individual and official capacities be dismissed.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen after
17 being served with these findings and recommendations, plaintiff may file written objections with
18 the court. The document should be captioned “Objections to Magistrate Judge’s Findings and
19 Recommendations.” Plaintiff is advised that failure to file objections within the specified time
20 waives the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
21 1991).

22 Dated: April 1, 2020



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROLAND THOMAS KOCH,
Plaintiff,
v.
SCOTT JONES,
Defendants.

No. 2:19-cv-1535 JAM CKD P
NOTICE OF SUBMISSION
OF DOCUMENTS

Plaintiff submits the following documents in compliance with the court's order filed

- _____:
- _____ completed summons form
 - _____ completed USM-285 forms
 - _____ copies of the _____
Complaint

DATED:

Plaintiff