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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH POLLARD,

Plaintiff,

v.

FBI, et al.,

Defendants.

No. 2:20-cv-0112-KJM-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, seeks leave to proceed in forma pauperis (“IFP”). ECF Nos. 5 & 10. He also moves to amend his complaint. ECF No. 11. For the reasons stated hereafter, the court grants plaintiff’s IFP application and recommends that his complaint be dismissed without leave to amend.

Application to Proceed in Forma Pauperis

Plaintiff’s application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Screening Requirements

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

1 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
2 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
3 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

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8 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), *superseded by statute*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

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

23 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
24 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
25 *Corp.*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content
26 that allows the court to draw the reasonable inference that the defendant is liable for the
27 misconduct alleged.” *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 556). In reviewing a complaint
28 under this standard, the court must accept as true the allegations of the complaint in question,

1 *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), as well as construe the pleading
2 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, *Jenkins v.*
3 *McKeithen*, 395 U.S. 411, 421 (1969).

4 Screening Order

5 Plaintiff’s complaint concerns his fears surrounding what he believes to be a “neurological
6 society that can send electromagnetic shock to [his] brain . . . and shut down [his] organs.” ECF
7 No. 1 at 1. In a “supplement” to his complaint, he adds allegations about an “eye lens implant”
8 used by the police for wire tap operations. ECF No. 3 at 1; *see also* ECF No. 6. In his motion to
9 amend, he alleges he is a victim of “satellite terrorism” and “holographic drone laser surveillance
10 that look[s] like a fake sun” ECF No. 11.

11 The Supreme Court has held that a claim is frivolous “when the facts alleged arise to the
12 level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts
13 available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992); *see also Neitzke v.*
14 *Williams*, 490 U.S. 319, 325 (1989) (holding that “§ 1915(d)’s term ‘frivolous,’ when applied to a
15 complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual
16 allegation.”). The court concludes that plaintiff’s allegations irrational and wholly incredible and
17 are therefore, frivolous. As a result, the complaint should be dismissed and the motion to amend
18 denied. *See Lopez v. Smith*, 203 F.3d 1122, 1127 n.8 (9th Cir. 2000) (“When a case may be
19 classified as frivolous or malicious, there is, by definition, no merit to the underlying action and
20 so no reason to grant leave to amend.”).

21 Conclusion

22 Accordingly, it is ORDERED that:

- 23 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 5 & 10) is granted; and
24 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
25 accordance with the notice to the California Department of Corrections and Rehabilitation filed
26 concurrently herewith.

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1 Further, it is RECOMMENDED that plaintiff's complaint (ECF No. 1) be dismissed as
2 frivolous and the motion to amend (ECF No. 11) be denied.

3 These findings and recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
5 after being served with these findings and recommendations, plaintiff may file written objections
6 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings
7 and Recommendations." Failure to file objections within the specified time may waive the right
8 to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998);
9 *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

10 DATED: April 8, 2020.

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12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE
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