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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCUS ANTHONY KENDRIX,
Plaintiff,
v.
SACRAMENTO MAIN JAIL, et al.,
Defendants.

No. 2:22-cv-1502 AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state 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 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 of twenty percent of the preceding month’s income credited to plaintiff’s prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 II. Statutory Screening of Prisoner Complaints

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

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13 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as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

17 "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the
18 claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of
19 what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550
20 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
21 "Failure to state a claim under § 1915A incorporates the familiar standard applied in the context
22 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)." Wilhelm v. Rotman,
23 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure
24 to state a claim, a complaint must contain more than "a formulaic recitation of the elements of a
25 cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the
26 speculative level." Twombly, 550 U.S. at 555 (citations omitted). "[T]he pleading must contain
27 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally
28 cognizable right of action." Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur

1 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

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

11 III. Complaint

12 The complaint alleges that defendants Sacramento County Jail, Gill, and Acallega violated
13 plaintiff’s rights. ECF No. 1. Specifically, plaintiff alleges that he received a check in the mail
14 from the Internal Revenue Service and Acallega opened the check outside his presence and cashed
15 it without his consent. Id. at 3, 6. Gill then removed all but \$300.00 for the Department of
16 Revenue Recovery. Id. at 5. Under policy, income tax refunds and any type of check from the
17 United States Treasury that are received through the mail are not acceptable for deposit into an
18 inmate’s account and are to be returned to the sender or placed in the inmate’s property. Id. at 3-
19 4; ECF No. 2 at 10. Because policy was not followed, plaintiff was deprived of the money sent to
20 the Department of Revenue Recovery. ECF No. 1 at 5.

21 IV. Failure to State a Claim

22 The unauthorized deprivation of property by a prison official, whether intentional or
23 negligent, does not state a claim under § 1983 if the state provides an adequate post-deprivation
24 remedy. Hudson v. Palmer, 468 U.S. 517, 533 (1984). “California Law provides an adequate
25 post-deprivation remedy for any property deprivations.” Barnett v. Centoni, 31 F.3d 813, 816-17
26 (9th Cir. 1994) (per curiam) (citing Cal. Gov’t Code §§ 810-895). Therefore, only an intentional
27 and authorized deprivation of property may constitute an actionable § 1983 claim for violation of
28 the Due Process Clause. An authorized deprivation is one carried out pursuant to established

1 state procedures, regulations, or statutes. Piatt v. MacDougall, 773 F.2d 1032, 1036 (9th Cir.
2 1985).

3 In the instant case, plaintiff claims that Acalleja and Gill violated policy by accepting a
4 check sent to him by the Internal Revenue Service and taking all but \$300.00 of the money
5 deposited. ECF No. 1 at 3-6. Because the deposit and withdrawal was allegedly in violation of
6 policy, it was unauthorized and plaintiff's property claim is not cognizable against any individual.
7 Plaintiff also fails to state a claim against the Sacramento County Jail because he has failed to
8 demonstrate that his rights were violated as a result of a custom or policy of the jail. See City of
9 Canton v. Harris, 489 U.S. 378, 389 (1989) ("a municipality can be liable under § 1983 only
10 where its policies are the 'moving force [behind] the constitutional violation,'" (alteration in
11 original) (quoting Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 and Polk County v. Dodson,
12 454 U.S. 312, 326 (1981))).

13 V. No Leave to Amend

14 Leave to amend should be granted if it appears possible that the defects in the complaint
15 could be corrected, especially if a plaintiff is pro se. Lopez v. Smith, 203 F.3d 1122, 1130-31
16 (9th Cir. 2000) (en banc). However, if, after careful consideration, it is clear that a complaint
17 cannot be cured by amendment, the court may dismiss without leave to amend. Cato v. United
18 States, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

19 The undersigned finds that, as set forth above, the complaint fails to state a claim upon
20 which relief may be granted and that given the nature of the claims, amendment would be futile.
21 The complaint should therefore be dismissed without leave to amend.

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

23 Your request to proceed in forma pauperis is granted. That means you do not have to pay
24 the entire filing fee now. You will pay it over time, out of your trust account.

25 It is being recommended that your complaint be dismissed without leave to amend
26 because the claim for the loss of your money does not state a claim for relief that can be pursued
27 in this court.

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

1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.

2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the appropriate agency filed concurrently herewith.

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

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

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judges Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: November 29, 2022



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE