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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 LAQUINTON D. BOWERS,

12 Plaintiff,

13 v.

14 CALIFORNIA STATE PRISON
15 SACRAMENTO, et al.,

16 Defendants.
17

No. 2:22-cv-1919 AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

18 Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and
19 has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

20 I. Application to Proceed In Forma Pauperis

21 Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C.
22 § 1915(a). ECF No. 2. Accordingly, the request to proceed in forma pauperis will be granted.

23 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C.
24 §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in
25 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct
26 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and
27 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments
28 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.

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

4 II. Statutory Screening of Prisoner Complaints

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

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

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

1 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur
2 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

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

12 III. Complaint

13 The complaint alleges that defendants California State Prison (CSP)-Sacramento and
14 Warden Lynch have violated plaintiff’s constitutional rights. ECF No. 1. Plaintiff asserts that the
15 prison refuses to fix errors in applying his vested credits based on time served in the county jail,
16 resulting in plaintiff being held past his release date. Id. at 3-5. Attachments to the complaint
17 indicate that plaintiff has determinate prison sentences of four and six years, to be served
18 concurrently. Id. at 8. Plaintiff also alleges that he is missing property and that CSP-Sacramento
19 has failed to give him any information regarding the missing property. Id. at 6. He seeks
20 compensatory damages. Id. at 7.

21 IV. Failure to State a Claim

22 A. Defendant CSP-Sacramento

23 Plaintiff’s claims against CSP-Sacramento are barred by sovereign immunity because the
24 prison is an arm of the state. See Howlett v. Rose, 496 U.S. 356, 365 (1990) (the state and arms
25 of the state “are not subject to suit under § 1983” (citing Will v. Mich. Dep’t of State Police, 491
26 U.S. 58 (1989))).

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1 B. Application of Credits

2 A claim to recover monetary damages is not cognizable under § 1983 if success on the
3 claim “would necessarily imply the invalidity of [the plaintiff’s] conviction or sentence.” Heck v.
4 Humphrey, 512 U.S. 477, 487 (1994). In order to recover damages, “a § 1983 plaintiff must
5 prove that the conviction or sentence has been reversed on direct appeal, expunged by executive
6 order, declared invalid by a state tribunal authorized to make such determination, or called into
7 question by a federal court’s issuance of writ of habeas corpus.” Id. at 486-87. The so-called
8 “Heck bar” also applies where a prisoner claims his release date has been miscalculated. See
9 Erlin v. United States, 364 F.3d 1127, 1130 (9th Cir. 2004) (no cause of action for miscalculation
10 of release date until prisoner had first prevailed in habeas case establishing entitlement to release).

11 Plaintiff has not demonstrated that he has successfully challenged the alleged
12 miscalculation or misapplication of his credits in a habeas proceeding, and the complaint and
13 attachments indicate that after plaintiff received a response to his institutional grievance
14 addressing the calculation of his release date (ECF No. 1 at 8-9), he proceeded to file this action a
15 week later. There is no indication that in the short time between plaintiff’s inquiry into his
16 release date and the filing of this complaint that he pursued these claims by way of a habeas
17 petition, much less had a petition resolved in his favor. Accordingly, Heck bars plaintiff’s claims
18 for damages based on his allegations that his release date has been miscalculated.

19 C. Property

20 The unauthorized deprivation of property by a prison official, whether intentional or
21 negligent, does not state a claim under § 1983 if the state provides an adequate post-deprivation
22 remedy, Hudson v. Palmer, 468 U.S. 517, 533 (1984), and “California Law provides an adequate
23 post-deprivation remedy for any property deprivations,” Barnett v. Centoni, 31 F.3d 813, 816-17
24 (9th Cir. 1994) (per curiam) (citing Cal. Gov’t Code §§ 810-895). Plaintiff’s allegations that his
25 property was lost therefore fail to state a claim for relief and must be dismissed.

26 V. No Leave to Amend

27 Leave to amend should be granted if it appears possible that the defects in the complaint
28 could be corrected, especially if a plaintiff is pro se. Lopez v. Smith, 203 F.3d 1122, 1130-31

1 (9th Cir. 2000) (en banc). However, if, after careful consideration, it is clear that a complaint
2 cannot be cured by amendment, the court may dismiss without leave to amend. Cato v. United
3 States, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

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

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

8 Your request to proceed in forma pauperis is granted and you are not required to pay the
9 entire filing fee immediately.

10 It is being recommended that your complaint be dismissed without leave to amend
11 because your allegations do not state any claims for relief and it does not appear the problems can
12 be fixed. You cannot bring a claim for money based on your release date being miscalculated
13 until you have successfully challenged the calculation in a habeas action and the loss of your
14 property does not state a claim for relief that can be pursued in this court.

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

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

17 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
18 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
19 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
20 Director of the California Department of Corrections and Rehabilitation filed concurrently
21 herewith.

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

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

26 These findings and recommendations are submitted to the United States District Judge
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
28 after being served with these findings and recommendations, plaintiff may file written objections

1 with the court. Such a document should be captioned “Objections to Magistrate Judges Findings
2 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
3 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
4 (9th Cir. 1991).

5 DATED: November 28, 2022

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7 ALLISON CLAIRE
8 UNITED STATES MAGISTRATE JUDGE
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