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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CECIL JEROME HATCHETT,
Plaintiff,
v.
KEN CLARK, et al.,
Defendants.

No. 2:23-cv-1215 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 Nos. 2, 6. 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13 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as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

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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 Plaintiff alleges that defendant Clark, whom he identifies as a warden in charge of inmate
14 trust account funds, and Doe defendants at Fisher Investment Group, Franklin Templeton Group,
15 J-Pay, and Walkenhorst’s Inmate Packages, have violated his constitutional rights. ECF No. 1.
16 Specifically, plaintiff asserts that he has attempted to deposit checks for one septillion dollars at
17 Fisher Investment Group, ten million dollars at Franklin Templeton and J-Pay, ten million thirty
18 thousand dollars at Mule Creek State Prison, and ten thousand dollars at Walkenhorst’s, but all
19 defendants have all refused to honor the checks, saying they do not take checks from inmates
20 because they do not trust them. Id. at 2. Plaintiff alleges that defendants are discriminating
21 against him because he is an inmate and that they have refused to return the checks to plaintiff so
22 that he may attempt to cash them elsewhere. Id. at 4.

23 IV. Failure to State a Claim

24 A. Equal Protection

25 With respect to plaintiff’s claim that he is being discriminated against because he is an
26 inmate, the Fourteenth Amendment’s Equal Protection Clause requires the State to treat all
27 similarly situated people equally. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439
28 (1985) (citation omitted). “To state a claim for violation of the Equal Protection Clause, a

1 plaintiff must show that the defendant acted with an intent or purpose to discriminate against him
2 based upon his membership in a protected class.” Serrano v. Francis, 345 F.3d 1071, 1082 (9th
3 Cir. 2003) (citing Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998)). Prisoners are not a
4 protected class. Webber v. Crabtree, 158 F.3d 460, 461 (9th Cir. 1998) (inmates denied tobacco
5 use based on housing location not a protected class). Alternatively, a plaintiff may state an equal
6 protection claim if he shows similarly situated individuals were intentionally treated differently
7 without a rational relationship to a legitimate government purpose. Vill. of Willowbrook v.
8 Olech, 528 U.S. 562, 564 (2000) (citations omitted).

9 Inmates are not a protected class for equal protection purposes, nor are they similarly
10 situated to non-inmates. Accordingly, plaintiff cannot state a claim for relief based on allegations
11 that defendants violated his equal protection rights when they refused to cash or deposit his
12 checks because he is an inmate.

13 B. Property

14 The unauthorized deprivation of property by a prison official, whether intentional or
15 negligent, does not state a claim under § 1983 if the state provides an adequate post-deprivation
16 remedy, Hudson v. Palmer, 468 U.S. 517, 533 (1984), and “California Law provides an adequate
17 post-deprivation remedy for any property deprivations,” Barnett v. Centoni, 31 F.3d 813, 816-17
18 (9th Cir. 1994) (per curiam) (citing Cal. Gov’t Code §§ 810-895). Therefore, to the extent
19 plaintiff is attempting to state a due process claim against any defendant based on the refusal to
20 return his checks, he fails to state a claim for relief.

21 C. Private Actors

22 Plaintiff does not state any claims for relief against the Doe defendants employed by
23 Fisher Investment Group, Franklin Templeton Group, J-Pay, and Walkenhorst’s because
24 U.S.C. § 1983 applies only to persons who are “acting under color of state law.” Marsh v.
25 County of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012). “[T]he under-color-of-state-law
26 element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory
27 or wrongful.” Id. (quoting Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50 (1999)). To
28 state claims against these defendants, plaintiff would have to allege facts demonstrating that their

1 conduct was “fairly attributable to the State.” See West v. Atkins, 487 U.S. 42, 49 (1988) (to
2 state a claim under § 1983 a defendant’s conduct must be “fairly attributable to the State”
3 (citation omitted)).

4 V. No Leave to Amend

5 Leave to amend should be granted if it appears possible that the defects in the complaint
6 could be corrected, especially if a plaintiff is pro se. Lopez v. Smith, 203 F.3d 1122, 1130-31
7 (9th Cir. 2000) (en banc). However, if, after careful consideration, it is clear that a complaint
8 cannot be cured by amendment, the court may dismiss without leave to amend. Cato v. United
9 States, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

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

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

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

16 It is being recommended that your complaint be dismissed without leave to amend
17 because you cannot state an equal protection claim based on being treated differently because you
18 are a prisoner. That is because prisoners are not a protected class and they are not in a similar
19 position to non-prisoners. Your claim for the loss of your money does not state a claim for relief
20 that can be pursued in this court. Finally, you cannot state a claim against individuals who were
21 not state actors.

22 CONCLUSION

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

- 24 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.
25 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
26 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
27 § 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the
28 appropriate agency filed concurrently herewith.

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

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

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
7 after being served with these findings and recommendations, plaintiff may file written objections
8 with the court. Such a document should be captioned “Objections to Magistrate Judges Findings
9 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
10 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
11 (9th Cir. 1991).

12 DATED: July 29, 2024

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14 ALLISON CLAIRE
15 UNITED STATES MAGISTRATE JUDGE
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