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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VALDEZ BLACKMON,
Plaintiff,
v.
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, DIVISION OF
ADULT PAROLE OPERATION,
REGION 2; J. LARSON; JAMES
SCAVER; RAY POLIAKOFF;
Defendant.

No. C 11-3948 JSW (PR)
**ORDER GRANTING MOTIONS
TO DISMISS AND MOTION TO
AMEND MOTION TO DISMISS**

(Docket Nos. 11, 21, 23)

INTRODUCTION

Plaintiff, a parolee of the State of California, filed this pro se civil rights action pursuant to 42 U.S.C. § 1983. Defendants J. Larson, James Scaver, and Ray Poliakoff, filed a motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that the complaint fails to state a cognizable claim for relief. They later filed a motion to amend that motion. Defendant California Department of Corrections and Rehabilitation, Division of Adult Parole Operation, Region 2 (“CDCR”) filed a separate motion to dismiss under Rule 12(b)(6) as well. Plaintiff has not opposed the motions. For the reasons discussed below, the motions to dismiss and to amend the motion to dismiss are GRANTED.

DISCUSSION

A. Standard of Review

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. The United States Supreme Court has recently explained the "plausible on its face" standard of *Twombly*: "[w]hile legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950 (2009).

In deciding a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court must limit its review to the contents of the complaint, *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994), including documents physically attached to the complaint or documents the complaint necessarily relies on and whose authenticity is not contested, *Lee v. County of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Allegations of fact in the complaint must be taken as true and construed in the light most favorable to the non-moving party. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). The Court need not, however, "accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable

1 inferences.” *Id.*

2 Pro se pleadings must be construed liberally on a defendant’s motion to dismiss
3 for failure to state a claim. *Ortez v. Washington County Oregon*, 88 F.3d 804, 807 (9th
4 Cir. 1996). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
5 elements: (1) that a right secured by the Constitution or laws of the United States was
6 violated, and (2) that the alleged violation was committed by a person acting under the
7 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

8 **B. Analysis**

9 The only allegation in the complaint is that “[i]t is unconstitutional to inflict
10 ‘serious psychological pain’ on inmate to served [sic] ‘minor [Correctional] concern
11 [sic].” (Complaint at 2.) Even liberally construing it in Plaintiff’s favor, this allegation
12 is wholly conclusory. Plaintiff does not allege, and it cannot be inferred, what actions
13 any defendant took, or how such actions violated any of Plaintiff constitutional rights.
14 Defendant CDCR is, furthermore, immune from suit under the Eleventh Amendment.
15 *Brown v. Cal. Dep’t of Corrs.*, 554 F.3d 747, 752 (9th Cir. 2009) (California Department
16 of Corrections entitled to 11th Amendment immunity). The complaint must be dismissed
17 on these grounds.

18 **CONCLUSION**

19 For the foregoing reasons, Defendants’ motion to amend a motion to dismiss and
20 their motions to dismiss, as amended, are GRANTED and this case is DISMISSED.

21 The Clerk shall enter judgment and close the file.

22 IT IS SO ORDERED.

23 DATED: December 21, 2011

24 
25 _____
26 JEFFREY S. WHITE
27 United States District Judge
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 VALDEZ BLACKMON,
6 Plaintiff,
7

Case Number: CV11-03948 JSW

CERTIFICATE OF SERVICE

8 v.

9 DIVISION OF ADULT PAROLE
OPERATION et al,

10 Defendant.
11 _____/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
Court, Northern District of California.

13 That on December 21, 2011, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
delivery receptacle located in the Clerk's office.

16
17 Valdez Blackmon
P.O. Box 213
18 Palo Alto, CA 94025

19 Dated: December 21, 2011



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk

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