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

WILLIAM WHITSITT,

Plaintiff,

No. CIV S-10-1620 GEB KJM PS

vs.

PAM HARRIS, et al.,

Defendants.

ORDER

_____ /

Plaintiff is proceeding in this action pro se. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 72-302(c)(21).

Plaintiff has submitted the affidavit required by § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

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1 A claim is legally frivolous when it lacks an arguable basis either in law or in
2 fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-
3 28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless.
5 Neitzke, 490 U.S. at 327.

6 In order to avoid dismissal for failure to state a claim a complaint must contain
7 more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements
8 of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other
9 words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
10 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a
11 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.
12 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
13 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129
14 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be
15 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200
16 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.
17 Rhodes, 416 U.S. 232, 236 (1974).

18 The court is unable to determine whether the current action is frivolous or fails to
19 state a claim for relief. The court has determined that the complaint does not contain a short and
20 plain statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a
21 flexible pleading policy, a complaint must give fair notice and state the elements of the claim
22 plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).
23 Plaintiff must allege with at least some degree of particularity overt acts which defendants
24 engaged in that support plaintiff’s claim. Id. Because plaintiff has not complied with the
25 requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will,
26 however, grant leave to file an amended complaint.

1 If plaintiff chooses to amend the complaint, plaintiff must set forth the
2 jurisdictional grounds upon which the court's jurisdiction depends. Fed. R. Civ. P. 8(a).
3 Further, plaintiff must demonstrate how the conduct complained of has resulted in a deprivation
4 of plaintiff's federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

5 It appears plaintiff is complaining about a denial of unemployment benefits by the
6 State of California. As plaintiff himself appears to acknowledge, the Eleventh Amendment bars
7 suits against state agencies. See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.,
8 506 U.S. 139, 144 (1993) (Eleventh Amendment bars suits against state agencies); Han v. United
9 States Dep't of Justice, 45 F.3d 333, 338 (9th Cir. 1995) (Eleventh Amendment bars suits against
10 state officials in their official capacities). Moreover, it may be appropriate for the federal court
11 to abstain from hearing plaintiff's present action. See Woodfeathers, Inc. v. Wash. County, Or.,
12 180 F.3d 1017, 1020 (9th Cir. 1999); Hydrostorage, Inc. v. Northern Cal. Boilermakers Local
13 Joint Apprenticeship Comm., 891 F.2d 719, 725 (9th Cir. 1989) (abstention may be properly
14 raised sua sponte).

15 Plaintiff is informed that the court cannot refer to a prior pleading in order to
16 make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended
17 complaint be complete in itself without reference to any prior or other pleading. This is because,
18 as a general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay,
19 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading
20 no longer serves any function in the case. Therefore, in an amended complaint, as in an original
21 complaint, each claim and the involvement of each defendant must be sufficiently alleged.
22 Plaintiff also should not file a separate brief in support of an amended complaint. If the
23 complaint is served, once an answer or motion in response to the complaint is filed, plaintiff may
24 have the opportunity to brief the merits of legal issues requiring the court's resolution.

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

1. Plaintiff's request to proceed in forma pauperis is granted;
2. Plaintiff's complaint is dismissed; and
3. Plaintiff is granted thirty days from the date of service of this order to file an

amended complaint that complies with the requirements of the Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and two copies of the amended complaint; failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

DATED: July 23, 2010.



U.S. MAGISTRATE JUDGE

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