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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.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is proceeding in this action pro se and in forma pauperis. Plaintiff has filed an amended complaint.

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).

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

1 In order to avoid dismissal for failure to state a claim a complaint must contain
2 more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements
3 of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other
4 words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
5 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a
6 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.
7 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
8 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129
9 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be
10 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200
11 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.
12 Rhodes, 416 U.S. 232, 236 (1974).

13 In this action, plaintiff alleges that his civil rights have been violated in
14 connection with his claim for unemployment benefits. Plaintiff’s allegations fail to state a claim
15 under 42 U.S.C. § 1983. Plaintiff makes no assertion that his claim for unemployment benefits
16 was denied on an impermissible basis. See Rutan v. Republican Party of Illinois, 497 U.S. 62,
17 86-87 (1990) (even though a person has no right to valuable governmental benefit and
18 government may deny the benefit for any number of reasons, benefit may not be denied where it
19 infringes on constitutionally protected interests such as free speech); see also Sherbert v. Verner,
20 374 U.S. 398 (1963) (unemployment benefits could not be denied based on plaintiff’s religious
21 practices). Although plaintiff asserts a claim for violation of due process, it is apparent from
22 plaintiff’s allegations that he has been afforded full due process in connection with his claim for
23 unemployment benefits, including reviews by an administrative judge and notices from the
24 Employment Development Department. Am. Compl. at 3:20-28. Plaintiff’s disagreement with
25 the administrative determination does not a due process claim make. In addition, the California
26 system of administering unemployment claims has been certified as reasonably calculated to

