



1 an immune defendant.

2 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
3 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
4 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
5 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
6 490 U.S. at 327.

7 To avoid dismissal for failure to state a claim, a complaint must contain more than “naked  
8 assertions,” “labels and conclusions,” or “a formulaic recitation of the elements of a cause of  
9 action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other words,  
10 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
11 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim  
12 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A  
13 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
14 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.  
15 at 678. When considering whether a complaint states a claim upon which relief can be granted,  
16 the court must accept the well-pled factual allegations as true, Erickson v. Pardus, 551 U.S. 89, 94  
17 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.  
18 Rhodes, 416 U.S. 232, 236 (1974).

19 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21  
20 (1972); Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988). Unless it is clear  
21 that no amendment can cure the defects of a complaint, a pro se plaintiff proceeding *in forma*  
22 *pauperis* is ordinarily entitled to notice and an opportunity to amend before dismissal. See Noll  
23 v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin v. Murphy, 745 F.2d 1221, 1230 (9th  
24 Cir. 1984).

25 In this case, plaintiff alleges that, around December 21, 2014, he applied to defendant  
26 IMKO Workforce Solutions, a screening and placement agency, for an electrician assembler  
27 position with defendant Unison Corporation. However, on January 27, 2015, plaintiff was  
28 informed that he was disqualified from employment, and would not be hired at Unison, because

1 of his criminal record. According to plaintiff, he was told that the disqualification was job related  
2 and consistent with company business necessity. When plaintiff inquired further, one  
3 representative informed plaintiff that he could not have any criminal record, and another  
4 representative stated that he could not have any felonies or serious misdemeanors. Plaintiff  
5 admits that he has a misdemeanor from 2010 for using his brother's driver's license and a  
6 misdemeanor from 2013 for petty theft, but does not believe that those convictions are job related  
7 or require exclusion from an electrician assembler position. Plaintiff contends that he was  
8 discriminated against on the basis of his race in violation of Title VII of the Civil Rights Act and  
9 on the basis of age in violation of the Age Discrimination in Employment Act ("ADEA").

10 Plaintiff's complaint is subject to dismissal, because it states, on its face, a legitimate  
11 reason for why defendants refused to hire plaintiff. Generally, employers are free to refuse to hire  
12 applicants with any criminal record without violating Title VII or the ADEA, even if plaintiff  
13 personally disagrees with the relevance of such a requirement for the position he seeks.  
14 Furthermore, although plaintiff alleges that the reason given for the refusal to hire was pretextual,  
15 his allegation in that regard is entirely conclusory and unsupported by any specific factual  
16 allegations.

17 In light of the above, the court dismisses plaintiff's complaint, but with leave to amend.  
18 If plaintiff elects to file an amended complaint, it shall be captioned "First Amended Complaint";  
19 shall address the deficiencies outlined above; and shall be filed within 28 days of this order.

20 Plaintiff is informed that the court cannot refer to a prior complaint or other filing in order  
21 to make plaintiff's first amended complaint complete. Local Rule 220 requires that an amended  
22 complaint be complete in itself without reference to any prior pleading. As a general rule, an  
23 amended complaint supersedes the original complaint, and once the first amended complaint is  
24 filed, the original complaint no longer serves any function in the case.

25 Finally, nothing in this order requires plaintiff to file a first amended complaint. If  
26 plaintiff determines that he is unable to amend his complaint to state a viable claim in accordance  
27 with his obligations under Federal Rule of Civil Procedure 11, he may alternatively file a notice  
28 of voluntary dismissal of his claims without prejudice pursuant to Federal Rule of Civil Procedure

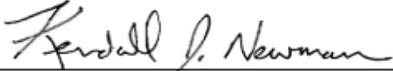
1 41(a)(1)(A)(i) within 28 days of this order.

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. Plaintiff's motion to proceed *in forma pauperis* (ECF No. 2) is granted.
- 4 2. Plaintiff's complaint is dismissed with leave to amend.
- 5 3. Within 28 days of this order, plaintiff shall file either a first amended complaint in
- 6 compliance with this order or a request for voluntary dismissal of the action without
- 7 prejudice.
- 8 4. Failure to timely comply with this order may result in dismissal of the action with
- 9 prejudice pursuant to Federal Rule of Civil Procedure 41(b).

10 IT IS SO ORDERED.

11 Dated: June 16, 2017

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14 KENDALL J. NEWMAN  
15 UNITED STATES MAGISTRATE JUDGE

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