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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. WHITSITT,
Plaintiff,
v.
ROY, et al.,
Defendants.

No. 2:17-cv-1836 TLN AC (PS)

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in this action pro se. This matter was accordingly referred to the undersigned by E.D. Cal. 302(c)(21). Plaintiff has filed a request for leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915, and has submitted the affidavit required by that statute. See 28 U.S.C. § 1915(a)(1). ECF No. 2. The motion to proceed IFP will therefore be GRANTED.

I. SCREENING

The federal IFP statute requires 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). Plaintiff must assist the court in determining whether or not the complaint is frivolous, by drafting the complaint so that it complies with the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”). The Federal Rules of Civil Procedure are available online at www.uscourts.gov/rules-

1 [policies/current-rules-practice-procedure/federal-rules-civil-procedure](#). Under the Federal Rules
2 of Civil Procedure, the complaint must contain (1) a “short and plain statement” of the basis for
3 federal jurisdiction (that is, the reason the case is filed in this court, rather than in a state court),
4 (2) a short and plain statement showing that plaintiff is entitled to relief (that is, who harmed the
5 plaintiff, and in what way), and (3) a demand for the relief sought. Fed. R. Civ. P. 8(a).
6 Plaintiff’s claims must be set forth simply, concisely and directly. Fed. R. Civ. P. 8(d)(1). Forms
7 are available to help pro se plaintiffs organize their complaint in the proper way. They are
8 available at the Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200), Sacramento, CA 95814, or
9 online at www.uscourts.gov/forms/pro-se-forms.

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the
12 court will (1) accept as true all of the factual allegations contained in the complaint, unless they
13 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the
14 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von
15 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert.
16 denied, 564 U.S. 1037 (2011).

17 The court applies the same rules of construction in determining whether the complaint
18 states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court
19 must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must
20 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a
21 less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520
22 (1972). However, the court need not accept as true conclusory allegations, unreasonable
23 inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,
24 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice
25 to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Ashcroft v. Iqbal,
26 556 U.S. 662, 678 (2009).

27 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to
28 state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “A claim has

1 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
2 reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at
3 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity
4 to amend, unless the complaint’s deficiencies could not be cured by amendment. See Noll v.
5 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

6 A. The Complaint

7 Plaintiff brings suit under 42 U.S.C. §1983 against defendants for the deprivation of his
8 “right to eligibility determination to Unemployment Insurance (“UI”) benefits within (21) days of
9 Application.” ECF No. 1 at 1. Plaintiff cites 42 U.S.C.A. § 503 as the basis for this right. Id.

10 Plaintiff alleges he applied for unemployment benefits on July 11, 2017 and did not
11 receive benefits for 36 days. ECF No. 1 at 4. Plaintiff ultimately began to receive benefits. Id.
12 Plaintiff asserts that a UI Benefits eligibility manager named Roy told him that he “did not care
13 about their (21) days of determination period and the scheduling of their Phone Eligibility
14 Determination Interview” at the 30th day of that period. Id. Plaintiff alleges he objected to the
15 delayed hearing, but was told there were not enough phone interviewers to shorten the waiting
16 time. Id. Plaintiff seeks compensatory and punitive damages. Id. at 7-8.

17 B. Analysis

18 Plaintiff does not state a claim upon which relief can be granted, and his complaint must
19 be dismissed. The law plaintiff relies on, 42 U.S.C.A. § 503 governs federal payments to state
20 unemployment insurance programs and says, in relevant part, that the “Secretary of Labor may
21 not certify payment of federal funds unless he first finds that the State’s program conforms to
22 federal requirements.” 42 U.S.C.A. § 503(a)(1). The Supreme Court has recognized a private
23 right of action under §503. See California Department of Human Resources v. Java, 402 U.S.
24 121(1971). One of the requirements a state program must meet in order for the federal
25 government to provide funding to an unemployment program is that the program must be
26 reasonably calculated to insure full payment of unemployment compensation “when due.” 42
27 U.S.C. § 503(a)(1). The Ninth Circuit has concluded that the “when due” statutory language,
28 “when construed in light of the purposes of the Act, means the time when payments are first
administratively allowed *as a result of a hearing of which both parties have notice and are*

1 *permitted to present their respective positions[.]*” California Dep’t of Human Res. Dev., 402 U.S.
2 at 133 (emphasis added). Thus, payments are not “due” before an initial hearing is held, as
3 plaintiff alleges. Further, §503 does not set a time limit for a hearing to occur. Plaintiff does not
4 cite any law or regulation requiring the completion of an unemployment hearing within 21 days
5 of an unemployment application, and the court finds none. Even if there were a regulation setting
6 such a deadline, that would not necessarily create a constitutional right to an eligibility
7 determination within the specified time. For the foregoing reasons, plaintiff fails to state a claim
8 upon which relief can be granted and the undersigned recommends his complaint be dismissed.
9 The undersigned further recommends that leave to amend not granted in this instance because, in
10 light of the facts at issue in this case, the complaint’s deficiencies could not be cured by
11 amendment. Noll, 809 F.2d at 1448.

11 III. CONCLUSION

12 Accordingly, the undersigned recommends that plaintiff’s request to proceed in forma
13 pauperis (ECF No. 2) be GRANTED but that the complaint (ECF No. 1) be DISMISSED with
14 prejudice because it fails to state a claim upon which relief can be granted. It is further
15 recommended that leave to amend not be granted because amendment would be futile.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days
18 after being served with these findings and recommendations, plaintiff may file written objections
19 with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a document
20 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure
21 to file objections within the specified time may waive the right to appeal the District Court’s
22 order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153,
23 1156-57 (9th Cir. 1991).

24 DATED: September 18, 2017

25 
26 ALLISON CLAIRE
27 UNITED STATES MAGISTRATE JUDGE
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