

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 RICHARD ZAKOSKY,
12 Plaintiff,

13 v.

14 DEPARTMENT OF VETERANS
15 AFFAIRS,
16 Defendant.

Case No.: 17cv1373-JAH (BGS)

**ORDER DISMISSING PLAINTIFF'S
AMENDED COMPLAINT
PURSUANT TO 28 U.S.C. § 1915(e)(2)**

17 **INTRODUCTION**

18 On July 6, 2017, Plaintiff Richard Zakosky ("Plaintiff") filed a civil complaint with
19 this Court along with a motion to proceed in forma pauperis and a motion to appoint
20 counsel. [Doc. Nos. 1, 2, 3]. On October 24, 2017 this Court granted Plaintiff's motion to
21 proceed in forma pauperis, denied his motion to appoint counsel, and on sua sponte
22 screening, dismissed the complaint without prejudice. See Doc. No. 4. Presently before the
23 Court is Plaintiff's Amended Complaint [Doc. No. 7], which pursuant to 28 U.S.C. §
24 1915(a) is subject to mandatory and sua sponte review.

25 **DISCUSSION**

26 As stated above, any complaint filed by a person filing in forma pauperis pursuant
27 to 28 U.S.C. § 1915(a) is subject to mandatory and sua sponte review and dismissal by the
28

1 court to the extent it is “frivolous, malicious, failing to state a claim upon which relief may
2 be granted, or seeking monetary relief from a defendant immune from such relief.” 28
3 U.S.C. §1915(e)(2)(B); Calhoun v. Stahl, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he
4 provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); Lopez v. Smith,
5 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc). Moreover, section 1915(e)(2) requires
6 that the court reviewing a complaint filed pursuant to the in forma pauperis provisions of
7 section 1915 make and rule on its own motion to dismiss before directing that the complaint
8 be served by the U.S. Marshal. Lopez, 203 F.3d at 1127 (“[S]ection 1915(e) not only
9 permits, but requires a district court to dismiss an in forma pauperis complaint that fails to
10 state a claim.”).

11 In dismissing Plaintiff’s initial complaint, this Court found that Plaintiff had not
12 presented actionable claims “beyond stating that there was wrongdoing at the Department
13 of Veterans Affairs.” Doc. No. 4, pg. 3. Plaintiff fails to remedy these deficiencies in his
14 amended complaint. Even evaluating Plaintiff’s complaint liberally, as this Court must do
15 given his pro se status, Plaintiff has not presented a sufficient basis for a cognizable claim
16 on which relief may be granted. See Estelle v. Gamble, 429 U.S. 97 (1976). Accordingly,
17 the Court **DISMISSES** the amended complaint without prejudice for failure to state a
18 claim. 28 U.S.C. § 1915(e)(2).

19 **CONCLUSION AND ORDER**

20 Based on the foregoing, **IT IS HEREBY ORDERED** that Plaintiff’s amended
21 complaint [Doc. No. 7] is **DISMISSED** without prejudice for failure to state a claim.
22 Plaintiff is permitted leave to file an amended complaint **within thirty (30) days** from the
23 date of this Order in order to cure the noted deficiencies in the complaint.

24 **IT IS SO ORDERED.**

25 DATED: August 17, 2018

26
27
28


JOHN A. HOUSTON
United States District Judge