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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MONTOREY DANYELL HARPER,
12 Military Leader UNI Star General,
13 Plaintiff,
14 v.
15 FED EX, SAN DIEGO, SAN DIEGO
16 POLICE DEPARTMENT, FBI, US, UN
17 Defendants.

Case No.: 3:17-cv-01070-GPC-MDD

ORDER:

**(1) DENYING PLAINTIFF'S
REQUEST TO PROCEED IN
FORMA PAUPERIS**

AND

**(2) DISMISSING PLAINTIFF'S
COMPLAINT FOR LACK OF
SUBJECT MATTER JURISDICTION
AND FAILURE TO STATE A
CLAIM PURSUANT TO 28 U.S.C. §
1915(e)(2)(B)**

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23 On May 23, 2017, Plaintiffs Montorey Danyell Harper ("Plaintiff" or "Harper"),
24 proceeding *pro se*, filed a Complaint against Fed Ex, the City of San Diego, the San
25 Diego Police Department, the Federal Bureau of Investigation ("FBI"), the United States
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1 of America, and the United Nations (collectively, “Defendants”).¹ (Dkt. No. 1.) Plaintiff
2 concurrently filed a motion to proceed *in forma pauperis* (“IFP”). (Dkt. No. 2.) For the
3 reasons set forth below, the Court **DENIES** Plaintiff’s motion to proceed *in forma*
4 *pauperis* and **DISMISSES** Plaintiff’s Complaint for failure to state a claim pursuant to
5 28 U.S.C. § 1915(e)(2)(B)(ii) and for lack of subject matter jurisdiction.

6 **DISCUSSION**

7 **I. Motion for Leave to Proceed *In Forma Pauperis***

8 All parties instituting any civil action, suit or proceeding in a district court of the
9 United States, except an application for writ of habeas corpus, must pay a filing fee of
10 \$400.² See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to
11 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
12 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
13 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). The plaintiff must submit an affidavit
14 demonstrating his inability to pay the filing fee, and the affidavit must include a complete
15 statement of the plaintiff’s assets. 28 U.S.C. § 1915(a)(1). The facts as to the affiant’s
16 poverty must be stated “with some particularity, definiteness, and certainty.” *United*
17 *States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981). When a plaintiff moves to
18 proceed IFP, the court first “grants or denies IFP status based on the plaintiff’s financial
19 resources alone and then independently determines whether to dismiss the complaint”
20 pursuant to 28 U.S.C. § 1915(e)(2) (“§ 1915(e)(2)”). *Franklin v. Murphy*, 745 F.2d 1221,
21 1226 n.5 (9th Cir. 1984). IFP status may be acquired and lost during the course of
22 litigation. *Wilson v. Dir. of Div. of Adult Insts.*, No. CIV S–06–0791, 2009 WL 311150,
23 at *2 (E.D. Cal. Feb. 9, 2009) (internal citation omitted).

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25 ¹ Although Montorey, LLC is listed as a Plaintiff in the Complaint, (Dkt. No. 1 at 2), a review of the
26 Complaint and Harper’s application to proceed *in forma pauperis* suggests that Harper is the sole
27 Plaintiff in this case.

28 ² In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50.
See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14
(eff. Dec. 1, 2016)). The additional \$50 administrative fee does not apply to persons granted leave to
proceed IFP. *Id.*

1 Here, Plaintiff has supplied an affidavit in support of his application to proceed *in*
2 *forma pauperis*. (Dkt. No. 2.) Plaintiff declares that his average monthly income amount
3 during the past twelve months totaled to approximately \$4231. (*Id.* at 2.) Plaintiff has
4 \$50 in cash and \$830 in the form of a pre-paid debit card. (*Id.*) Plaintiff’s monthly
5 income exceeds his total monthly expenses, which amount to \$3125. (*Id.* at 5.)

6 The Court concludes that Plaintiff can afford the \$400 filing fee. Accordingly, the
7 Court **DENIES** Plaintiff’s request to proceed *in forma pauperis*.

8 **II. Sua Sponte Screening**

9 A complaint filed by any person proceeding IFP, pursuant to 28 U.S.C. § 1915(a),
10 is additionally subject to mandatory *sua sponte* screening. The Court must review
11 complaints filed by all persons proceeding IFP and must *sua sponte* dismiss any
12 complaint, or any portion of a complaint, which is frivolous, malicious, fails to state a
13 claim, or seeks damages from defendants who are immune. *See* 28 U.S.C. §
14 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (§
15 1915(e)(2)).

16 All complaints must contain “a short and plain statement of the claim showing that
17 the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). Detailed factual allegations are
18 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
19 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
20 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining
21 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that
22 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*
23 The “mere possibility of misconduct” falls short of meeting this plausibility standard.
24 *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

25 “When there are well-pleaded factual allegations, a court should assume their
26 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
27 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
28 (“[W]hen determining whether a complaint states a claim, a court must accept as true all

1 allegations of material fact and must construe those facts in the light most favorable to
2 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that
3 § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6).”).

4 However, while the court “ha[s] an obligation where the Plaintiff is pro se,
5 particularly in civil rights cases, to construe the pleadings liberally and to afford the
6 Plaintiff the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
7 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not
8 “supply essential elements of claims that were not initially pled,” *Ivey v. Bd. of Regents of*
9 *the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

10 Moreover, the federal court is one of limited jurisdiction. *Lowdermilk v. U.S. Bank*
11 *Nat’l Ass’n*, 479 F.3d 994, 997 (9th Cir. 2007). It possesses only that power authorized
12 by the Constitution or a statute. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S.
13 534, 541 (1986). It is constitutionally required to raise issues related to federal subject
14 matter jurisdiction and may do so *sua sponte*. *Steel Co. v. Citizens for a Better Env’t*, 523
15 U.S. 83, 93–94 (1998); *see Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th
16 Cir. 1990).

17 Here, Plaintiff’s Complaint is defective in multiple respects. The entirety of
18 Plaintiff’s Complaint is as follows:

19 THE CITY OF SAN DIEGO AND SAN DIEGO POLICE DEPARTMENT
20 COULD HAVE PREVENTED THE ASSAULT, THE LOCATION INSIDE THE
21 STORE, A BALL WAS ROLLED TO HIT THE PLAINTIFF IN THE FOOT.
22 SAN DIEGO HAS A NUMBER OF COMPLAINTS AND ENOUGH
23 COMPLAINTS TO HAVE PREVENTED THE ASSAULT. BOTH THE CITY
24 AND THE POLICE DEPARTMENT. FEDEX DOES NOT ALLOW ROLLING
25 OF BALLS ECT [SIC], SO IT WAS THE CITY AND THE POLICE
26 DEPARTMENT WHO CHOULD HAVE PREVENTED THE ASSAULT. NO
27 EMPLOYEES INSTRUCTED THOSE IN THE STORE ROLLING BALLS ECT
28 [SIC] TO STOP THEREFORE LIABILITY IS WITH FEDEX AS WELL FEDEX
IS AT FAULT. THE LAWSUIT THE PLAINTIFF HAD WAS ALSO HIT SO
THE LAWSUIT WAS ASSAULTED AND THAT IS ALSO A LIABILITY, SAN
DIEGO KNEW. CONSPIRACY SURROUNDS THE ASSAULT BECAUSE IT
INCLUDES FEDEX LIABILITY. FRAUD CENTERS AROUND THE

1 COMPLAINT BECAUSE IT SURROUNDS THE US, THE UNITED STATES
2 OF AMERICA. THE PLAINTIFF HAS A NUMBER OF SUITS SINCE THE
3 SUITS WERE HIT THEN THE CONSPIRACY AND THE FRAUD IS
4 ALLOWED.

5 (Dkt. No. 1 at 2.)

6 Although unclear, Plaintiff's Complaint appears to center on an alleged tort ("a ball
7 was rolled to hit the Plaintiff in the foot") which occurred within a Fed Ex store. (Dkt.
8 No. 1 at 2.) A number of problems plague Plaintiff's Complaint. First, Plaintiff fails to
9 state a claim against Defendants the United States, the FBI, and the United Nations.
10 Beyond ambiguous allegations that "fraud . . . surrounds the US," (*id.*), Plaintiff has not
11 alleged how the United States, the FBI, and the United Nations were involved in
12 perpetrating the allegedly wrongful conduct underlying Plaintiff's Complaint. Second, as
13 for Plaintiff's claim against the remaining Defendants, Plaintiff does not provide any
14 allegations of the circumstances surrounding the "ball rolling" incident—the Complaint
15 does not even specify who committed the allegedly tortious act. Third, even liberally
16 construing Plaintiff's claim as a tort claim, the Court lacks original jurisdiction to
17 entertain Plaintiff's state law claim. *See* 28 U.S.C. § 1331. Nor has Plaintiff alleged any
18 information showing that the Court has diversity jurisdiction in this case. 28 U.S.C. §
19 1332. Moreover, Plaintiff's Complaint cannot be construed to allege a 42 U.S.C. § 1983
20 claim, as Plaintiff does not allege a deprivation of a right protected by the Constitution or
21 created by federal statute. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

22 The Court **DISMISSES** Plaintiff's Complaint, because the Court lacks jurisdiction
23 to entertain Plaintiff's state law claim, and because Plaintiff's Complaint is frivolous and
24 fails to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B).³

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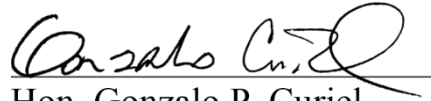
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28 ³ Because Plaintiff does not specify whether he intends to seek monetary relief, the Court does not reach the question of whether the Defendants are immune from monetary relief.

1 **CONCLUSION**

2 For the foregoing reasons, the Court **DENIES** Plaintiff's motion to proceed *in*
3 *forma pauperis* and **DISMISSES** Plaintiff's Complaint for lack of subject matter
4 jurisdiction and for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B).

5 **IT IS SO ORDERED.**

6 Dated: June 12, 2017

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8 Hon. Gonzalo P. Curiel
United States District Judge

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