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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

GARY BRADSHAW,

Plaintiff,

v.

DONALD TRUMP,

Defendant.

Case No. 1:18-cv-01415-DAD-EPG

**FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT THIS ACTION BE
DISMISSED FOR FAILURE TO STATE A
CLAIM AND THAT PLAINTIFF’S
APPLICATION TO PROCEED IN FORMA
PAUPERIS BE DENIED**

(ECF Nos. 1, 2)

**OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS**

I. BACKGROUND

On October 12, 2018, Gary Bradshaw (“Plaintiff”), proceeding *pro se*, commenced this action by filing a Complaint against Donald Trump, the President of the United States of America. (ECF No. 1). Plaintiff also filed an application to proceed *in forma pauperis*. (ECF No. 2).

II. APPLICATION TO PROCEED IN FORMA PAUPERIS

A civil action may proceed despite a failure to prepay the entire filing fee only if the party initiating the action is granted leave to proceed *in forma pauperis*. See *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). The decision whether to grant leave to proceed *in forma pauperis* is in the sound discretion of the court. See *Calif. Men’s Colony v. Rowland*, 939 F.2d

1 854, 858 (9th Cir. 1991) (“Section 1915 typically requires the reviewing court to exercise its
2 sound discretion in determining whether the affiant has satisfied the statute’s requirement of
3 indigency”), *rev’d on other grounds*, 506 U.S. 194 (1993). “[T]here is no formula set forth by
4 statute, regulation, or case law to determine when someone is poor enough to earn IFP status.”
5 *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015).

6 In applying to proceed *in forma pauperis*, a party must submit an affidavit that “state[s]
7 the facts as to [the] affiant’s poverty with some particularity, definiteness and certainty.”
8 *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960) (“The right to proceed in forma
9 paupers is not an unqualified one. It is a privilege, rather than a right”). The party “need not be
10 absolutely destitute to obtain benefits of the *in forma pauperis* statute.” *Id.* at 725.
11 Nevertheless, the affidavit must show that he “cannot because of his poverty pay or give
12 security for the costs and still be able to provide himself and dependents with the necessities of
13 life.” *Escobedo*, 787 F.3d at 1235 (citing *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S.
14 331, 339 (1948)).

15 Here, Plaintiff fails to demonstrate that he is unable to pay the court’s filing fee due to
16 poverty or indigence. Plaintiff submits an incomplete affidavit that does not indicate his assets
17 with particularity, definiteness, and certainty. Accordingly, Plaintiff’s application to proceed *in*
18 *forma pauperis* is denied.

18 **III. SCREENING REQUIREMENT**

19 Under 28 U.S.C. § 1915(e)(2), the Court must conduct a review of an *in forma pauperis*
20 complaint to determine whether it “state[s] a claim on which relief may be granted,” is
21 “frivolous or malicious,” or “seek[s] monetary relief against a defendant who is immune from
22 such relief.” If the Court determines that the complaint fails to state a claim, it must dismiss the
23 complaint. *Id.* Leave to amend may be granted to the extent that the deficiencies of the
24 complaint can be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.
25 1995).

26 A complaint must contain “a short and plain statement of the claim showing that the
27 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
28 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere

1 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
2 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient
3 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Ashcroft v. Iqbal*,
4 556 U.S. at 663 (quoting *Twombly*, 550 U.S. at 555). While factual allegations are accepted as
5 true, legal conclusions are not. *Id.* at 678.

6 In determining whether a complaint states an actionable claim, the Court must accept
7 the allegations in the complaint as true, *Hosp. Bldg. Co. v. Trs. of Rex Hospital*, 425 U.S. 738,
8 740 (1976), construe *pro se* pleadings liberally in the light most favorable to the Plaintiff,
9 *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s
10 favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of *pro se* plaintiffs “must be
11 held to less stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627
12 F.3d 338, 342 (9th Cir. 2010) (holding that *pro se* complaints should continue to be liberally
13 construed after *Iqbal*).

14 Here, Plaintiff’s Complaint is devoid of any allegations. The Complaint consists of
15 exhibits with indecipherable scribbles. Accordingly, it fails to state a claim on which relief may
16 be granted.

17 **IV. CONCLUSION AND RECOMMENDATIONS**

18 The Court finds that Plaintiff fails to set forth his assets with sufficient particularity to
19 show that he is unable to pay the required filing fee. Moreover, Plaintiff fails to state any claim
20 on which relief may be granted as the Complaint is devoid of any allegations. Accordingly, the
21 Court HEREBY RECOMMENDS that:

- 22 1. Plaintiff’s application to proceed pursuant to 28 U.S.C. §1915 be DENIED;
- 23 2. Pursuant to 28 U.S.C. §1915(e)(2)(B)(ii), this action be DISMISSED based on
24 Plaintiff’s failure to state a claim on which relief may be granted; and
- 25 3. The Clerk of Court be directed to close this case.

26 These findings and recommendations are submitted to the district judge assigned to the
27 case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being
28 served with these findings and recommendations, Plaintiff may file written objections with the

1 court. Such a document should be captioned, “Objections to Magistrate Judge’s Findings and
2 Recommendations.” Plaintiff is advised that failure to file objections within the specified time
3 may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
4 2014) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

5
6 IT IS SO ORDERED.

7 Dated: October 16, 2018

8 /s/ Eric P. Groj
9 UNITED STATES MAGISTRATE JUDGE
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