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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARK SCOTT,

Plaintiff,

vs.

SAN DIEGO PORT AUTHORITY, LAURA
TOSADO, and THE MARINE GROUP,

Defendants.

CASE NO. 07CV2110 WQH (LSP)

ORDER GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
AND DISMISSING COMPLAINT
WITHOUT PREJUDICE FOR
FAILURE TO STATE A CLAIM

HAYES, Judge:

Pending before the Court is Plaintiff's motion to proceed in forma pauperis. (Doc. # 2).

DISCUSSION & ORDER

On November 5, 2007, Plaintiff Mark Scott filed a Complaint against Defendants San Diego Port Authority, Laura Tosado, and the Marine Group. (Doc. # 1). Plaintiff also filed the presently pending motion to proceed in forma pauperis. (Doc. # 2).

I. Motion to Proceed In Forma Pauperis

All parties instituting a civil action, suit, or proceeding in a district court of the United States, other than a petition for writ of habeas corpus, must pay a filing fee of \$350.00. 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). "To proceed in forma pauperis is a privilege not a right." *Smart v. Heinze*, 347 F.2d 114,

1 116 (9th Cir. 1965).

2 In his accompanying affidavit, Plaintiff states that he is not employed, and has not been
3 employed since 1993. Plaintiff currently receives \$750.00 per/month in Social Security Benefits, and
4 has \$100.00 in a savings account. Plaintiff does not own a car, and aside from the savings account,
5 does not own other assets such as stocks, bonds, or securities. Plaintiff pays \$450.00 per/month for
6 rent.

7 After considering Plaintiff's motion and the accompanying affidavit, the Court determines that
8 Plaintiff cannot afford to pay the filing fee in this case and is eligible to proceed in forma pauperis
9 pursuant to 28 U.S.C. § 1915(a). The Court therefore **GRANTS** Plaintiff's motion to proceed in
10 forma pauperis. (Doc. # 2).

11 **II. Sua Sponte Screening of the Complaint Pursuant to 28 U.S.C. § 1915(e)(2)**

12 Pursuant to 28 U.S.C. § 1915(e)(2), “[w]hen a complaint is filed in forma pauperis, it must be
13 dismissed prior to service of process if it is frivolous or malicious, fails to state a claim, or seeks
14 monetary damages from defendants who are immune from suit.” *Borhani v. Real Estate Companies*,
15 No. C 07-04637 PJH, 2007 U.S. Dist. LEXIS 72952, *4 (N.D. Cal. Sept. 21, 2007) (citing 28 U.S.C.
16 § 1915(e)(2)). The purpose of 28 U.S.C. § 1915(e)(2) is to prevent “abusive or captious litigation,”
17 and to “spare prospective defendants the inconvenience and expense of answering such complaints.”
18 *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). “A complaint is frivolous for the purposes of § 1915(e)
19 if it lacks any arguable basis in fact or law.” *Borhani*, No. C 07-04637 PJH, 2007 U.S. Dist. LEXIS
20 72952, *4 (N.D. Cal. Sept. 21, 2007) (citing *Neitzke*, 490 U.S. at 328-330)). A complaint may be
21 dismissed for failure to state a claim where the factual allegations do not raise the “right to relief
22 above the speculative level.” *Bell Atlantic v. Twombly*, 127 S. Ct. 1955, 1965 (2007); *see also* FED
23 R. CIV. P. 8(a)(2). In determining whether a complaint fails to state a claim for relief, a court must
24 construe the pleadings in the light most favorable to the plaintiff, and further, must accept as true all
25 material allegations in the complaint, as well as any reasonable inferences to be drawn therefrom. *See*
26 *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003); *see Sconiers v. Cal. Dep’t of Soc. Serv.*, No.
27 CV F 06-1260 AWI LJO, 2007 U.S. Dist. LEXIS 14485, *2-6 (E.D. Cal. Feb. 16, 2007).

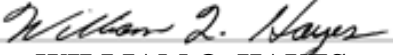
28 Plaintiff's Complaint is less than one page in length and makes vague reference to a ship or

1 vessel known as the “Tradition.” *Complaint* at 1. The Complaint also refers to the vessel’s “seizure,”
2 and notes that the vessel is “under no persons ownership.” *Compl.* at 1. However, aside from these
3 vague references, the Court cannot determine (1) whether Plaintiff claims an ownership interest in the
4 vessel, (2) how or why Defendants are subject to suit, (3) what injury, if any, Plaintiff suffered, and
5 (4) what relief Plaintiff is seeking. After reviewing the Complaint, the Court concludes that the
6 Complaint does not put Defendants on fair notice of the claims against them, and does not raise the
7 “right to relief above the speculative level.” *Bell Atlantic v. Twombly*, 127 S. Ct. 1955, 1965 (2007).
8 Accordingly, the Court sua sponte dismisses Plaintiff’s Complaint for failure to state a claim pursuant
9 to 28 U.S.C. § 1915(e)(2).

10 IT IS HEREBY ORDERED that Plaintiff’s Complaint is DISMISSED without prejudice and
11 with leave to amend. The Clerk of the Court is Ordered to close this case. Plaintiff may reopen this
12 case by filing a First Amended Complaint on or before Monday, December 17, 2007.

13 **IT IS SO ORDERED.**

14 DATED: November 9, 2007

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16 **WILLIAM Q. HAYES**
17 United States District Judge
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