UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GINA HERNDON,

Plaintiff,

V.

UNITED STATES ARMY,

Defendant.

Defendant.

Civil No. 10cv1479 JAH(CAB)

ORDER SUA SPONTE

DISMISSING COMPLAINT

WITHOUT PREJUDICE; AND

DENYING PLAINTIFF'S MOTION

FOR APPOINTMENT OF

COUNSEL [DOC. # 2] AND

MOTION TO PROCEED IN

FORMA PAUPERIS [DOC. # 3]

AS MOOT

Plaintiff, a non-prisoner appearing *pro se*, filed the instant complaint on July 16, 2010, along with a motion to proceed *in forma pauperis* and a motion for appointment of counsel. All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if the plaintiff 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).

Notwithstanding payment of any filing fee or portion thereof, a complaint filed by any person seeking to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) is subject to a mandatory and *sua sponte* review and dismissal by the court to the extent it is "frivolous, malicious, failing to state a claim upon which relief may be granted, or seeking monetary relief from a defendant immune from such relief." 28 U.S.C. § 1915(e)(2)(B);

10cv1479

Calhoun v. Stahl, 254 F.3d 845, 845 (9th Cir. 2001) ("[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners."); Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc). 28 U.S.C. § 1915(e)(2) mandates that the Court reviewing a complaint filed pursuant to the *in forma pauperis* provisions of Section 1915 make and rule on its own motion to dismiss before directing that the complaint be served by the U.S. Marshal pursuant to Fed. R. Civ. P. 4(c)(2). Lopez, 203 F.3d at 1127.

As currently plead, it is clear that plaintiff's complaint fails to state a claim upon which relief can be granted. The standard used to evaluate whether a complaint states a claim is a liberal one particularly when the action has been filed *pro se. See* Estelle v. Gamble, 429 U.S. 97, 97 (1976). However, even a "liberal interpretation ... may not supply elements of the claim that were not initially pled." Ivey v. Bd. of Regents of the Univ. of Alaska, 673 F.2d 266, 268 (9th Cir. 1982). "[P]ro se litigants are bound by the rules of procedure." Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir. 1995). Rule 8 of the Federal Rules of Civil Procedure provides that "[a] pleading that states a claim for relief must contain ... a short and plain statement of the claim showing that the pleader is entitled to relief ..." Fed.R.Civ. P. 8(a). "[A] plaintiff's obligation to provide the grounds of [her] entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)(quotation omitted).

Here, plaintiff's complaint consists of a single paragraph which states:

I was speaking to an officer regarding the probable development of laser technology and he called the cops on me. They illegally searched by room and caused an emotional breakdown. I was hospitalized in an unsanitary environment.

Compl. at 1.

This Court finds these allegations are insufficient to put defendant on notice of the claims against it, as required by Rule 8 of the Federal Rules of Civil Procedure. Therefore, this Court finds the complaint fails to state a claim upon which relief may be granted. Accordingly, the instant complaint must be *sua sponte* dismissed pursuant to Section

2 10cv1479

1915(e)(2)(B). Because the complaint must be dismissed, plaintiff's motion to proceed *in* forma pauperis and request for appointment of counsel are moot.

Based on the foregoing, IT IS HEREBY ORDERED that:

- 1. The instant complaint is *sua sponte* **DISMISSED** without prejudice for failure to state a claim upon which relief may be granted;
- 2. Plaintiff's motion to proceed in forma pauperis is **DENIED** as moot; and
- 3. Plaintiff's request for appointment of counsel is **DENIED** as moot.

DATED: July 26, 2010

OHN A. HOUSTON
United States District Judge

3 10cv1479