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

MARVA L. SMITH,

Plaintiff,

vs.

SLOAN D. GIBSON, acting Secretary of  
Veterans Affairs,

Defendant.

CASE NO. 14cv1018-LAB (DHB)

**ORDER AMENDING CAPTION;**

**ORDER GRANTING MOTION TO  
PROCEED *IN FORMA*  
*PAUPERIS*;**

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL;  
AND**

**ORDER OF DISMISSAL**

Plaintiff Marva Smith, proceeding *pro se*, filed her complaint in this case, originally captioned *Smith v. Shinseki*, naming the then U.S. secretary of Veterans Affairs, Eric Shinseki, as Defendant. Pursuant to Fed. R. Civ. P. 25(d), Sloan D. Gibson, the Acting Secretary of Veterans Affairs, is **SUBSTITUTED** in place of Eric Shinseki and the Clerk is directed to make this change in the docket.

Smith has filed a motion to proceed *in forma pauperis* ("IFP"), which shows she is unable to pay the filing fee and at the same time provide herself with the necessities of life. Her motion to proceed IFP is therefore **GRANTED**.

Smith has also filed a motion for appointment of counsel. Because this is a civil case, she does not have a constitutional right to appointed counsel. See *Palmer v. Valdez*, 560

1 F.3d 965, 970 (9th Cir. 2009). The Court may request the voluntary assistance of counsel  
2 pursuant to 28 U.S.C. § 1915(e)(1), but it will do so only in exceptional circumstances. *Id.*  
3 at 970; *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). In making this  
4 determination, the Court must evaluate the likelihood of success on the merits and Smith's  
5 ability to articulate her claims *pro se* in light of the complexity of the legal issues involved.  
6 *Palmer*, 560 F.3d at 970; *Wilborn*, 789 F.2d at 1331. Neither consideration is dispositive and  
7 they must be viewed together. *Palmer* at 970; *Wilborn* 789 F.2d at 1331. The fact that Smith  
8 would benefit from the appointment of counsel does not amount to extraordinary  
9 circumstances; this is true of most *pro se* litigants.

10 As discussed below, the complaint does not explain what Smith's claims are or why  
11 they are meritorious. The complaint shows that Smith is a coherent writer and able to explain  
12 herself adequately, even if she has not yet explained what her claim is. The motion for  
13 appointment of counsel is therefore **DENIED**.

14 The Court is required to required to screen the complaint of a plaintiff proceeding in  
15 forma pauperis, and to dismiss it to the extent it fails to state a claim. See 28 U.S.C.  
16 § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc).

17 The complaint says Smith is suing for violations of the Americans with Disabilities Act,  
18 the Rehabilitation Act, Title VII of the Civil Rights Act, the Paycheck Fairness Act, and  
19 possibly under supplemental state law theories. (Compl., ¶ 4.) It also alleges she  
20 administratively exhausted her claim by filing a claim for discrimination with the EEOC. (*Id.*,  
21 ¶ 6). A copy of the right-to-sue letter from the EEOC, dated January 14, 2014, is attached  
22 to the complaint, but no other documents are attached. The EEOC document doesn't  
23 provide any factual details about Smith's claim, or even about the type of discrimination she  
24 alleged in her claim to that agency. While Smith isn't required to attach additional  
25 documents, they might have helped fill in the gaps in the complaint's allegations. The relief  
26 Smith seeks (damages for lost benefits, wages, and other privileges of employment, as well  
27 as an order reinstating her pension) confirms that her claim is for some kind of illegal  
28 termination of her employment.

1           The complaint is long and thorough in its recitation of facts, except that it never gets  
2 around to explaining how Smith thinks her employer discriminated against her. The factual  
3 allegations give her work history dating back several decades, although they never clearly  
4 say whether she was employed by the Department of Veterans Affairs. The only allegation  
5 that suggests she was employed by the Department is her allegation that she went to a  
6 Department medical facility seeking treatment she believed she was eligible for because she  
7 had participated in “unacknowledged programs,” but was denied and sent away. Apparently  
8 what this means is that Smith believes she was a *de facto* employee of the Department,  
9 although no details are provided. She alleges she applied for employment with the  
10 Department in 1993, but was neither given an interview nor hired. (Compl., ¶ 1, 26.)

11           Some allegations pertain to unwelcome flirtations during the early 1990s by someone  
12 alleged to work for the Department, although Smith wasn’t employed by the Department at  
13 that time. The complaint alleges that Smith had some dealings with the Veterans  
14 Administration Hospital in La Jolla, though not as an employee there. The complaint also  
15 mentions several car accidents that Smith believes were orchestrated by someone working  
16 for the Department. The complaint also alleges, in conclusory fashion, that although Smith  
17 was disabled, the Department didn’t make reasonable accommodations for her as required  
18 by law. (Compl., ¶¶ 21–24.)

19           What is missing is a “short, plain statement” of the facts underlying Smith’s claim. See  
20 Fed. R. Civ. P. 8(a)(2). Smith has not alleged facts showing how, when, or where she was  
21 employed by the Department, nor how the Department discriminated against her. In addition,  
22 many of the events the complaint alleges happened long ago. It appears likely that if Smith  
23 ever did have a claim, it is time-barred.

24           The Complaint is **DISMISSED WITHOUT PREJUDICE**. If Smith believes she can  
25 successfully amend the complaint to correct the flaws this order identifies, she may file an  
26 amended complaint no later than the close of business on **September 1, 2014**. (This means  
27 the complaint must be filed and docketed by that date, not merely sent.) Any amended  
28 complaint must allege facts clearly showing when and where Smith worked for the

1 Department, and how, when, and by whom Smith was discriminated against. Factual  
2 allegations must be provided in the body of the complaint and not merely in attachments.  
3 An amended complaint that does not clearly allege these facts will be dismissed.

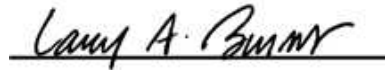
4 If no amended complaint is filed in the docket by September 1, or if an amended  
5 complaint is filed that does not comply with this order, the Court will assume Smith is unable  
6 to amend successfully and will dismiss the complaint without leave to amend.

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8 **IT IS SO ORDERED.**

9 DATED: August 1, 2014

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**HONORABLE LARRY ALAN BURNS**  
United States District Judge

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