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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

O'NEATER J. GEORGE,  
  
Plaintiff,  
  
v.  
  
OCWEN LOAN SERVICES, LLC,  
  
Defendant.

CASE NO. 15cv1929-GPC(BGS)

**ORDER:**

**(1) GRANTING PLAINTIFF'S  
MOTION TO PROCEED IN  
FORMA PAUPERIS;**

**[Dkt. No. 2]**

**(2) SUA SPONTE DISMISSING  
PLAINTIFF'S COMPLAINT FOR  
FAILURE TO STATE A CLAIM**

On August 31, 2015, Plaintiff O'Neater J. George ("Plaintiff"), proceeding pro se, filed a complaint against Ocwen Loan Services, LLC ("Defendant"). (Dkt. No. 1.) Plaintiff concurrently filed a motion to proceed *in forma pauperis* ("IFP"). (Dkt. No. 2.) Based on the reasoning below, the Court GRANTS Plaintiff's motion to proceed IFP and sua sponte DISMISSES Plaintiff's complaint for failure to state a claim on which relief may granted.

**Discussion**

**A. Motion to Proceed *In Forma Pauperis***

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

1 of \$400. See 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a plaintiff’s failure  
2 to prepay the entire fee only if he is granted leave to proceed IFP pursuant to § 1915(a).  
3 See Andrews v. Cervantes, 493 F.3d 1047, 1051 (9th Cir. 2007); Rodriguez v. Cook,  
4 169 F.3d 1176, 1177 (9th Cir. 1999). The plaintiff must submit an affidavit  
5 demonstrating his inability to pay the filing fee, and the affidavit must include a  
6 complete statement of the plaintiff’s assets. 28 U.S.C. § 1915(a)(1). When a plaintiff  
7 moves to proceed IFP, the court first “grants or denies IFP status based on the  
8 plaintiff’s financial resources alone and then independently determines whether to  
9 dismiss the complaint” pursuant to 28 U.S.C. § 1915(e)(2) (“§ 1915(e)(2)”). Franklin  
10 v. Murphy, 745 F.2d 1221, 1226 n.5 (9th Cir. 1984).

11 Here, Plaintiff submitted a declaration indicating that he receives retirement  
12 income of \$1,413.00/ month and has \$3.29 in a checking account. (Dkt. No. 2 at 2.)  
13 Plaintiff owns a home valued at \$336,000 and a 2007 PT Cruiser. (Id. at 3.) Plaintiff  
14 states he has monthly expenses of \$1396.66. (Id. at 4.) Based on Plaintiff’s  
15 application, he has sufficiently shown that he is unable to pay the required filing fee.  
16 Therefore, the Court GRANTS Plaintiff’s motion for leave to proceed IFP.

17 **B. Sua Sponte Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)**

18 A complaint filed by any person proceeding IFP pursuant to § 1915(a) is subject  
19 to mandatory sua sponte review and dismissal by the Court if it is “frivolous, or  
20 malicious; fails to state a claim upon which relief may be granted; or seeks monetary  
21 relief against a defendant immune from such relief.” 28 U.S.C. § 1915(e)(2)(B);  
22 Calhoun v. Stahl, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C.  
23 § 1915(e)(2)(B) are not limited to prisoners.”); Lopez v. Smith, 203 F.3d 1122, 1126-  
24 27 (9th Cir. 2000). § 1915(e)(2) mandates that a court reviewing a complaint filed  
25 pursuant to the IFP provisions of 28 U.S.C. § 1915 make and rule on its own motion

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26  
27 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee  
28 of \$50. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee  
Schedule, § 14 (eff. Dec. 1, 2014)). The additional \$50 administrative fee does not apply to persons  
granted leave to proceed IFP. Id.

1 to dismiss before directing that the complaint be served by the U.S. Marshal pursuant  
2 to Federal Rule of Civil Procedures 4(c)(2). Lopez, 203 F.3d at 1127.

3 Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain “a short  
4 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.  
5 Civ. P. 8(a)(2). While a plaintiff need not give “detailed factual allegations,” a plaintiff  
6 must plead sufficient facts that, if true, “raise a right to relief above the speculative  
7 level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 545 (2007). To state a claim  
8 upon which relief may be granted “a complaint must contain sufficient factual matter,  
9 accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v.  
10 Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 547). A claim is  
11 facially plausible when the factual allegations permit “the court to draw the reasonable  
12 inference that the defendant is liable for the misconduct alleged.” Id. In other words,  
13 “the non-conclusory ‘factual content,’ and reasonable inferences from that content,  
14 must be plausibly suggestive of a claim entitling the plaintiff to relief.” Moss v. U.S.  
15 Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). “Determining whether a complaint  
16 states a plausible claim for relief will . . . be a context-specific task that requires the  
17 reviewing court to draw on its judicial experience and common sense.” Iqbal, 556 U.S.  
18 at 679.

19 Federal courts are also courts of limited jurisdiction. They can adjudicate only  
20 those cases which the Constitution and Congress authorize them to adjudicate, i.e.  
21 those involving diversity of citizenship, a federal question, or to which the United  
22 States is a party. See Finley v. United States, 490 U.S. 545 (1989). Federal courts are  
23 presumptively without jurisdiction over civil actions and the burden of establishing the  
24 contrary rests upon the party asserting jurisdiction. See Kokkonen v. Guardian Life  
25 Ins. Co., 511 U.S. 375, 377 (1994).

26 Here, Plaintiff makes general factual allegations as to discrepancies in his loan  
27 application and his mortgage, the delinquencies in his mortgage payment and  
28 Defendant’s indication that it would assist in modifying the loan but did not. (Dkt. No.

1 1.) Plaintiff does not allege facts sufficient to state a claim for relief, and does not state  
2 a basis for federal subject matter jurisdiction. Accordingly the Court *sua sponte*  
3 DISMISSES the complaint for failure to state a claim and lack of subject matter  
4 jurisdiction.

5 **Conclusion**

6 Based on the above, the Court GRANTS Plaintiff's motion to proceed IFP and  
7 *sua sponte* DISMISSES Plaintiff's complaint for failing to state a claim pursuant to 28  
8 U.S.C. § 1915(e)(2)(B)(ii).

9 IT IS SO ORDERED.

10  
11 DATED: September 23, 2015

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13 HON. GONZALO P. CURIEL  
14 United States District Judge  
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