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

MONTOREY D. HARPER,

Plaintiff,

v.

US DOJ; LOS ANGELES POLICE
DEPT.; LONG BEACH POLICE
DEPARTMENT; ARCO GASOLINE,

Defendant.

CASE NO. 16cv1199-WQH-BLM

ORDER

HAYES, Judge:

On May 19, 2016, Plaintiff initiated this action by filing a Complaint (ECF No. 1) and a motion to proceed in forma pauperis (“IFP”) (ECF No. 2).

I. Motion to Proceed IFP

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 \$400.00. *See* 28 U.S.C. § 1914(a); S.D. Cal. Civ. L.R. 4.5. 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, 116 (9th Cir. 1965).

In an affidavit, Plaintiff states that his gross pay is \$4,025 per month. (ECF No. 2 at 1). He states that he has \$280 in his bank account. *Id.* at 2. He states that his monthly expenses are \$4,400. *Id.* After considering Plaintiff’s motion and affidavit the

1 Court determines that Plaintiff cannot afford to pay the filing fee in this case and is
2 eligible to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a).

3 **II. Initial Screening of Complaint**

4 A complaint filed by any person proceeding IFP pursuant to 28 U.S.C. § 1915(a)
5 is also subject to mandatory review and sua sponte dismissal to the extent it “is
6 frivolous or malicious; fails to state a claim on which relief may be granted; or seeks
7 monetary relief from a defendant who is immune from such relief.” 28 U.S.C. §
8 1915(e)(2)(B)(I)-(iii); *see Lopez v. Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000) (en
9 banc). The standard used to evaluate whether a complaint states a claim is a liberal one,
10 particularly when the action has been filed pro se. *See Estelle v. Gamble*, 429 U.S. 97,
11 97 (1976). “[P]ro se litigants are bound by the rules of procedure.” *Ghazali v. Moran*,
12 46 F.3d 52, 54 (9th Cir. 1995). Federal Rule of Civil Procedure 8 provides that “[a]
13 pleading that states a claim for relief must contain ... a short and plain statement of the
14 claim showing that the pleader is entitled to relief...” Fed. R. Civ. P. 8(a).

15 In order to state a claim under 42 U.S.C. § 1983, a plaintiff must allege facts to
16 show: (1) the violation of a right secured by the constitution or laws of the United
17 States, and (2) that the alleged deprivations were committed by persons acting under the
18 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

19 In this case, Plaintiff alleges that “the city of Long Beach used its police officer
20 to come inside a store” and harass him “about a drink [he] attempted to purchase”
21 (ECF No. 1 at 3). Plaintiff alleges that “the entire ordeal shows that the US has criminal
22 enterprises that involves police officers.” *Id.* Plaintiff alleges that the police officer
23 was influenced by “satanic devil worshiping.” *Id.* Plaintiff claims are grounded on
24 emotional pain, suffering, mental anguish, and inconvenience without offering any
25 allegations to support his claims. *Id.* at 4-7. Plaintiff requests relief in a sum far
26 exceeding a trillion dollars.

27 The Court cannot clearly determine under what legal theory Plaintiff’s cause of
28 action arises. To the extent that Plaintiff asserts a claim under 42 U.S.C. § 1983,


1 Plaintiff has not stated a claim upon which § 1983 relief can be granted because he has
2 not alleged a violation of a Constitutional right. Further, Plaintiff cannot state a claim
3 against the United States Department of Justice or ARCO Gasoline because neither of
4 those entities acts “under the color of state law.” The Court concludes that Plaintiff
5 fails to state a claim.

6 **III. Conclusion**

7 IT IS HEREBY ORDERED that Plaintiff’s motion to proceed in forma pauperis
8 is granted (ECF No. 2).

9 IT IS FURTHER ORDERED that Plaintiff’s Complaint is dismissed.

10 DATED: May 27, 2016

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12 **WILLIAM Q. HAYES**
United States District Judge

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