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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 RAPI L. SOTOA,
12 Plaintiff,
13 v.
14 U.S. DEPARTMENT OF
15 VETERANS AFFAIRS - LA JOLLA
16 MEDICAL CENTER, SAN DIEGO,
17 Defendant.

Case No.: 16cv1935

**ORDER GRANTING MOTION TO
PROCEED IN FORMA
PAUPERIS; DISMISSING
COMPLAINT FOR FAILURE TO
STATE A CLAIM; AND
DENYING REQUEST FOR
APPOINTMENT OF COUNSEL**

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19 On August 1, 2016, Plaintiff filed a Complaint in addition to a Motion to
20 Proceed In Forma Pauperis (“IFP Motion”) and a Request for Appointment of
21 Counsel. For the reasons discussed below, the IFP Motion is granted, the
22 Complaint is dismissed with leave to amend, and the Request for Appointment of
23 Counsel is denied without prejudice.

24 I. Motion to Proceed IFP

25 Upon review of Plaintiff’s affidavit in support of his IFP Motion, the Court
26 finds that Plaintiff has made a sufficient showing of inability to pay the filing fees
27 required to prosecute this action. Accordingly, Plaintiff’s IFP Motion is
28 GRANTED.

1 II. Failure to State a Claim

2 Although the Court will allow Plaintiff to proceed IFP, Plaintiff's Complaint
3 must be dismissed for failure to state a claim. The Court is under a continuing
4 duty to dismiss an IFP case whenever the Court determines that the action "fails
5 to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).
6 Here, the Complaint must be dismissed because it does not identify a party
7 defendant.

8 Plaintiff's Complaint alleges that he was injured at the VA San Diego
9 Medical Center (the "VA Center") when a nurse negligently allowed an
10 automated door to close on his right side, injuring his shoulder and neck. The
11 Complaint does not refer to the Federal Tort Claims Act (FTCA), 28 U.S.C. §
12 2671 et seq., or otherwise invoke the FTCA as the basis for Plaintiff's claims.
13 However, attached to the Complaint are copies of an administrative claim he filed
14 with the U.S. Department of Veterans Affairs under the FTCA based on the same
15 incident. The Court may consider the documents attached as exhibits to a
16 complaint in deciding whether plaintiff has stated a plausible claim for relief. See,
17 e.g., Beauvoir v. Israel, 794 F.3d 244, 248 n.4 (2d Cir. 2015). Also, because
18 Plaintiff is proceeding in pro se, his pleadings are "held to less rigorous standards
19 than those drafted by attorneys." Cripps v. Life Ins. Co. of North America, 980
20 F.2d 1261,1268 (9th Cir. 1992). Liberally interpreted, the Complaint, including its
21 attachments, invokes the FTCA as the statutory basis for Plaintiff's negligence
22 claims.

23 Even so, Plaintiff has not yet succeeded in stating a claim on which relief
24 can be granted, because his Complaint does not name any party defendants. In
25 the caption of the Complaint, the area where the "Defendant(s)" are supposed to
26 be named has been left blank. See Fed. R. Civ. P. 10(a) ("[t]he title of the
27 complaint must name all the parties"). And although the body of the Complaint
28 states that Plaintiff has "a grievance against the Department of Veterans Affairs,"

1 it does not go so far as to allege that the Department of Veterans Affairs, or any
2 other person or entity, is a party defendant. “[F]ederal courts lack jurisdiction
3 over ... unnamed parties, as a case has not been commenced with respect to
4 them.” Nat’l Commodity & Barter Ass’n v. Gibbs, 886 F.2d 1240, 1245 (10th Cir.
5 1989); accord, Loa-Herrera v. Trominski, 231 F.3d 984, 991 (5th Cir. 2000); see
6 Adams v. School Board, 53 F.R.D. 267, 268 (M.D. Pa. 1971) (where civil rights
7 complaint names only one party defendant in caption, only that party is the
8 defendant). Because the Complaint does not identify the party defendants,
9 Plaintiff has not yet stated a claim against anyone, so the Complaint must be
10 dismissed.

11 The Court notes that two of the documents filed at the same time as the
12 Complaint do name defendants, but the defendants differ on each document.
13 Plaintiff’s Request for Appointment of Counsel names three defendants: the
14 “U.S. Dept. of Veterans Affairs—La Jolla Medical Center, San Diego,” “Hazal
15 Tanga, Manager,” and “Nurse (name unknown).” His Civil Case Cover Sheet
16 appears to identify just one defendant, Hazal Tanga. If any of these are the
17 parties Plaintiff meant to name in the Complaint, they are not proper defendants
18 to his FTCA claim. Veterans’ medical facilities are operated by the Veterans
19 Health Administration, an administration within the Department of Veterans
20 Affairs, a federal agency. Federal agencies are generally immune from suit.
21 Loeffler v. Frank, 486 U.S. 549, 544 (1988). Under the FTCA, a claim against a
22 federal agency may be brought only against the United States.

23 28 U.S.C. § 2679(a). Therefore, it would be improper for Plaintiff to name the
24 Department of Veterans Affairs or the VA Center as defendants to his FTCA
25 claim. If he does intend to state a claim under the FTCA based on the alleged
26 negligence of either of these entities, the United States is the proper defendant.

27 With respect to the “Nurse (name unknown),” the Complaint alleges that
28 she was an employee of the VA Center. Suits against federal employees are

1 “deemed an action against the United States,” 28 U.S.C. § 2679(d)(1), and “any
2 other civil action or proceeding for money damages arising out of or relating to
3 the same subject matter against the employee . . . is precluded,” 28 U.S.C. §
4 2679(b)(1). Thus, to the extent Plaintiff wishes to assert an FTCA claim against
5 the nurse in her capacity as a VA Center employee, once again, the United
6 States is the proper defendant.

7 The Complaint does not allege any specific facts as to Hazal Tanga, or
8 anyone identified as a “Manager.” As currently pled, the Complaint fails to state
9 a claim for relief against this person. Plaintiff will need to add facts to his
10 Complaint explaining how Hazal Tanga, “Manager,” was negligent if he wishes to
11 base his FTCA claim on this person’s alleged wrongdoing. Also, to the extent
12 Plaintiff contends that this is another VA Center employee, the United States
13 would be the proper defendant.

14 Because Plaintiff’s Complaint does not identify any defendants, it will be
15 dismissed with leave to amend.¹ Plaintiff will have 45 days from the date of this
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18 ¹ The Court also notes that, at least in its current form, Plaintiff’s Complaint may
19 be time-barred. Under 28 U.S.C. § 2401(b), an FTCA action must be filed “within
20 six months after the date of mailing, by certified or registered mail, of notice of
21 final denial of the claim by the agency to which it was presented.” 28 U.S.C. §
22 2401(b). It appears from the Complaint’s attachments that the VA issued a final
23 denial on October 8, 2014, and that Plaintiff thereafter filed a request for
24 reconsideration. Filing a request for reconsideration tolls the limitations period
25 for an additional six months, 28 C.F.R. § 14.9(b), but Plaintiff’s Complaint
26 appears to have been filed beyond even this additional period, because the VA
27 denied his request for reconsideration on December 15, 2015, and Plaintiff did
28 not file this action until August 1, 2016. However, the FTCA’s limitations period
can be extended by equitable tolling. United States v. Kwai Fun Wong, 135 S.
Ct. 1625, 1638 (2015). The Court cannot determine, based on Plaintiff’s current
allegations, whether he seeks to rely on equitable tolling. If he does, he should
add facts to the Complaint that explain the reasons why, through no fault of his
own, he was unable to file his Complaint with the Court within the required six
months.

1 order to file an amended complaint.

2 III. Request for Appointment of Counsel

3 Plaintiff has filed a request for appointment of counsel.

4 There is no right to counsel in civil cases, and district courts may appoint
5 counsel only under “exceptional circumstances.” Terrell v. Brewer, 935 F.2d
6 1015, 1017 (9th Cir. 1991). “A finding of exceptional circumstances requires an
7 evaluation of both ‘likelihood of success on the merits and the ability of the
8 plaintiff to articulate his claims pro se in light of the complexity of the legal issues
9 involved.’ Neither of these issues is dispositive and both must be viewed
10 together before reaching a decision.” Id.

11 At this point in time, the Court cannot say there is any likelihood of success
12 on the merits. Therefore, the Court DENIES without prejudice Plaintiff’s Request
13 for Appointment of Counsel.


14 IV. Conclusion and Order

15 Based on the foregoing, the Court ORDERS as follows:

- 16 1) Plaintiff’s Motion to Proceed IFP is GRANTED;
17 2) Plaintiff’s Complaint is DISMISSED WITH LEAVE TO AMEND. Plaintiff
18 will have 45 days from the date of this Order to file an amended
19 complaint; and
20 3) Plaintiff’s Plaintiff’s request for appointment of counsel is DENIED
21 without prejudice.

22 **IT IS SO ORDERED:**

23 Dated: September 23, 2016

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25 Barry Ted Moskowitz, Chief Judge
26 United States District Court
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