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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER OLIVER,  
Plaintiff,  
v.  
LANAE BECERAA,  
Defendant.

Case No.: 3:16-cv-3016-LAB-PCL

**ORDER:**

**(1) GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS  
PURSUANT TO 28 U.S.C. § 1915(a);  
AND**

**(2) SUA SPONTE DISMISSING  
CIVIL ACTION FOR FAILING TO  
STATE A CLAIM PURSUANT TO 28  
U.S.C. § 1915(e)(2)**

Christopher Oliver (“Plaintiff”), a former state inmate, has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff alleges that Defendant, his probation officer, has violated his Fourth Amendment rights by conducting an illegal search and has discriminated against him based on his disabilities. (Id. at 10-11.) Plaintiff seeks 1.5 million dollars in compensatory damages and 3 million dollars in punitive damages. (Id. at 7.)

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1 Plaintiff has not paid the civil filing fees required by 28 U.S.C. § 1914(a) to  
2 commence a civil action; instead he has filed a Motion to Proceed In Forma Pauperis  
3 (“IFP”) pursuant to 28 U.S.C. § 1915(a). (ECF No. 2.)

#### 4 **I. Proper Parties**

5 As an initial matter, the Court finds that while Plaintiff appears to bring claims on  
6 behalf of his Mother, only Plaintiff has signed the Complaint, and only he has requested  
7 leave to proceed IFP. Pro se litigants have no authority to represent anyone other than  
8 themselves; therefore, they lack the representative capacity to file motions and other  
9 documents on behalf of other persons. See *Johns v. County of San Diego*, 114 F.3d 874,  
10 877 (9th Cir. 1997) (“[A] non-lawyer ‘has no authority to appear as an attorney for others  
11 than himself.’” (quoting *Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir.  
12 1987))). “Although a non-attorney may appear in propria persona in his own behalf, that  
13 privilege is personal to him.” *Id.* (citations omitted); see also Fed.R.Civ.P. 11(a) (“[I]f the  
14 party is not represented by an attorney, [every written motion and other paper] shall be  
15 signed by the party.”). Thus, because only Plaintiff, a non-attorney proceeding pro se, has  
16 signed the Complaint, and only Plaintiff has requested IFP status, he is the only proper  
17 Plaintiff in this case. Purported claims by anyone else, including Plaintiff’s Mother, are  
18 therefore DISMISSED from this action.

#### 19 **II. Motion to Proceed IFP**

20 All parties instituting any civil action, suit or proceeding in a district court of the  
21 United States, except an application for writ of habeas corpus, must pay a filing fee of  
22 \$400. See 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to  
23 prepay the entire fee only if the plaintiff is granted leave to proceed IFP pursuant to 28  
24 U.S.C. § 1915(a). See *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

25 However, “[u]nlike other indigent litigants, prisoners proceeding IFP must pay the  
26 full amount of filing fees in civil actions and appeals pursuant to the PLRA [Prison  
27 Litigation Reform Act].” *Agyeman v. INS*, 296 F.3d 871, 886 (9th Cir. 2002). As defined  
28 by the PLRA, a “prisoner” is “any person incarcerated or detained in any facility who is

1 accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of  
2 criminal law or the terms and conditions of parole, probation, pretrial release, or  
3 diversionary program.” 28 U.S.C. § 1915(h).

4 Because Plaintiff is not a “prisoner” as defined by 28 U.S.C. § 1915(h), the filing  
5 fee provisions of 28 U.S.C. § 1915(b) do not apply to this case. Therefore, the Court has  
6 reviewed Plaintiff’s affidavit of assets, just as it would for any other non-prisoner litigant  
7 seeking IFP status, and finds it is sufficient to show that he is unable to pay the fees or  
8 post securities required to maintain a civil action. See S.D. Cal. CivLR 3.2(d).

9 Accordingly, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28  
10 U.S.C. § 1915(a) (ECF No. 2).

### 11 **III. Sua Sponte Screening per 28 U.S.C. § 1915(e)(2)**

#### 12 **A. Standard of Review**

13 A complaint filed by any person proceeding IFP is subject to sua sponte dismissal,  
14 however, if it is “frivolous, malicious, fail[s] to state a claim upon which relief may be  
15 granted, or seek[s] monetary relief from a defendant immune from such relief.” 28 U.S.C.  
16 § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (per curiam)  
17 (holding that “the provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”);  
18 *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (“[S]ection 1915(e) not  
19 only permits, but requires a district court to dismiss an in forma pauperis complaint that  
20 fails to state a claim.”).

21 All complaints must contain “a short and plain statement of the claim showing that  
22 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are  
23 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by  
24 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
25 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining whether  
26 a complaint states a plausible claim for relief [is] . . . a context-specific task that requires  
27 the reviewing court to draw on its judicial experience and common sense.” *Id.* The “mere  
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1 possibility of misconduct” falls short of meeting this plausibility standard. *Id.*; see also  
2 *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

3 “When there are well-pleaded factual allegations, a court should assume their  
4 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”  
5 *Iqbal*, 556 U.S. at 679; see also *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)  
6 (“[W]hen determining whether a complaint states a claim, a court must accept as true all  
7 allegations of material fact and must construe those facts in the light most favorable to  
8 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that  
9 § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

10 However, while the court “ha[s] an obligation where the petitioner is pro se,  
11 particularly in civil rights cases, to construe the pleadings liberally and to afford the  
12 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.  
13 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not  
14 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*  
15 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

16 Section 1983 imposes two essential proof requirements upon a claimant: (1) that a  
17 person acting under color of state law committed the conduct at issue, and (2) that the  
18 conduct deprived the claimant of some right, privilege, or immunity protected by the  
19 Constitution or laws of the United States. See 42 U.S.C. § 1983; *Nelson v. Campbell*,  
20 541 U.S. 637, 124 S. Ct. 2117, 2122 (2004); *Haygood v. Younger*, 769 F.2d 1350, 1354  
21 (9th Cir. 1985) (en banc).

## 22 **B. Fourth Amendment claims**

23 Plaintiff alleges that he was subjected to an “unlawful search” by Defendant  
24 Beceraa who is his probation officer on March 25, 2016. (Compl. at 8, 10.) Plaintiff was  
25 residing with his Mother and he claims that Defendant Beceraa had no right to search  
26 beyond the “common area” of his home. (Id. at 8.) Plaintiff maintains that this search  
27 violated his Fourth Amendment rights because he claims that Defendant Beceraa did not  
28 “show an arrest warrant for my arrest.” (Id. at 10.)

1 Plaintiff attaches as an exhibit to his Complaint his “Order Granting Formal  
2 Probation” which contains, among other information, the conditions for his probation.  
3 (Id. at 13, Ex. A, “Order Granting Formal Probation.”) One of the conditions that  
4 Plaintiff was subjected to includes an agreement by Plaintiff to “[s]ubmit person, vehicle,  
5 residence, property, personal effects, computers, and recordable media to search at any  
6 time with or without a warrant, and with or without reasonable cause, when required by  
7 P.O. or law enforcement officer.” (Id. at 14.)

8 The Fourth Amendment governs the reasonableness of government searches and  
9 seizures. See U.S. Const., amend. IV (“The right of the people to be secure in their  
10 persons, houses, papers, and effects, against unreasonable searches and seizures, shall not  
11 be violated . . . but upon probable cause . . .”). “Where a particular Amendment ‘provides  
12 an explicit textual source of constitutional protection’ against a particular sort of  
13 government behavior, ‘that Amendment, [and] not the more generalized notion of  
14 ‘substantive due process,’ must be the guide for analyzing these claims.” *Albright v.*  
15 *Oliver*, 510 U.S. 266, 273 (1994), quoting *Graham v. Connor*, 490 U.S. 386, 394 (1989);  
16 see also *United States v. Lanier*, 520 U.S. 259, 272 n.7 (1997).<sup>1</sup>

17 As stated above, Plaintiff has submitted an exhibit that indicates he accepted a  
18 condition of probation that allows for a suspicionless search of his residence or vehicle.  
19 (See Pl.’s Ex. A., ECF No. 1 at 14.) In *Samson v. California*, the United States Supreme  
20 Court held that a similar condition for a parolee did not violate the Fourth Amendment  
21 but the Supreme Court also found that a probationer has a greater right to privacy than a  
22 parolee. See *Samson v. California*, 547 U.S. 843, 850 (2006). The Ninth Circuit  
23 addressed the issue of this probation condition in *United States v. King*, 736 F.3d 805 (9th  
24 Cir. 2013) but expressly limited their holding to probationers who had been convicted of  
25 a violent felony. Specifically, the Ninth Circuit held that “a suspicionless search,  
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28 <sup>1</sup> Plaintiff seeks to bring identical claims under the Eighth and Fourteenth Amendments. However, the  
Court finds that Plaintiff’s claims arise under the Fourth Amendment. See *Albright*, 510 U.S. at 273.

1 conducted pursuant to a suspicionless-search condition of a violent felon’s probation  
2 agreement, does not violate the Fourth Amendment.” *Id.* at 810. Here, Plaintiff fails to  
3 allege whether he had been convicted of a violent or non-violent crime and thus, at this  
4 stage of the proceedings, the Court cannot find that Plaintiff has stated a Fourth  
5 Amendment claim.

6 **C. Americans with Disabilities Act (“ADA”)**

7 Plaintiff alleges that Defendant Beceraa violated his rights under the ADA. In  
8 order to state a claim under Title II of the ADA, however, a plaintiff must allege:

9 (1) he ‘is an individual with a disability;’ (2) he ‘is otherwise qualified to  
10 participate in or receive the benefit of some public entity’s services,  
11 programs, or activities;’ (3) he ‘was either excluded from participation in or  
12 denied the benefits of the public entity’s services, programs, or activities, or  
13 was otherwise discriminated against by the public entity;’ and (4) ‘such  
14 exclusion, denial of benefits, or discrimination was by reason of [his]  
15 disability.’

16 *O’Guinn v. Lovelock Correctional Center*, 502 F.3d 1056, 1060 (9th Cir. 2007) (citing  
17 *McGary v. City of Portland*, 386 F.3d 1259, 1265 (9th Cir. 2004) (quoting *Thompson v.*  
18 *Davis*, 295 F.3d 890, 895 (9th Cir. 2002) (per curiam)).

19 While Plaintiff may be ultimately able to state an ADA claim if he named a public  
20 entity as a Defendant, Plaintiff may not pursue an ADA claim against Defendant Beceraa,  
21 however, because there is no individual liability under Title II. See *Heinke v. County of*  
22 *Tehama Sheriff’s Dept.*, No. CVI S-12-2433 LKK/KJN, 2013 WL 3992407, at \*7 (E.D.  
23 Cal. Aug.1, 2013). The ADA’s definition of “public entity” does not include individuals.  
24 See *Hardwick v. Curtis Trailers, Inc.*, 896 F. Supp. 1037, 1038-39 (D. Or. 1995)  
25 (individual liability is precluded under ADA Title II) (citing *Miller v. Maxwell’s Intern.,*  
26 *Inc.*, 991 F.2d 583 (9th Cir. 1993))

27 For these reasons, Plaintiff’s Complaint fails to state an ADA claim upon which  
28 relief can be granted.

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