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SOUTHERN DISTRICT OF CALIFORNIA

*[Signature]* DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JAMES JOSEPH CAPERS,

Plaintiff,

v.

UNITED STATES JUSTICE  
DEPARTMENT,

Defendant.

Case No.: 3:17-cv-00156-BEN-NLS

**ORDER:**

**(1) DENYING MOTION TO  
PROVIDE PROOF OF SERVICE;**

**(2) DENYING SECOND MOTION  
FOR APPOINTMENT OF  
COUNSEL; and**

**(3) DISMISSING COMPLAINT FOR  
FAILING TO STATE A CLAIM**

Plaintiff James Joseph Capers has filed a Motion to Provide Proof of Service and a second Motion for Appointment of Counsel. (Docket Nos. 11, 13.) The Court finds the Motions suitable for determination on the papers without oral argument, pursuant to Civil Local Rule 7.1.d.1. For the reasons set forth below, each Motion is **DENIED**, and Plaintiff's First Amended Complaint is **DISMISSED without prejudice**.

**I. Motion to Provide Proof of Service**

Plaintiff moved for a court order ordering a United States Marshall to serve Defendant. (Docket No. 11.) However, Plaintiff did not state what it wanted the Court to

1 serve on Defendant. Even if the Court assumes Plaintiff seeks to have Defendant served  
2 with the First Amended Complaint (“FAC”), Plaintiff’s request is moot because  
3 Defendant has already appeared by moving for an extension of time to file its answer to  
4 the FAC. (Docket No. 8.) Accordingly, Plaintiff’s Motion to Provide Proof of Service is  
5 **DENIED.**

## 6 **II. Second Motion for Appointment of Counsel<sup>1</sup>**

7 Plaintiff’s second Motion for Appointment of Counsel asserts Plaintiff should be  
8 appointed counsel because Plaintiff is indigent, disabled, and has been unable to retain an  
9 attorney. (Docket No. 13 at 1-3.)

10 As the Court stated in its February 7, 2017 Order (docket no. 4), courts have  
11 discretion, pursuant to 28 U.S.C. § 1915(e)(1) (1996), to appoint counsel for indigent  
12 civil litigants upon a showing of exceptional circumstances. “A finding of exceptional  
13 circumstances requires an evaluation of both the likelihood of success on the merits and  
14 the ability of the petitioner to articulate his claims pro se in light of the complexity of the  
15 legal issues involved.” *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991) (internal  
16 citations omitted). “Neither of these factors is dispositive and both must be viewed  
17 together before reaching a decision.” *Id.* (internal citations omitted).

18 The Court cannot say there is any likelihood of success on the merits of Plaintiff’s  
19 claims because, as will be explained in further detail below, Plaintiff’s FAC fails to state  
20 a claim upon which relief may be granted. In addition, Plaintiff does not demonstrate an  
21 inability to represent herself beyond the ordinary burdens encountered by plaintiffs  
22 representing themselves *pro se*. See *Garcia v. Smith*, No. 10-cv-1187, 2012 WL  
23 2499003, at \*4 (S.D. Cal. June 27, 2012). Therefore, the Court finds that the exceptional  
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27 <sup>1</sup> The Court denied Plaintiff’s first request for appointment of counsel for failing to  
28 demonstrate a likelihood of success on the merits of her claim. (Docket No. 4.)

1 circumstances required for the appointment of counsel are not present. Plaintiff's second  
2 Motion for Appointment of Counsel is **DENIED**.

3 **III. Section 1915 Screening**

4 The Court granted Plaintiff's Motion to Proceed *In Forma Pauperis* ("IFP")  
5 (docket no. 4), and must determine whether Plaintiff's FAC sufficiently alleges facts to  
6 state a claim for relief. 28 U.S.C. § 1915(e)(2).

7 A. Legal Standard

8 Under section 1915(e) of title 28 of the United States Code, the Court must *sua*  
9 *sponte* dismiss IFP complaints, or any portions thereof, which are frivolous, malicious,  
10 fail to state a claim, or which seek damages from defendants who are immune. *See Lopez*  
11 *v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (discussing 28 U.S.C. §  
12 1915(e)(2)). "[T]he provisions of section 1915(e)(2)(B) are not limited to prisoners."  
13 *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001).

14 Every complaint must contain "a short and plain statement of the claim showing  
15 that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
16 are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported  
17 by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
18 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "When there are  
19 well-pleaded factual allegations, a court should assume their veracity, and then determine  
20 whether they plausibly give rise to an entitlement to relief." *Id.* at 679; *see Barren v.*  
21 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that section 1915(e)(2)  
22 "parallels the language of Federal Rule of Civil Procedure 12(b)(6)"). "Determining  
23 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that  
24 requires the reviewing court to draw on its judicial experience and common sense."  
25 *Iqbal*, 556 U.S. at 679. The "mere possibility of misconduct" falls short of meeting this  
26 plausibility standard. *Id.*; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.  
27 2009).

1 While a plaintiff's factual allegations are taken as true, courts "are not required to  
2 indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th  
3 Cir. 2009) (internal quotation marks and citation omitted). Indeed, while courts "have an  
4 obligation where the petitioner is pro se, particularly in civil rights cases, to construe the  
5 pleadings liberally and to afford the petitioner the benefit of any doubt," *Hebbe v. Pliler*,  
6 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1  
7 (9th Cir. 1985)), it may not "supply essential elements of claims that were not initially  
8 pled." *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

9 B. Discussion

10 Plaintiff's FAC must be dismissed for failing to state a claim upon which relief  
11 may be granted. 28 U.S.C. § 1915(e). The Court previously found Plaintiff's 7-page  
12 initial complaint failed to state a claim because it contained "nonsensical and seemingly  
13 irrelevant assertions regarding Plaintiff's 'creations and inventions,' groundless  
14 accusations of misconduct by 'the government,' and vague conclusions that 'the  
15 government' discriminated against him for being transgender." (Docket No. 4 at 4.)

16 Plaintiff's 48-page FAC has not cured those deficiencies.<sup>2</sup> (Docket No. 5.)  
17 Plaintiff's Complaint contains various accusations, state and federal legal definitions,  
18 pictures of scientific research, excerpts of alleged contracts, and legal conclusions  
19 spanning multiple time frames. Thus, Plaintiff fails to provide "a short and plain  
20 statement of the claim showing that the pleader is entitled to relief," and it is unclear  
21 whether she has stated any plausible claims for relief. Fed. R. Civ. Proc. 8(a)(2).

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26 <sup>2</sup> The Court further notes Plaintiff did not provide "a version of the proposed amended  
27 pleading that shows---through redlining, underlining, strikeouts, or other similarly  
28 effective typographic methods---how the proposed amended pleading differs from the  
operative pleading," as required by Civil Local Rule 15.1.b.

1 As a result, the Court must dismiss the FAC for failing to state a claim upon which  
2 relief may be granted. 28 U.S.C. § 1915(e)(2). However, the Court grants Plaintiff leave  
3 to file a Second Amended Complaint that cures the deficiencies identified above.

4 **CONCLUSION**

5 For the reasons stated above, Plaintiff's Motion to Provide Proof of Service and  
6 second Motion for Appointment of Counsel are **DENIED**. Plaintiff's First Amended  
7 Complaint is **DISMISSED without prejudice** for failing to state a claim. Plaintiff is  
8 granted **thirty (30) days** from the date of this Order to file a second amended complaint  
9 ("SAC") that cures the deficiencies identified in this Order. If Plaintiff does not file a  
10 SAC, this action shall remain closed without further order of the Court.

11 **IT IS SO ORDERED.**

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13 DATED: April 5, 2017

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16 HON. ROGER T. BENITEZ  
17 United States District Judge  
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