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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
by *[Signature]*  
DEPUTYUNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ALBERT SHOQUIST,

Plaintiff,

v.

UNITED STATES FOREST SERVICE  
DEPARTMENT OF AGRICULTURE,

Defendant.

Case No.: 3:17-cv-00204-BEN-NLS

**ORDER:****(1) GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS;****(2) DENYING MOTION FOR  
APPOINTMENT OF COUNSEL;****(3) DISMISSING COMPLAINT FOR  
FAILING TO STATE A CLAIM****[Docket Nos. 1-3]**

On February 2, 2017, Plaintiff Albert Shoquist filed a civil Complaint, a Motion to Proceed *In Forma Pauperis* ("IFP"), and a Motion for Appointment of Counsel. (Docket Nos. 1-3.) For the reasons stated below, the Motion to Proceed IFP is GRANTED, the Motion for Appointment of Counsel is **DENIED**, and the Complaint is **DISMISSED without prejudice.**

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1      **I. Motion to Proceed IFP**

2      All parties instituting any civil action in a district court must pay a filing fee. 28  
3      U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire  
4      fee only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a).

5      Under 28 U.S.C. § 1915(a)(1),

6      any court of the United States may authorize the  
7      commencement, prosecution or defense of any suit, action or  
8      proceeding . . . without prepayment of fees or security therefor,  
9      by a person who submits an affidavit that includes a statement  
10     of all assets such [person] possesses that the person is unable to  
11     pay such fees or give security therefor.

12     Plaintiff stated he receives approximately \$880.00 a month from public-assistance  
13     programs and retirement benefits. (Docket No. 2 at ¶ 1.) His monthly expenses are  
14     approximately \$640.00. (*Id.* at ¶ 8.) The Court finds Plaintiff has sufficiently stated that  
15     he cannot afford to pay the filing fee. The Motion is therefore **GRANTED**.

16      **II. Motion to Appoint Counsel**

17     Plaintiff has moved for the appointment of counsel, on the sole grounds that he  
18     cannot afford to hire an attorney. (Docket No. 3.)

19     Courts have discretion, pursuant to 28 U.S.C. § 1915(e)(1) (1996), to appoint  
20     counsel for indigent civil litigants upon a showing of exceptional circumstances. "A  
21     finding of exceptional circumstances requires an evaluation of both the likelihood of  
22     success on the merits and the ability of the petitioner to articulate his claims pro se in  
23     light of the complexity of the legal issues involved." *Terrell v. Brewer*, 935 F.2d 1015,  
24     1017 (9th Cir. 1991) (internal citations omitted). "Neither of these factors is dispositive  
25     and both must be viewed together before reaching a decision." *Id.* (internal citations  
26     omitted).

1 At this time, the Court cannot say there is any likelihood of success on the merits.<sup>1</sup>  
2 Moreover, Plaintiff fails to demonstrate an inability to represent himself beyond the  
3 ordinary burdens encountered by plaintiffs representing themselves *pro se*, or that he has  
4 even attempted to obtain counsel to represent him. *See Garcia v. Smith*, No. 10-cv-1187,  
5 2012 WL 2499003, at \*4 (S.D. Cal. June 27, 2012) (“Merely alleging indigence is  
6 insufficient to entitle him to appointed counsel; he must also demonstrate that he made a  
7 good faith effort, but was unable, to obtain counsel.”). Therefore, the Court finds that the  
8 exceptional circumstances required for the appointment of counsel are not present.

9 Plaintiff’s Motion is **DENIED**.

### 10 **III. Section 1915 Screening**

#### 11 **A. Legal Standard**

12 Under section 1915(e) of title 28 of the United States Code, the Court must *sua*  
13 *sponte* dismiss IFP complaints, or any portions thereof, which are frivolous, malicious,  
14 fail to state a claim, or which seek damages from defendants who are immune. *See Lopez*  
15 *v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (discussing 28 U.S.C. §  
16 1915(e)(2)). “[T]he provisions of section 1915(e)(2)(B) are not limited to prisoners.”  
17 *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001).

18 Every complaint must contain “a short and plain statement of the claim showing  
19 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
20 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported  
21 by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
22 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “When there are  
23 well-pleaded factual allegations, a court should assume their veracity, and then determine  
24 whether they plausibly give rise to an entitlement to relief.” *Id.* at 679; *see Barren v.*  
25 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that section 1915(e)(2)

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28 <sup>1</sup> As will be described in further detail below, Plaintiff’s Complaint does not contain  
sufficient facts to state a claim for relief.

1 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). “Determining  
2 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that  
3 requires the reviewing court to draw on its judicial experience and common sense.”  
4 *Iqbal*, 556 U.S. at 679. The “mere possibility of misconduct” falls short of meeting this  
5 plausibility standard. *Id.*; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.  
6 2009).

7 While a plaintiff’s factual allegations are taken as true, courts “are not required to  
8 indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th  
9 Cir. 2009) (internal quotation marks and citation omitted). Indeed, while courts “have an  
10 obligation where the petitioner is pro se, particularly in civil rights cases, to construe the  
11 pleadings liberally and to afford the petitioner the benefit of any doubt,” *Hebbe v. Pliler*,  
12 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1  
13 (9th Cir. 1985)), it may not “supply essential elements of claims that were not initially  
14 pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

15       B. Discussion

16 Plaintiff’s Complaint must be dismissed for failing to state a claim upon which  
17 relief may be granted. 28 U.S.C. § 1915(e). Plaintiff’s Complaint, which includes a  
18 single request for relief of “money compensation” lacks any factual allegations. (Docket  
19 No. 1 at 3.) Even construing the documents liberally, the Court finds Plaintiff has failed  
20 to state any cognizable claim.<sup>2</sup> As a result, Plaintiff’s Complaint falls well below the  
21 requirement to include “a short and plain statement of the claim showing that the pleader  
22 is entitled to relief.” Fed. R. Civ. P. 8(a)(2).

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26       <sup>2</sup> This may be due to the fact that the Court did not receive the second page of the form  
27 complaint form, which instructs the filing party to: “Briefly state the facts of your case.  
28 Describe how each defendant is involved, and tell what each defendant did to you that  
caused you to file this suit against them. Include names of any other persons involved,  
dates, and places.” (Docket No. 1 at 1.)

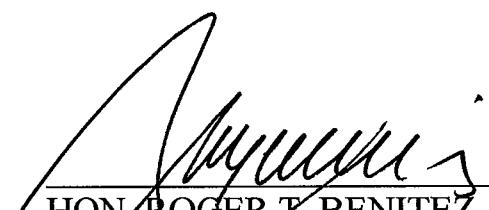
1 Accordingly, the Complaint is **DISMISSED**. However, the Court grants Plaintiff  
2 leave to file a First Amended Complaint that cures the deficiencies noted above.

3 **CONCLUSION**

4 Plaintiff's Motion to Proceed IFP is **GRANTED**. Plaintiff's Motion for  
5 Appointment of Counsel is **DENIED**. The Complaint is **DISMISSED without**  
6 **prejudice** for failing to state a claim. Plaintiff is granted **thirty (30) days** from the date  
7 of this Order to file a first amended complaint. If Plaintiff does not file an amended  
8 complaint, this action shall remain closed without further Order of the Court.

9 **IT IS SO ORDERED.**

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11 DATED: February 23, 2017

12   
13 HON. ROGER T. BENITEZ  
14 United States District Judge

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