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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY



DEPUTY

UNITED 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).
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1 At this time, the Court cannot say there is any likelihood of success on the merits.¹
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 ¹ 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.² 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).

25 ² This may be due to the fact that the Court did not receive the second page of the form
26 complaint form, which instructs the filing party to: “Briefly state the facts of your case.
27 Describe how each defendant is involved, and tell what each defendant did to you that
28 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 HON. ROGER T. BENITEZ
13 United States District Judge
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