

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 MONTOREY D. HARPER,
12 Plaintiff,
13 v.
14 US DOJ,
15 Defendant.

Case No.: 17cv1634 BTM (BLM)

**ORDER GRANTING MOTION TO
PROCEED IN FORMA
PAUPERS AND DISMISSING
COMPLAINT FOR FAILURE TO
STATE A CLAIM**

16
17 On August 14, 2017, Plaintiff filed a Complaint and a Motion to Proceed In
18 Forma Pauperis (“IFP”). For the reasons discussed below, the IFP Motion is
19 granted, and the Complaint is dismissed for failure to state a claim.
20

21 **DISCUSSION**

22 **I. Motion to Proceed IFP**

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

27 **II. Failure to State a Claim**

28 Although the Court will allow Plaintiff to proceed IFP, Plaintiff’s Complaint

1 must be dismissed for failure to state a claim. The Court is under a continuing duty
2 to dismiss an IFP case whenever the Court determines that the action “fails to state
3 a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

4 Under Federal Rule of Civil Procedure 8(a), Plaintiff’s complaint must state
5 a claim for relief that contains: (1) “a short and plain statement of the grounds for
6 the court’s jurisdiction, unless the court already has jurisdiction and the claim
7 needs no new jurisdictional support; (2) a short and plain statement of the claim
8 showing that the pleader is entitled to relief; and (3) a demand for relief sought,
9 which may include relief in the alternative or different types of relief.” The factual
10 allegations “must be enough to raise a right to relief above the speculative level.”
11 *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007). Here, even under the most
12 liberal review, Plaintiff has failed to state enough facts to support a cognizable
13 claim for relief. The first page of the Complaint includes the following heading:
14 “Fashionable Assault.” However, the allegations under the heading are
15 unintelligible and fail to support a claim of assault. The following pages of the
16 Complaint appear to be letters written to the “State Bureau of Investigation”
17 requesting that it investigate “identity theft,” “religious discrimination,” and
18 “disability discrimination,” but these also fail to allege sufficient facts to support a
19 claim for relief.

20 Because Plaintiff is proceeding without counsel, and he has now been
21 provided with notice of his Complaint’s deficiencies, the Court will grant him leave
22 to amend. See *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (“A district
23 court should not dismiss a pro se complaint without leave to amend [pursuant to
24 28 U.S.C. § 1915(e)(2)(B)(ii)] unless ‘it is absolutely clear that the deficiencies of
25 the complaint could not be cured by amendment.’”) (quoting *Akhtar v. Mesa*, 698
26 F.3d 1202, 1212 (9th Cir. 2012)).

27 //

28 //

1 **CONCLUSION**

2 For the reasons discussed above, Plaintiff’s motion to proceed in forma
3 pauperis is **GRANTED**, and Plaintiff’s Complaint is **DISMISSED** for failure to state
4 a claim. The Court **GRANTS** Plaintiff leave to file a First Amended Complaint
5 which cures the deficiencies noted above. If Plaintiff chooses to file a First
6 Amended Complaint, he must do so on or before **September 22, 2017**. Plaintiff’s
7 Amended Complaint must be complete by itself without reference to his original
8 pleading. Defendants not named and any claim not re-alleged in his Amended
9 Complaint will be considered waived. See S.D. CAL. CIVLR 15.1; *Hal Roach*
10 *Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989)
11 (“[A]n amended pleading supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693
12 F.3d 896, 928 (9th Cir. 2012) (noting that claims dismissed with leave to amend
13 which are not re-alleged in an amended pleading may be “considered waived if not
14 replied.”). If Plaintiff fails to file an Amended Complaint, the Court will enter a final
15 Order dismissing this civil action based both on Plaintiff’s failure to state a claim
16 upon which relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and
17 his failure to prosecute in compliance with a court order requiring amendment. See
18 *Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take
19 advantage of the opportunity to fix his complaint, a district court may convert the
20 dismissal of the complaint into dismissal of the entire action.”).

21
22 **IT IS SO ORDERED.**

23 Dated: August 28, 2017



24
25 Barry Ted Moskowitz, Chief Judge
26 United States District Court
27
28