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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 CORNELIUS OLUSEYI OGUN SALU,
12 Plaintiff,
13 v.
14 OFFICE OF ADMINISTRATIVE
15 HEARINGS; CALIFORNIA
16 COMMISSION ON TEACHER
17 CREDENTIALING; and CALIFORNIA
18 ATTORNEY GENERAL'S OFFICE,
19 Defendants.

Case No.: 3:17-cv-01766-GPC-AGS

ORDER:

**(1) GRANTING PLAINTIFF'S
MOTION TO PROCEED IN FORMA
PAUPERIS [Dkt. No. 2]; and**

**(2) DISMISSING PLAINTIFF'S
COMPLAINT WITHOUT
PREJUDICE FOR FAILURE TO
STATE A CLAIM**

20 On September 1, 2017, Plaintiff Cornelius Oluseyi Ogunsalu ("Plaintiff"),
21 proceeding *pro se*, filed a complaint against California's Office of Administrative
22 Hearings ("OAH"), the California Commission on Teacher Credentialing (the "CCTC"),
23 and the California Attorney General's Office ("COAG"). (ECF No. 1.) Plaintiff
24 concurrently filed a motion to proceed *in forma pauperis* ("IFP"). (ECF No. 2.) Based
25 on the reasoning below, the Court GRANTS the motion to proceed IFP, but *sua sponte*
26 DISMISSES Plaintiff's complaint without prejudice because it fails to state a claim on
27 which relief may be granted.

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1 **I. DISCUSSION**

2 **A. Motion to Proceed *In Forma Pauperis***

3 All parties instituting any non-habeas “civil action, suit, or proceeding” in a federal
4 district court must pay a filing fee of \$400. *See* 28 U.S.C. § 1914(a).¹ An action may
5 proceed despite a plaintiff’s failure to prepay the entire fee only if the plaintiff is granted
6 leave to proceed IFP under § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051
7 (9th Cir. 2007). The plaintiff must submit an affidavit demonstrating his inability to pay
8 the filing fee and including a complete statement of the plaintiff’s assets. 28 U.S.C.
9 § 1915(a)(1). When a plaintiff moves to proceed IFP, the court first “grants or denies IFP
10 status based on the plaintiff’s financial resources alone and then independently
11 determines whether to dismiss the complaint” pursuant to 28 U.S.C. § 1915(e)(2).
12 *Franklin v. Murphy*, 745 F.2d 1221, 1226 n.5 (9th Cir. 1984).

13 Here, plaintiff asserts that he is presently unemployed, and receives temporary
14 disability benefits of \$245.33 per week and \$140 per month in food stamps. (ECF No. 2
15 at 1.) Plaintiff currently has \$490 in his bank account. (*Id.* at 2.) His monthly expenses,
16 not including loan payments, amount to \$845. (*Id.*) Based on this information, the Court
17 concludes that Plaintiff cannot afford the filing fee for this action. Therefore, the Court
18 GRANTS Plaintiff’s motion for leave to proceed IFP. (ECF No. 2.)

19 **B. *Sua Sponte* Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)**

20 A complaint filed by any person proceeding IFP pursuant to § 1915(a) is subject to
21 mandatory *sua sponte* review and dismissal by the Court if it is “frivolous, or malicious;
22 fails to state a claim upon which relief may be granted; or seeks monetary relief against a
23 defendant immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v.*
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26 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. *See*
27 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.
28 Dec. 1, 2016)). The additional \$50 administrative fee does not apply to persons granted leave to proceed
IFP. *Id.*

1 *Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B)
2 are not limited to prisoners.”).

3 **i. Legal Standard**

4 Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain “a short
5 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.
6 Civ. P. 8(a)(2). While a plaintiff need not give “detailed factual allegations,” a plaintiff
7 must plead sufficient facts that, if true, “raise a right to relief above the speculative level.”
8 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007). To state a claim upon which
9 relief may be granted “a complaint must contain sufficient factual matter, accepted as
10 true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S.
11 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 547). A claim is facially plausible when
12 the factual allegations permit “the court to draw the reasonable inference that the
13 defendant is liable for the misconduct alleged.” *Id.* In other words, “the non-conclusory
14 ‘factual content,’ and reasonable inferences from that content, must be plausibly
15 suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Service*, 572
16 F.3d 962, 969 (9th Cir. 2009). “Determining whether a complaint states a plausible claim
17 for relief will . . . be a context-specific task that requires the reviewing court to draw on
18 its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679. Because Plaintiff
19 proceeds *pro se*, the Court construes the complaint liberally. *See Tritz v. U.S. Postal*
20 *Serv.*, 721 F.3d 1133, 1139 (9th Cir. 2013).

21 **ii. Allegations**

22 Plaintiff’s complaint alleges the following facts. Plaintiff received a Preliminary
23 Single Subject Teaching Credential from the CCTC on July 18, 2013, which was set to
24 expire on June 1, 2016. (ECF No. 1-2 at 2.¹) Plaintiff applied for a Clear Single Subject
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27 ¹ The Court may consider documents attached to the complaint. *Akhtar v. Mesa*, 698 F.3d 1202, 1212
28 (9th Cir. 2012) (“When reviewing a motion to dismiss we consider only allegations contained in the
pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice.” (internal
quotation marks omitted)).

1 Teaching Credential on July 1, 2014. (*Id.*) During the 2013-14 school year, Plaintiff
2 served as a World History and Geography teacher at Bell Middle School in the San Diego
3 Unified School District (the “District”). (*Id.*) On March 11, 2014, the District served
4 Plaintiff with a notice of “non-reelection” based on the recommendation of the school
5 principal, Michael Dodson. (*Id.* at 2, 3, 8–9.) According to Plaintiff, Dodson’s
6 recommendation included “fabricated and false” information. (ECF No. 1 at 8.)

7 The CCTC held a hearing on Plaintiff’s non-reelection in Sacramento, California.
8 (*Id.*) Plaintiff attended the hearing and was represented by an attorney. (*Id.*) On
9 February 27, 2015, the Commissioner’s Committee of Credentials (the “Committee”)
10 advised Plaintiff that “probable cause existed” to suspend Plaintiff’s Preliminary
11 Credential for 21 days. (ECF No. 1-2 at 2.) The Committee recommended, however,
12 that Plaintiff’s “application for a Clear Credential be granted upon the completion of the
13 suspension of the Preliminary Credential.” (*Id.*) The Committee informed Plaintiff that
14 he had “the option of requesting an administrative hearing but noted that disciplinary
15 action imposed following the hearing could be greater or less than the action
16 recommended by the Committee.” (*Id.*) Fearing that accepting the suspension would
17 lead to the denial of his Clear Credential because it would be seen by the CCTC as an
18 admission of wrongdoing, Plaintiff requested an administrative hearing. (*Id.*; ECF No. 1
19 at 8.) On June 22, 2016, California Deputy Attorney General Chara L. Crane filed an
20 accusation and statement of issues, and a hearing was set for November 14 and 15, 2016.
21 (ECF No. 1-2 at 1–2.)

22 In the meantime, Plaintiff became concerned that the COAG was “strong-arming
23 him and attempting to railroad him into accepting the 21-days suspension,” particularly
24 because there was a pending federal lawsuit that Plaintiff had filed “in which the [CCTC]
25 and [COAG] were implicated.” (ECF No. 1 at 8.) Plaintiff believed that “the 21-day
26 suspension he’d appealed before the Commissioner and for which he was given proper
27 notice of had turned into something else, i.e., a revocation hearing for which he had not
28 previously appeared before the Commission to address and for which he had not been

1 given proper notice of.” (*Id.*)

2 At a “settlement/scheduling conference” before the OAH, Plaintiff voiced this
3 concern and requested a continuance of his hearing. (*Id.*) He also indicated that “a
4 pending Public Employment Relations Board opinion” would moot the OAH’s hearing
5 “if favorable to Plaintiff.” (*Id.*) The administrative law judge (the “ALJ”) denied
6 Plaintiff’s request for a continuance for lack of good cause. (*Id.* at 9.) Plaintiff filed a
7 petition for a writ of mandate in California Superior Court to challenge the denial of his
8 requested continuance. (*Id.*) The Superior Court denied Plaintiff’s petition, however, in
9 light of his status as a vexatious litigant under California Civil Procedure Code § 391 *et*
10 *seq.* (*Id.*) Plaintiff sought permission from the California Court of Appeal to file a
11 petition for a writ directing the Superior Court to grant Plaintiff’s challenge to the ALJ’s
12 denial of his request for a continuance. (*Id.*) The Court of Appeal denied Plaintiff
13 permission to file the petition. (*Id.*) Plaintiff petitioned the California Supreme Court for
14 review. (*Id.*) The California Supreme Court granted the petition and remanded to the
15 Court of Appeal with instructions to reconsider its decision in light of a recent California
16 Supreme Court decision, *John v. Superior Court*, 63 Cal. 4th 91 (2016), which was
17 relevant to the operation of California’s vexatious litigant law. (*Id.*)

18 Meanwhile, the ALJ went forward with the hearing on November 14 and 15, 2016.
19 (ECF No. 1-2 at 1.) Plaintiff was not present at the hearing. (*Id.*; ECF No. 1 at 9.)
20 According to the ALJ’s decision, on November 10, 2016, Plaintiff sent an email to Crane,
21 with a copy to the OAH, in which he asserted that the OAH was as “an illegal tribunal,”
22 and that “he would appear at this hearing, state his position, and then leave.” (ECF No.
23 1-2 at 3 n.2.) The ALJ noted that “[t]hese emails established [that Plaintiff] had actual
24 knowledge of the hearing but elected not to appear.” (*Id.*) On December 12, 2016, the
25 ALJ issued a decision revoking Plaintiff’s Preliminary credential and denying Plaintiff’s
26 application for a Clear Credential. (*Id.* at 20.) The ALJ concluded that there was clear
27 and convincing evidence that, in light of his harassment of teachers and students at Bell,
28 Plaintiff “engaged in unprofessional conduct” and that he “poses a significant danger of

1 harm to students, school, employees, or others who might be affected by his actions as a
2 teacher.” (*Id.* at 1.) “Accordingly, the only discipline that will adequately protect the
3 public,” the ALJ concluded, “is revocation of the Preliminary Credential and denial of his
4 application for a Clear Credential.” (*Id.*) The ALJ’s decision became effective on March
5 19, 2017. (*Id.*) Plaintiff challenged that decision in Superior Court. (ECF No. 1 at 2.)
6 The Superior Court denied Plaintiff’s challenge “based on the pending proceedings
7 before the Court of Appeal and the California Supreme Court.” (*Id.*) On May 31, 2017,
8 on remand from the California Supreme Court, the Court of Appeal held that Plaintiff’s
9 petition was moot because the OAH had since rendered a decision after its hearing. (ECF
10 No. 1-3.) On August 23, 2017, the Supreme Court of California denied Plaintiff’s
11 petition for review. (*Id.*)

12 Plaintiff states that he “has effectively been completely shut out of the state court
13 system by the Superior Court, Court of Appeal and California Supreme Court.” (*Id.*) As
14 a result, he “is unable to get relief from the state court system due to being on the
15 California Vexatious Litigant List.” (*Id.*) He seeks the following relief: (1) “VOID the
16 OAH order revoking Plaintiff’s credentials,” (2) “Order the [CCTC] to re-instate all of
17 Plaintiff’s teaching credentials that were unconstitutionally revoked,” (3) “Order the
18 [CCTC] to grant the Clear Credential Application that was pending before it since July
19 2[014] before it was denied in March 2017 based on the unconstitutional OAH proposed
20 order,” (4) “Order the [CAOG] to cease and desi[s]t any and all retaliatory actions against
21 Plaintiff,” and (5) “Declare that the vexatious litigant bar of access to the state court is
22 unconstitutional in as long as it prevents plaintiff from appealing the OAH revocation of
23 Plaintiff’s teaching credentials.” (*Id.* at 11.)

24 **iii. Discussion**

25 Plaintiff offers three legal theories under which he asserts that his constitutional
26 rights have been violated. Even construing Plaintiff’s complaint liberally, the Court
27 concludes that the complaint fails to state any plausible claim for relief.

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1 Credential, and (2) a grant of his application for a Clear Credential. The Court assumes
2 without deciding that, at the time of the ALJ's decision, Plaintiff held a recognized
3 property interest in both of these credentials. The question the Court must answer, then,
4 is whether the OAH offered Plaintiff adequate process before engaging in this
5 deprivation. It did.

6 As discussed above, Plaintiff received notice about the OAH hearing, yet he chose
7 not to attend. At the hearing, the COAG offered testimony by Dodson, a campus police
8 officer, Bell's vice principal, Bell's current principal, a student who observed Plaintiff
9 engage in harassment of students, and that student's father. (ECF No. 1-2 at 3–14.) If
10 Plaintiff had attended the hearing, he could have engaged in cross-examination and
11 offered his own evidence in response. Cal. Gov't Code § 11513(b).² Plaintiff also could
12 have been represented by an attorney. *See id.* § 11509. Before the hearing, Plaintiff had
13 the opportunity to request discovery from the CCTC and take depositions. *Id.*
14 §§ 11507.6, 11511. Moreover, the complaint indicates that Plaintiff's credential was not
15 revoked until after the hearing and the ALJ issued his decision. Plaintiff has not
16 identified any additional measure of procedural protection that he should have been
17 afforded, and the Court cannot imagine any. The procedures available to Plaintiff were
18 adequate to satisfy the Due Process Clause's requirements in this context. *See Goldberg*
19 *v. Kelly*, 397 U.S. 254, 267–71 (1970) (discussing each of these procedural protections).
20 The Court concludes that Plaintiff fails to state a procedural due process claim because
21 Defendants afforded him adequate procedural protections before revoking Plaintiff's
22 Preliminary Credential and denying his Clear Credential.

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25 ² California Code of Regulations, title 5, section 80521, states that an administrative hearing in this
26 context "shall be conducted in accordance" with the hearing requirements set forth in California
27 Government Code § 11500 *et seq.* Among the many requirements of such a hearing, "[e]ach party shall
28 have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing
witnesses on any matter relevant to the issues even though that matter was not covered in the direct
examination; to impeach any witness regardless of which party first called him or her to testify; and to
rebut the evidence against him or her." Cal. Gov't Code § 11513(b).

1 **c. Access to Courts**

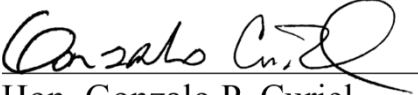
2 Last, Plaintiff contends that Defendants violated Plaintiff’s right under the First
3 Amendment of access to state courts “to petition the government for redress (i.e., to
4 appeal credential revocation) by utilizing the California Vexatious Litigant Statute
5 unconstitutionally against Plaintiff.” (ECF No. 1 at 3.) Based on Plaintiff’s allegations,
6 however, the CCTC, OAH, and CAOG had no role in enforcing California’s vexatious
7 litigant law against Plaintiff. In other words, Defendants’ actions were not a but-for
8 cause of Plaintiff’s need to obtain authorization from a Superior Court before he can file
9 suit there. Rather, the California courts are responsible for designating a litigant as
10 vexatious and enforcing that law’s requirements against him. *See* Cal. Civ. Proc. Code §
11 391.7. “Causation is, of course, a required element of a § 1983 claim.” *Estate of Brooks*
12 *ex rel. Brooks v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999). Because Plaintiff’s
13 complaint fails to allege any causation between Defendants’ conduct and Plaintiff’s
14 inability to access the California court system, the complaint does not state a plausible
15 access to courts claim.

16 **II. CONCLUSION**

17 Based on the reasoning above, the Court GRANTS Plaintiff’s motion to proceed
18 IFP, but *sua sponte* DISMISSES Plaintiff’s complaint without prejudice pursuant to 28
19 U.S.C. § 1915(e)(2)(B)(ii) because the complaint fails to state a claim for relief. Within
20 21 days of the filing of this order, Plaintiff may file an amended complaint curing the
21 deficiencies explained above.

22 **IT IS SO ORDERED.**

23 Dated: November 7, 2017

24 
25 Hon. Gonzalo P. Curiel
26 United States District Judge
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