

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MONTOREY DANYELL HARPER,
Plaintiff
v.
UNITED STATES, ET AL.,
Defendant

Case No.: 3:17-cv-01982-GPC-BGS

ORDER:

**(1) DENYING MOTION TO
PROCEED IFP [ECF No. 2]**

**(2) SUA SPONTE DISMISSING
COMPLAINT**

INTRODUCTION

On September 27, 2017, Plaintiff Montorey Danyell Harper (“Plaintiff”), proceeding pro se, initiated this action against defendants United States, United Nations, and NATO (collectively “Defendants”). (ECF No. 1.) Plaintiff concurrently filed a motion to proceed in forma pauperis (“IFP”). (ECF No. 2.) For the reasons set forth below, the Court **DENIES** Plaintiff’s motion and sua sponte **DISMISSES** Plaintiff’s complaint for failure to state a claim on which relief may be granted.

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DISCUSSION

I. Motion for Leave to Proceed IFP

3 Any party instituting any civil action, suit or proceeding in a district court of the
4 United States, except an application for writ of habeas corpus, must pay a filing fee of
5 \$350.00. 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay
6 the entire fee only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C.
7 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Under 28 U.S.C.
8 § 1915(a), the Court may waive the filing fee if a party demonstrates an inability to pay by
9 submitting an affidavit reporting all assets of the individual. 28 U.S.C. § 1915(a). The
10 plaintiff must submit an affidavit demonstrating an inability to pay the filing fee, and the
11 affidavit must include a complete statement of the plaintiff's assets. *Id.* § 1915(a)(1). When
12 a plaintiff moves to proceed IFP, the court first "grants or denies IFP status based on the
13 plaintiff's financial resources alone and then independently determines whether to dismiss
14 the complaint" pursuant to 28 U.S.C. § 1915(e)(2) ("§ 1915(e)(2)"). *Franklin v. Murphy*,
15 745 F.2d 1221, 1226 n.5 (9th Cir. 1984).

16 In his declaration accompanying the Motion to Proceed IFP, Plaintiff states that he
17 receives \$2915 in disability payments and \$1315 in other income, and thus has a monthly
18 income of \$4230. (ECF No. 2 at 2). Plaintiff has \$20.00 in cash and has a bank account
19 with \$1495. (*Id.*) Plaintiff does not have any other significant assets such as real estate,
20 stocks, bonds, or securities. (*Id.*) Plaintiff has regular monthly expenses in the amount of
21 \$4480—\$2670 on housing, \$800 on food, \$700 on recreation and entertainment, \$160 on
22 clothing and laundry, \$50 for business operation expenses, and \$100 on transportation.
23 (*Id.*) Plaintiff does not have any dependents, debts owed, or financial obligations. (*Id.*)

24 Based on Plaintiff's representations, the Court finds that he is able to pay the filing
25 fee due to the existing funds in his bank account and because he can make acceptable
26 sacrifices to other expenses. Accordingly, the Court **DENIES** Plaintiff's motion for leave
27 to proceed IFP.

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1 **II. Sua Sponte Screening**

2 A complaint filed by any person proceeding IFP, pursuant to 28 U.S.C. § 1915(a), is
3 additionally subject to mandatory sua sponte screening. The Court must dismiss any
4 complaint if at any time the Court determines that it is “frivolous or malicious,” “fails to
5 state a claim on which relief may be granted,” or “seeks monetary relief from a defendant
6 who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)–(iii); *Calhoun v. Stahl*, 254
7 F.3d 845 (9th Cir. 2001) (per curiam); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000)
8 (en banc).

9 The requirements under 28 U.S.C. § 1915(e)(2)(B)(ii) are analogous to those under
10 Federal Rule of Civil Procedure (hereinafter “Rule”) 12(b)(6). Under Rule 8, a pleading
11 must contain “a short and plain statement of the claim showing that the pleader is entitled
12 to relief.” Fed. R. Civ. P. 8(a)(2). While a plaintiff need not give “detailed factual
13 allegations,” a plaintiff must plead sufficient facts that, if true, “raise a right to relief above
14 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007). To state
15 a claim upon which relief may be granted “a complaint must contain sufficient factual
16 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 547). A claim is facially
17 plausible when the factual allegations permit “the court to draw the reasonable inference
18 that the defendant is liable for the misconduct alleged.” *Id.* In other words, “the non-
19 conclusory ‘factual content,’ and reasonable inferences from that content, must be
20 plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Service*,
21 572 F.3d 962, 969 (9th Cir. 2009). “Determining whether a complaint states a plausible
22 claim for relief will . . . be a context-specific task that requires the reviewing court to draw
23 on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679.

24 In addition to the liberal pleading standards set out in Rule 8(a), a document filed
25 pro se is “to be liberally construed.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). When the
26 plaintiff is appearing pro se, the court affords the plaintiff any benefit of the doubt.
27 *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2001); *Karim-Panahi*, 839 F.2d 621, 623

1 (9th Cir. 1988).

2 As currently pleaded, Plaintiff's complaint is subject to *sua sponte* dismissal because
3 it fails to state a claim upon which relief can be granted. Plaintiff's allegations are
4 scattered, not comprehensible, unsupported by any factual allegations, and fail to state a
5 claim that is plausible. Plaintiff appears to claim that he was sent a threatening email from
6 Loyal Towing, who Plaintiff does not name as a Defendant. Further, Plaintiff appears to
7 allege that the "US and others" bear some responsibility in stopping this alleged threat.
8 (ECF No. 1 at 2.) As pleaded, the allegations in the Complaint are insufficient to put
9 Defendants on notice of the claims against them, as required by Federal Rule of Procedure
10 8.

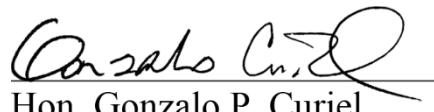
11 Accordingly, as currently pled, Plaintiff's complaint is subject to *sua sponte*
12 dismissal and the Court **DISMISSES** Plaintiff's complaint for failing to state a claim
13 pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

14 **CONCLUSION**

15 Based on the foregoing, the Court **DENIES** Plaintiff's motion to proceed IFP and
16 *sua sponte* **DISMISSES** Plaintiff's complaint without prejudice for failing to state a claim
17 pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). The Clerk of Court is directed to close this case.

18 **IT IS SO ORDERED.**

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20 Dated: September 28, 2017


21 Hon. Gonzalo P. Curiel
22 United States District Judge

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