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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 RUDOLF SHTEYNBERG,

11 Plaintiff,

12 v.

13 SHERIFFS DEPARTMENT,

14 Defendant.

Case No.: 17-CV-2149 JLS (KSC)

**ORDER (1) DENYING MOTION TO  
PROCEED *IN FORMA PAUPERIS*; 2)  
DISMISSING CIVIL ACTION FOR  
FAILING TO STATE A CLAIM; (3)  
DENYING MOTION FOR  
APPOINTMENT OF COUNSEL**

(ECF Nos. 2, 3)

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18 Presently before the Court are Plaintiff Rudolf Shteynberg’s Motion to Proceed *In*  
19 *Forma Pauperis* (“IFP”), (“IFP Mot.,” ECF No. 2), and Motion for Appointment of  
20 Counsel, (“Mot. for Counsel,” ECF No. 3).

21 **IFP MOTION**

22 All parties instituting any civil action, suit, or proceeding in a district court of the  
23 United States, except an application for writ of habeas corpus, must pay a filing fee of  
24 \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to  
25 prepay the entire fee only if he is granted leave to proceed *in forma pauperis* pursuant to  
26 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). A  
27 federal court may authorize the commencement of an action without the prepayment of  
28

1 fees if the party submits an affidavit, including a statement of assets, showing that he is  
2 unable to pay the required filing fee. 28 U.S.C. § 1915(a).

3 In the present case, Plaintiff has submitted an affidavit indicating his total monthly  
4 income is \$937.36 (received through disability payments and “annuity payments”), he is  
5 currently unemployed, and has no assets. (IFP Mot. 2–4.)<sup>1</sup> Plaintiff states his monthly  
6 expenses are approximately \$470. These expenses comprise of \$70 for a 2-day “hotel  
7 stay,” approximately \$200 for “small business development” and approximately \$200 for  
8 “taxi, rental hotel stay and others.” (*Id.* at 5–6.) It appears the “hotel stay” is double  
9 counted, and Plaintiff lists no other expenses. Plaintiff also states he is going through a  
10 divorce, but lists nothing regarding his spouse’s employment history or income. (*Id.* at 3–  
11 6.) At this time, it is unclear if Plaintiff is able to pay the requisite fees and costs.  
12 Accordingly, the Court **DENIES** Plaintiff’s Motion to Proceed IFP. As will be discussed  
13 below, the Court has previously granted Plaintiff’s Motion to Proceed IFP in his related  
14 case, No. 17-CV-1098-JLS-KSC.

### 15 **Screening Pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

16 Even though it denies Plaintiff’s Motion, the Court finds it necessary to screen  
17 Plaintiff’s Complaint. The Court must screen every civil action brought pursuant to 28  
18 U.S.C. § 1915(a) and dismiss any case it finds “frivolous or malicious,” “fails to state a  
19 claim on which relief may be granted,” or “seeks monetary relief against a defendant who  
20 is immune from relief.” 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d  
21 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited  
22 to prisoner.”); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (noting  
23 that 28 U.S.C. § 1915(e) “not only permits but requires a district court to dismiss an in  
24 forma pauperis complaint that fails to state a claim”).

25 As amended by the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(e)(2)  
26 mandates that the court reviewing an action filed pursuant to the IFP provisions of § 1915  
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28 <sup>1</sup> For ease of reference, page numbers to docketed materials refer to the CM/ECF page number.

1 make and rule on its own motion to dismiss before directing the Marshal to effect service  
2 pursuant to Federal Rule of Civil Procedure 4(c)(3). *See* Fed. R. Civ. P. 4(c)(3); *Navarette*  
3 *v. Pioneer Med. Ctr.*, No. 12-cv-0629-WQH (DHB), 2013 WL 139925, at \*1 (S.D. Cal.  
4 Jan. 9, 2013).

5 All complaints must contain a “short and plain statement of the claim showing that  
6 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are  
7 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by  
8 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
9 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007)). “[D]etermining whether a  
10 complaint states a plausible claim is context-specific, requiring the reviewing court to draw  
11 on its experience and common sense.” *Iqbal*, 556 U.S. at 663–64 (citing *Twombly*, 550  
12 U.S. at 556).

13 “When there are well-pleaded factual allegations, a court should assume their  
14 veracity, and then determine whether they plausibly give rise to an entitlement of relief.”  
15 *Iqbal*, 556 U.S. at 679. “[W]hen determining whether a complaint states a claim, a court  
16 must accept as true all allegations of material fact and must construe those facts in the light  
17 most favorable to the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *see*  
18 *also Andrews v. King*, 393 F.3d 1113, 1121 (9th Cir. 2005); *Barren v. Harrington*, 152  
19 F.3d 1193, 1194 (9th Cir. 1998) (“The language of § 1915(e)(2)(B)(ii) parallels the  
20 language of Federal Rule of Civil Procedure 12(b)(6).”).

21 “While factual allegations are accepted as true, legal conclusions are not.” *Hoagland*  
22 *v. Astrue*, No. 1:12-cv-00973-SMS, 2012 WL 2521753, at \*3 (E.D. Cal. June 28, 2012)  
23 (citing *Iqbal*, 556 U.S. at 678). Courts cannot accept legal conclusions set forth in a  
24 complaint if the plaintiff has not supported her contentions with facts. *Id.* (citing *Iqbal*,  
25 556 U.S. at 679).

26 In the present case, Plaintiff’s Complaint appears to be a reiteration of his request  
27 for counsel. The entire Complaint states: “This is to notify Judge appointed and judicial  
28 authority that Plaintiff is in position to continue [illegible] volunteers Program and Counsel

1 to be appointed as the Plaintiff who is acting on his own and have no [knowledge] and legal  
2 capacity to pro[c]eed on his own. Limited [knowledge] of legal terms would not [illegible]  
3 him to communicate in legal manners or proceed on his own. Previous request from Judge  
4 Sammartino to obtain names of the Defendants Parties was not released in full by San  
5 Diego County Sheriffs Department and it was discussion in the correctional facility on  
6 release of such information.” (ECF No. 1, at 3.)

7 Attached to Plaintiff’s Complaint is a Complaint Form for the San Diego County  
8 Sheriff’s Department, (ECF No. 1-20). In this Complaint Form, Plaintiff requests the  
9 “release of all sheriffs officers and names of Judges (including medical team / doctors,  
10 nurses, and employees) working at the date/ time of [illegible] in custody. Date and time  
11 of my incarceration.” (*Id.*) No other information is provided.

12 Plaintiff has filed a complaint in a related case before the Court, (*see* Case No. 17-  
13 CV-1098-JLS-KSC). The issue in that case arises from alleged personal injury against  
14 Plaintiff by the San Diego County Sheriff’s Office. (*See* ECF No. 1.)<sup>2</sup> In that case, the  
15 Court granted Plaintiff’s motion to proceed IFP on June 30, 2017, but dismissed the  
16 Complaint pursuant to mandatory screening under 28 U.S.C. §§ 1915(e)(2) & 1915A(b),  
17 (*see* ECF No. 6.) The Court granted Plaintiff thirty days to refile his complaint. Instead  
18 of filing an amended complaint, Plaintiff filed various motions (motion to expedite, motion  
19 to appoint counsel, and motion for recusal), which the Court generally denied in an  
20 omnibus order, (*see* ECF No. 19).<sup>3</sup> The Court gave Plaintiff an additional thirty days from  
21 the date of the omnibus order to file his Amended Complaint.

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24 <sup>2</sup> The citations to the ECF docket in this section relate to the docket in 17-CV-1098.

25 <sup>3</sup> The Court did grant Plaintiff’s Motion to Stop Correspondence to Mailing Address, (ECF No. 10).  
26 However, the Clerk’s Office has attempted to mail Plaintiff various Orders in case number 17-CV-1098  
27 and these have been returned as undeliverable. Plaintiff’s listed mailing address in the present case,  
28 number 17-CV-2149, is the same address Plaintiff requested the Court stop mailing correspondence to;  
however, his filings in the present case are also his most recent use of a mailing address. Therefore, in an  
effort to reach Plaintiff, the Court will direct the Clerk’s Office to send correspondence to the address  
listed in case 17-CV-2149.



1 evaluation of both the ‘likelihood of success on the merits and the ability of the plaintiff to  
2 articulate his claims pro se in light of the complexity of the legal issues involved.’ Neither  
3 of these issues is dispositive and both must be viewed together before reaching a decision.”  
4 *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

5 The Court finds Plaintiff has not satisfied the standards for appointment of counsel  
6 under 28 U.S.C. § 1915(e)(1). In both this case and the related case, Plaintiff has failed to  
7 file a complaint that explains, through factual allegations, exactly what happened in the  
8 case. The Court cannot evaluate Plaintiff’s Motion for Counsel without an operative  
9 complaint. Furthermore, Plaintiff’s Motion has no reason whatsoever why his situation  
10 merits appointment of counsel. Therefore, the Court finds that neither the interests of  
11 justice nor any exceptional circumstances warrant appointment of counsel at this time and  
12 **DENIES** Plaintiff’s motion, (ECF No. 3).

### 13 **CONCLUSION**

14 The Court has repeatedly extended Plaintiff’s deadline for filing an amended  
15 complaint. Plaintiff has repeatedly failed to do so. Instead, he has filed a variety of motions  
16 in case number 17-CV-1098 and has filed an entirely new case, presently before the Court,  
17 which appears to arise from the same common nucleus of operative facts. The Court cannot  
18 evaluate Plaintiff’s claim without a short and plain statement showing why Plaintiff is  
19 entitled to relief.

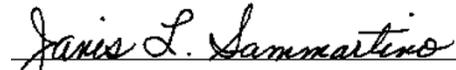
20 In sum, the Court **DENIES** Plaintiff’s Motion to Proceed IFP, (ECF No. 2), and  
21 **DENIES** Plaintiff’s Motion for Counsel, (ECF No. 3). Pursuant to the screening  
22 requirements of 28 U.S.C. §§ 1915(e)(2) & 1915A(b), the Court **DISMISSES WITHOUT**  
23 **PREJUDICE** Plaintiff’s Complaint, (ECF No. 1). The Court **ORDERS** the Clerk of Court  
24 to mail a copy of this Order as well as the Court’s Order in case number 17-CV-1098, dated  
25 October 18, 2017, (ECF No. 35), to Plaintiff’s most recently filed mailing address (in case  
26 number 17-CV-2149).

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1 Because Plaintiff has not received the Court's Order in 17-CV-1098, the Court **GRANTS**  
2 Plaintiff an additional thirty (30) days from the date on which this Order is electronically  
3 filed to file an amended complaint in Case Number 17-CV-1098. *Failure to file an*  
4 *amended complaint within thirty days may result in this case being dismissed for failure to*  
5 *prosecute.*

6 **IT IS SO ORDERED.**

7 Dated: November 16, 2017

  
8 Hon. Janis L. Sammartino  
9 United States District Judge

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