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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MEL MARIN,  
  
Plaintiff,  
  
v.  
  
WBC HOLDINGS CORP., *et al.*,  
  
Defendant.

Case No. 18-cv-00870-BAS-MDD

**ORDER:**  
  
**(1) GRANTING MOTION TO  
PROCEED *IN FORMA PAUPERIS*  
[ECF No. 2];**  
  
**(2) DENYING MOTION TO SEAL  
FINANCIAL RECORDS AS  
MOOT  
[ECF No. 3];**  
  
**AND**  
  
**(3) DISMISSING COMPLAINT  
[ECF No. 1] WITH PREJUDICE**

On May 4, 2018, Plaintiff Mel Marin filed a civil complaint (ECF No. 1), a motion to proceed *in forma pauperis* (“IFP”) (ECF No. 2), and a motion to seal financial records (ECF No. 3). For the reasons herein, the Court grants Plaintiff’s IFP motion, denies the motion to seal, and dismisses the Complaint with prejudice.

1     **I.     MOTION TO PROCEED IFP AND MOTION TO SEAL**

2             Under 28 U.S.C. §1915, a litigant who because of indigency is unable to pay  
3 the fee or give security needed to commence a legal action may petition a court to  
4 proceed without making such payment. The determination of indigency falls within  
5 the district court’s discretion. *Cal. Men’s Colony v. Rowland*, 939 F.2d 854, 858 (9th  
6 Cir. 1991), *rev’d on other grounds*, 506 U.S. 194 (1993) (holding that “Section 1915  
7 typically requires the reviewing court to exercise its sound discretion in determining  
8 whether the affiant has satisfied the statute’s requirement of indigency”). It is well-  
9 settled that a party need not be completely destitute to proceed IFP. *Adkins v. E.I.*  
10 *DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948). To satisfy the requirements  
11 of 28 U.S.C. § 1915(a), “an affidavit [of poverty] is sufficient which states that one  
12 cannot because of his poverty pay or give security for costs . . . and still be able to  
13 provide himself and dependents with the necessities of life.” *Id.* at 339.

14             Here, the Court finds that Plaintiff has shown that he cannot afford the filing  
15 fee. He has submitted an affidavit showing that he has no gainful employment and  
16 receives \$700 per month through military pension and food stamps. (ECF No. 2.)  
17 Plaintiff’s declared monthly expenses of \$770 exceed his limited financial resources.  
18 (*Id.*) Based on the information provided, the Court grants Plaintiff’s IFP motion.  
19 Plaintiff’s motion to seal concerns documentation regarding his financial situation;  
20 specifically, Plaintiff contends that if he is required to submit a “long form” IFP  
21 motion, he would like to file such information under seal. (ECF No. 3.) Because the  
22 Court has granted Plaintiff IFP status based on the financial information he provided,  
23 Plaintiff need not submit a “long form” IFP motion. His motion to seal is denied as  
24 moot.

25     **II.    MANDATORY SCREENING OF THE COMPLAINT**

26             **A.    Applicable Standard**

27             Under Section 1915(e) of title 28 of the United States Code, the Court must  
28 *sua sponte* dismiss IFP complaints, or any portions thereof, which are frivolous,

1 malicious, fail to state a claim, or which seek damages from defendants who are  
2 immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
3 (discussing 28 U.S.C. §1915(e)(2)). “[T]he provisions of section 1915(e)(2)(B) are  
4 not limited to prisoners.” *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001).

5 Every complaint must contain “a short and plain statement of the claim  
6 showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). Detailed factual  
7 allegations are not required, but “[t]hreadbare recitals of the elements of a cause of  
8 action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*,  
9 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555  
10 (2007)). “When there are well-pleaded factual allegations, a court should assume  
11 their veracity, and then determine whether they plausibly give rise to an entitlement  
12 to relief.” *Id.* at 679; *see Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)  
13 (noting that section 1915(e)(2) “parallels the language of Federal Rule of Civil  
14 Procedure 12(b)(6)”). “Determining whether a complaint states a plausible claim for  
15 relief [is] . . . a context-specific task that requires the reviewing court to draw on its  
16 judicial experience and common sense.” *Iqbal*, 556 U.S. at 679. The “mere  
17 possibility of misconduct” falls short of meeting this plausibility standard. *Id.*; *see*  
18 *also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

19 While a plaintiff’s factual allegations are taken as true, courts “are not required  
20 to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677,  
21 681 (9th Cir. 2009) (internal quotation marks and citation omitted). Indeed, while  
22 courts “have an obligation where the petitioner is *pro se*, particularly in civil rights  
23 cases, to construe the pleadings liberally and to afford the petitioner the benefit of  
24 any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v.*  
25 *Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not “supply essential  
26 elements of claims that were not initially pled.” *Ivey v. Bd. of Regents of the Univ.*  
27 *of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

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1           **B. Discussion**

2           Plaintiff purports to assert some nine causes of action, including: (1) a claim  
3 for declaratory and injunctive relief; (2) violation of the Real Estate Settlement  
4 Procedures Act (“RESPA”); (3) credit defamation in violation of 15 U.S.C. §1681;  
5 (4) the California Unfair Competition Law (“UCL”), CAL. BUS. & PROF. CODE  
6 §17200, *et seq.*; (5) bankruptcy contempt and conversion; (6) a declaratory judgment  
7 that Wells Fargo unlawfully seized funds and destroyed its status as creditor; (7) a  
8 quiet title claim regarding a property in which Plaintiff claims a lien; (8) violation of  
9 the automatic bankruptcy stay by Wells Fargo; and (9) a 42 U.S.C. §1983 claim.  
10 (ECF No. 1.) Notwithstanding the myriad causes of action labeled in the Complaint,  
11 the Complaint fails to state a claim upon which relief may be granted. 28 U.S.C.  
12 §1915(e)(2).

13           Plaintiff previously asserted all claims but his “bankruptcy contempt” claim in  
14 an action brought before a different judge in this Court in October 2016. *See Marin*  
15 *v. Wells Fargo, N.A., et al.*, No. 16-cv-2512-BEN-MDD, ECF No. 1 Complaint (S.D.  
16 Cal. Oct. 6, 2016). Upon a mandatory screening of his IFP complaint in that action,  
17 Judge Benitez dismissed the Complaint without prejudice for failure to state a claim,  
18 determining that: “Plaintiff’s Complaint is entirely based upon or related to,  
19 Defendants’ banking, lending, or credit reporting relationships with Plaintiff’s sister  
20 or her husband.” *Marin v. Wells Fargo, N.A., et al.*, No. 16-cv-2512-BEN-MDD,  
21 2016 WL 6875891, at \*2 (S.D. Cal. Nov. 17, 2016). Judge Benitez admonished  
22 Plaintiff that “he may not litigate another party’s claim *pro se* as it would constitute  
23 engaging in the unauthorized practice of law.” *Id.* (citing *Marin v. Escondido Care*  
24 *Ctr.*, No. 11CV1610 AJB JMA, 2012 WL 3648288, at \*2 (S.D. Cal. Aug. 23, 2012)).  
25 Here, Plaintiff once more runs afoul of warnings from two judges in this District that  
26 he cannot litigate his sister’s claims *pro se*. *See Marin*, 2016 WL 6875891, at \*2;

1 *Marin*, 2012 WL 3648288, at \*2.<sup>1</sup>

2 In assessing Plaintiff's prior complaint, Judge Benitez noted that Plaintiff  
3 "alleges that, between 2011 and 2016, the Defendants conspired to seize his sister's  
4 bank accounts, foreclose on her properties, violate stays in his sister's bankruptcy  
5 hearings, and create a negative impact on her credit score." *Id.* at \*3. Judge Benitez  
6 determined that "Plaintiff's allegations are conclusory in nature and lack sufficient  
7 factual matter to state a claim upon which relief can be granted. Plaintiff simply  
8 gives general conclusions that the Defendants have harmed him as a result of harming  
9 his sister, and he is entitled to relief, and that the Defendants conspired to commit  
10 these wrongs against his sister, which resulted in his own harm, and are therefore  
11 liable for each other's actions." *Id.* at \*3. After Judge Benitez dismissed the  
12 Complaint on these grounds, Plaintiff simultaneously filed an amended complaint  
13 and a notice of voluntary dismissal. *See Marin v. Wells Fargo, N.A., et al.*, No. 16-  
14 cv-2512-BEN-MDD, ECF No. 8 (Am. Compl.), No. 9 (Notice of Vol. Dismissal)  
15 (S.D. Cal. Dec. 29, 2016).

16 Here, Plaintiff's Complaint is indistinguishable from the Complaint Judge  
17 Benitez dismissed, based on the conduct allege, claims raised, and defendants. An  
18 IFP plaintiff cannot circumvent a prior dismissal of the same insufficiently pleaded  
19 claims by filing a different action before a different judge at a later point in time. An  
20 *in forma pauperis* complaint that merely repeats pending or previously litigated  
21 claims may be considered abusive and dismissed under 28 U.S.C. § 1915(e); *Cato v.*  
22 *United States*, 70 F.3d 1103, 1105 n. 2 (9th Cir.1995); *see also McWilliams v. State*  
23 *of Colorado*, 121 F.3d 573, 574 (11th Cir.1997) (repetitious action may be dismissed  
24 as frivolous or malicious). Plaintiff's Complaint is subject to dismissal on this  
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26 <sup>1</sup> The Court observes that a third judge in this district dismissed claims in  
27 Plaintiff's sister's IFP complaint based on willful violation of a bankruptcy stay by  
28 other defendants and an identically pleaded Section 1983 claim that Plaintiff alleges  
here. *See Bauman v. Harbor View Home Owners Ass'n*, No. 16cv2506-MMA  
(JMA), 2017 WL 1378215, at \*6 (S.D. Cal. April 11, 2017).

1 ground.


2 Moreover, this Court lacks jurisdiction over Plaintiff's claims regarding willful  
3 violation of a bankruptcy stay by the Defendants. The United States Bankruptcy  
4 Code establishes an automatic stay. *See* 11 U.S.C. §§362(a), (c), (k). Plaintiff  
5 appears to believe that once a bankruptcy proceeding is dismissed, he may bring a  
6 claim for willful violation of the automatic bankruptcy in district court. This belief  
7 is erroneous. "[R]ecover of compensatory and punitive damages for willful  
8 violations of [an] automatic stay . . . must be brought in the bankruptcy court, rather  
9 in the district court, which only has appellate jurisdiction over bankruptcy cases."  
10 *Marin v. City of Utica*, 140 Fed. App'x 304 (2d Cir. 2005) (quoting *Eastern Equip.*  
11 *& Servs. Corp. v. Factory Point Nat. Bank, Bennington*, 236 F.3d 117, 121 (2d Cir.  
12 2001); *see also Marin v. Nat'l Grid*, No. 6:10-CV-439 (DNH/ATB), 2010 U.S. Dist.  
13 LEXIS 150619, at \*6–7 (N.D.N.Y. April 20, 2010) (dismissing for lack of  
14 jurisdiction claim based on alleged violation of automatic bankruptcy stay).  
15 Plaintiff's sister was already advised of this when her claims of willful violation of a  
16 bankruptcy stay were dismissed with prejudice. *See Bauman v. Harbor View Home*  
17 *Owners Ass'n*, No. 16cv2506-MMA (JMA), 2017 WL 1378215, at \*2–3 (S.D. Cal.  
18 April 11, 2017). This is an independent ground to dismiss Plaintiff's bankruptcy  
19 claims.

### 20 III. CONCLUSION & ORDER

21 For the foregoing reasons, the Court **GRANTS** Plaintiff's motion to proceed  
22 IFP (ECF No. 2) and **DENIES AS MOOT** the motion to seal (ECF No. 3). Because  
23 Plaintiff's Complaint fails to correct pleading deficiencies to which Plaintiff was  
24 alerted nearly two years ago and raises claims over which this Court lacks  
25 jurisdiction, the Court dismisses **DISMISSES WITH PREJUDICE** the Complaint.  
26 (ECF No. 1.) The Clerk of the Court shall close the file in this case.

27 **IT IS SO ORDERED.**

28 **DATED: May 14, 2018**

  
**Hon. Cynthia Bashant**  
**United States District Judge**