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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SEAN MATTHEW FINNEGAN,
Plaintiff,

v.

US BANK,
Defendant.

Case No.: 21-cv-0620-GPC-BLM

ORDER:

**(1) DENYING PLAINTIFF’S
MOTION TO PROCEED IN FORMA
PAUPERIS; AND**

**(2) SUA SPONTE DISMISSING
COMPLAINT**

[ECF Nos. 1, 2]

Plaintiff, proceeding *pro se*, filed a Complaint and subsequently filed a Motion to Proceed *In Forma Pauperis* (“IFP Motion”). ECF Nos. 1, 2. The Court **DENIES** Plaintiff’s IFP Motion and *sua sponte* **DISMISSES** the Complaint.

PLAINTIFF’S IFP MOTION

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$402. *See* 28 U.S.C. § 1914(a) (discussing the \$350 statutory fee and \$52 administrative

1 fee). The action may proceed despite this requirement only if the plaintiff is granted IFP
2 status pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051
3 (9th Cir. 2007). The plaintiff must submit an affidavit demonstrating plaintiff’s inability
4 to pay the filing fee, and the affidavit must include a complete statement of the plaintiff’s
5 assets. 28 U.S.C. § 1915(a)(1). The facts in the affidavit must be stated “with some
6 particularity, definiteness, and certainty.” *United States v. McQuade*, 647 F.2d 938, 940
7 (9th Cir. 1981). When a plaintiff moves to proceed IFP, the court first “grants or denies
8 IFP status based on the plaintiff’s financial resources alone and then independently
9 determines whether to dismiss the complaint” pursuant to 28 U.S.C. § 1915(e)(2).
10 *Franklin v. Murphy*, 745 F.2d 1221, 1226 n.5 (9th Cir. 1984).

11 Here, Plaintiff supplied a form application to proceed IFP. ECF No. 2. However,
12 the details provide no particularity, definiteness, or certainty as to Plaintiff’s financial
13 status. Plaintiff left the majority of the form blank, with one line indicating that he
14 receives a monthly income of \$289.15. *Id.* at 2. The employment section indicates that
15 Plaintiff is employed, but the gross monthly pay is listed as zero, which inherently makes
16 little sense without further explanation. *Id.* Finally, Plaintiff alleges that “Bank is
17 holding funds hostage,” *id.* at 5, but provides no explanation on the circumstances or
18 what that statement even means. In sum, Plaintiff’s filing does not give the Court
19 adequate information from which to determine whether he is unable to pay the \$402 fee.

20 Accordingly, the Court **DENIES without prejudice** Plaintiff’s IFP Motion, ECF
21 No. 2. Should Plaintiff wish to proceed in this case, he must either pay the filing fee or
22 provide a completed affidavit that shows his inability to pay the fee. Plaintiff is advised
23 that Local Civil Rule 3.2(a) provides the requisite information to be included. The Court
24 additionally **DIRECTS** the Clerk to provide Plaintiff with a blank copy of the Southern
25 District of California’s “Motion and Declaration Under Penalty of Perjury in Support of
26 Motion to Proceed *In Forma Pauperis*.”

1 **SUA SPONTE SCREENING**

2 A complaint filed by any person proceeding IFP, pursuant to 28 U.S.C. § 1915(a),
3 is additionally subject to mandatory *sua sponte* screening. The Court must review
4 complaints filed by all persons proceeding IFP and must *sua sponte* dismiss any
5 complaint, or any portion of a complaint, which is frivolous, malicious, fails to state a
6 claim, or seeks damages from defendants who are immune. *See* 28 U.S.C. §
7 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc).

8 All complaints must contain “a short and plain statement of the claim showing that
9 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
10 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
11 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
12 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining
13 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that
14 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*
15 The “mere possibility of misconduct” falls short of meeting this plausibility standard.
16 *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

17 “When there are well-pleaded factual allegations, a court should assume their
18 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
19 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
20 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
21 allegations of material fact and must construe those facts in the light most favorable to
22 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that
23 Section 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6).”).
24 However, while the court “ha[s] an obligation where the Plaintiff is pro se, particularly in
25 civil rights cases, to construe the pleadings liberally and to afford the Plaintiff the benefit
26 of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v.*

1 *Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not “supply essential elements
2 of claims that were not initially pled,” *Ivey v. Bd. of Regents of the University of Alaska*,
3 673 F.2d 266, 268 (9th Cir. 1982).

4 Moreover, the federal court is one of limited jurisdiction. *Kokkonen v. Guardian*
5 *Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). It possesses only that power authorized
6 by the Constitution or a statute. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S.
7 534, 541 (1986). It is constitutionally required to raise issues related to federal subject
8 matter jurisdiction and may do so *sua sponte*. *Steel Co. v. Citizens for a Better Env’t*, 523
9 U.S. 83, 93–94 (1998); *see also Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092
10 (9th Cir. 1990).

11 Here, the Complaint is wholly deficient and fails to establish how this Court has
12 subject matter jurisdiction. As a starting matter, there is no diversity jurisdiction. *See* 28
13 U.S.C. § 1332(a). Plaintiff avers otherwise, but the Complaint indicates that both
14 Plaintiff and Defendant are citizens of California. *See* Compl. 3–4, ECF No. 1.

15 The only cause of action apparent in the Complaint is 15 U.S.C. § 1692d, which
16 Plaintiff also claims is the basis for federal question jurisdiction. Section 1692d prevents
17 a “debt collector” from engaging in any conduct “which is to harass, oppress, or abuse
18 any person in connection with the collection of a debt,” and enumerates specific incidents
19 of prohibited conduct, such as “use of violence” or “profane language,” *see, e.g.*, 15
20 U.S.C. § 1692d(1), (2).

21 Yet no part of Plaintiff’s Complaint establishes how Defendant constitutes a “debt
22 collector,” which is a specific term defined in 15 U.S.C. § 1692a(6). Further, Plaintiff’s
23 Statement of Claim fails to demonstrate how Defendant’s alleged acts meet any of the
24 prohibited conduct articulated in Section 1692d. Plaintiff’s conclusory remarks such as
25 “harassing and abusing,” “The defendant is in breach,” “The defendant stole the entire
26 balance,” or “for the fraudulent transaction the bank itself had conducted,” *see* Compl. 4,
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1 ECF No. 1, are all rejected pursuant to the standard for an adequate pleading, discussed
2 *supra* pages 3–4 of this Order. In sum, the Court finds that the Complaint does not allege
3 a colorable 15 U.S.C. § 1692d claim sufficient to invoke federal question jurisdiction.
4 *Cf. Arbaugh v. Y & H Corp.*, 546 U.S. 500, 513 n.10 (2006) (“A claim invoking federal
5 question jurisdiction . . . may be dismissed for want of subject-matter jurisdiction if it is
6 not colorable, *i.e.*, if it is ‘immaterial and made solely for the purpose of obtaining
7 jurisdiction’ or is ‘wholly insubstantial and frivolous.’”).

8 Because Plaintiff’s Complaint “fails to state a claim on which relief may be
9 granted,” 28 U.S.C. § 1915(e)(2)(B)(ii), and because the Court lacks subject matter
10 jurisdiction, the Court *sua sponte* **DISMISSES** the Complaint.

11 **CONCLUSION**

12 For the reasons discussed above, the Court **DENIES** Plaintiff’s Motion to Proceed
13 *In Forma Pauperis* and *sua sponte* **DISMISSES** the Complaint.

14 Should Plaintiff wish to file an amended complaint curing the deficiencies noted
15 above, Plaintiff must do so **within thirty (30) days** of the date of this Order. The Clerk
16 of Court shall mail to Plaintiff a blank copy of the Southern District of California’s
17 “Motion and Declaration Under Penalty of Perjury in Support of Motion to Proceed *In*
18 *Forma Pauperis*.” Otherwise, the case will remain closed.

19 **IT IS SO ORDERED.**

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21 Dated: April 28, 2021

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23 Hon. Gonzalo P. Curiel
24 United States District Judge
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