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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 AGUSTIN MUÑOZ PEREZ,  
12 Plaintiff,  
13 v.  
14 RANCHO POINT APARTMENTS INC.,  
15 *et al.*,  
16 Defendants.  
17

Case No.: 3:21-cv-1848-RSH-DEB

**ORDER:**

**DENYING RENEWED MOTION  
TO PROCEED IN FORMA  
PAUPERIS [ECF No. 11]; and  
DISMISSING CIVIL ACTION  
UNDER 28 U.S.C. § 1915(e)(2)(B)(ii)**

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19 Plaintiff Agustin Muñoz Perez filed *pro se* a Complaint and Application for Leave  
20 to Proceed *In Forma Pauperis* (“IFP”) on November 1, 2021. *See* Compl., ECF No. 1; IFP  
21 App., ECF No. 2. On November 9, 2021, this Court denied Perez’s IFP Application  
22 because it was incomplete and dismissed the case without prejudice under 28 U.S.C.  
23 § 1915(e)(2)(B) because his Complaint did not meet the minimal pleading requirements of  
24 Federal Rule of Civil Procedure 8(a)(2). *See* Order, ECF No. 3. The Dismissal Order  
25 instructed Perez to amend his Complaint and file a complete IFP application by December  
26 9, 2021, or the Court would dismiss his case with prejudice. *Id.*

27 Instead, Perez filed his First Amended Complaint on December 17, 2021. *See* Am.  
28 Compl., ECF No. 5. But he did not pay the civil filing fee or file a complete IFP application.

1 As a result, this Court issued an Order to Show Cause on March 29, 2022, directing Perez  
2 to pay the filing fee or file a complete IFP application (or request an extension to do so) by  
3 April 25, 2022. *See* Order, ECF No. 10.

4 Perez did file an IFP application on April 12, 2022, but it was still incomplete. *See*  
5 IFP App., ECF No. 11. Likewise, Perez’s First Amended Complaint suffers the same  
6 deficiencies as Perez’s Original Complaint. Therefore, the Court denies Perez IFP status  
7 and dismisses his case without prejudice as explained below.

## 8 **I. Motion to Proceed IFP**

### 9 **A. Legal Standard**

10 When someone files a lawsuit (other than a writ of habeas corpus) in a federal district  
11 court, the filer must pay a fee of \$402. *See* 28 U.S.C. § 1914(a). This fee “is a lot of money  
12 to many millions of Americans.” *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir.  
13 2015). For this reason, a court may waive this fee by granting a party leave to proceed IFP  
14 under 28 U.S.C. § 1915(a)(1). *See, e.g., Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th  
15 Cir. 2007).

16 To request IFP status, a party must file an affidavit that: (1) includes a complete  
17 statement of assets, (2) demonstrates that the party is unable to pay the filing fee, (3)  
18 provides the nature of the action, and (4) states that the party is entitled to redress. 28 U.S.C.  
19 § 1915(a)(1). Although “[o]ne need not be absolutely destitute to obtain benefits of the  
20 [IFP] statute[,]’ . . . a plaintiff seeking IFP status must allege poverty ‘with some  
21 particularity, definiteness and certainty.’” *Escobedo v. Applebees*, 787 F.3d 1226, 1234  
22 (9th Cir. 2015) (quoting *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960), and  
23 *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)). Once a party files an IFP  
24 application, it is within the court’s discretion to grant or deny the request. *Venerable v.*  
25 *Meyers*, 500 F.2d 1215, 1216 (9th Cir. 1974) (citations omitted).

### 26 **B. Analysis**

27 Here, Perez does not report having an employer, a spouse, or any dependents in his  
28 renewed IFP Application. *See* ECF No. 11 at 1–5. He largely lists “\$0” in assets but left

1 the portion of the application regarding any money Perez has in any bank accounts blank.  
2 *Id.* at 2–3. Perez similarly wrote “\$0” for the various categories of his possible income, but  
3 left income from retirement, disability, unemployment, and public assistance blank. *Id.* at  
4 1–2. Although Perez notes paying \$1,150 a month in rent, \$0 for insurance, \$0 in taxes,  
5 and \$0 for installment payments, Perez left blank his expenses for utilities, home  
6 maintenance, food, clothing, laundry, transportation, recreation, and medical/dental care.<sup>1</sup>  
7 Ultimately, Perez’s renewed IFP Application “does not give the Court adequate  
8 information from which to determine whether he is unable to pay the \$402 fee.” *Finnegan*  
9 *v. US Bank*, No. 21-cv-0620, 2021 WL 5545960, at \*1 (S.D. Cal. Apr. 28, 2021); *see*  
10 *Murphy v. Veterans Admin.*, No. 21-cv-01405, 2021 WL 4951650, at \*1 (S.D. Cal. Oct.  
11 25, 2021) (“[T]he remainder of the form is left blank. This leaves the Court unable to assess  
12 Plaintiff’s ability to pay the fees and costs associated with this action.”).

13 When denying his first IFP Application, the Court pointed Perez to the various  
14 deficiencies in his filing and explained that if he “chooses to submit another application,  
15 he may not omit any financial information about his assets or income.” ECF No. 3 at 3.<sup>2</sup>  
16 Indeed, the Order of Dismissal noted, “the Court may dismiss the case if the financial  
17 disclosures in his subsequent IFP Motion are incomplete.” *Id.* Yet, Perez’s renewed IFP  
18 Application suffered the same deficiencies. Therefore, the Court denies Perez IFP status.

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24 <sup>1</sup> The Order to Show Cause also directed Perez to ensure the Court has his current address  
25 because postal mail the Court sent to him was returned as undeliverable. ECF No. 10 at 2–  
26 3. Notably, Perez does not list his city or state of legal residence in his renewed IFP  
Application. *See* ECF No. 11 at 5.

27 <sup>2</sup> The instructions on the IFP Application Form AO 239 that Perez used begin, “Complete  
28 all questions in this application and then sign it. Do not leave any blanks: if the answer to  
a question is ‘0,’ ‘none,’ or ‘not applicable (N/A),’ write that response.” ECF No. 11 at 1.

1           **II. Screening Under 28 U.S.C. § 1915(e)(2)**

2           A. Legal Standard

3           Even if this Court granted Perez IFP status, the Court would still have to screen his  
4 First Amended Complaint under 28 U.S.C. § 1915(e)(2)(B). *See Lopez v. Smith*, 203 F.3d  
5 1122, 1129 (9th Cir. 2000) (en banc) (“[S]ection 1915(e) applies to all [IFP] complaints,  
6 not just those filed by prisoners.”). This statute requires a court to dismiss a plaintiff’s  
7 complaint (or any portion of it) which is frivolous, malicious, fails to state a claim, or seeks  
8 damages from defendants who are immune. *Id.* at 1126–27.

9           “The standard for determining whether a plaintiff has failed to state a claim for relief  
10 under which one can be granted under 28 U.S.C. § 1915(e)(2)(B)(ii) is the same as the  
11 [Federal Rule of Civil Procedure (“Rule”) 12(b)(6)] standard for failure to state a claim.”  
12 *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Although detailed factual  
13 allegations are not required, “[t]hreadbare recitals of the elements of a cause of action,  
14 supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662,  
15 678 (2009). “Determining whether a complaint states a plausible claim for relief [is] . . . a  
16 context-specific task that requires the court to draw on its judicial experience and common  
17 sense.” *Id.* The “mere possibility of misconduct” or “unadorned, the defendant-unlawfully-  
18 harmed me accusation[s]” fall short of meeting this plausibility standard. *Id.* Under Rule  
19 12(b)(6), a complaint must “contain sufficient factual matter, accepted as true, to state a  
20 claim to relief that is plausible on its face.” *Id.*

21           Complaints must also comply with Rule 8, which requires that each pleading include  
22 a “short and plain statement of the claim” and “each allegation [] be simple, concise and  
23 direct.” Fed. R. Civ. P. 8(a)(2), 8(d)(1). *See Iqbal*, 556 U.S. at 677–78. If a complaint fails  
24 to provide the defendant fair notice of the wrongs allegedly committed, a district court may  
25 dismiss the complaint for failing to comply with Rule 8. *See Cafasso, United States ex rel.*  
26 *v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011) (citing cases  
27 upholding Rule 8 dismissals where pleadings were “verbose,” “confusing,” “distracting,  
28

1 ambiguous, and unintelligible,” “highly repetitious,” and comprised of “incomprehensible  
2 rambling”).

3 Finally, courts should be mindful that *pro se* litigants “must be held to less stringent  
4 standards than formal pleadings drafted by lawyers . . . .” *Hebbe v. Pliler*, 627 F.3d 338,  
5 342 (9th Cir. 2010) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)); *see*  
6 *Lopez*, 203 F.3d at 1130–31 (holding that *pro se* litigants must be given leave to amend  
7 their pleading unless it is absolutely clear that deficiencies cannot be cured). But *pro se*  
8 parties “should not be treated more favorably than parties with attorneys of record . . . .”  
9 *Albanese v. Las Vegas Metro. Police Dep’t*, No. 217-CV-01600, 2017 WL 2622759, at \*2  
10 (D. Nev. June 15, 2017) (quoting *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986));  
11 *see Zavala v. Bartnik*, 348 F. App’x 211, 213 (9th Cir. 2009) (“Dismissal with prejudice  
12 was proper because [plaintiff] was given two prior opportunities to amend his complaint in  
13 order to correct the deficiencies identified by the district court but failed to do so.”).

#### 14 B. Analysis

15 As best as the Court understands it, Perez claims that he moved into a studio  
16 apartment in 2018, which Defendant Rancho Point Apartments Inc. owned. *See* ECF No 5  
17 at 2. The apartment had “many problems[,]” including an allegedly “dangerous spray” and  
18 “dangerous chemical exposure” on the “carpet and floor[.]” *Id.* Perez also alleges that the  
19 apartment “failed inspection” by the “San Diego Housing Commission” on three occasions.  
20 *Id.*

21 However, Perez’s First Amended Complaint does not explain how (or if) he was  
22 wronged, describe Defendant’s connection to the Complaint, assert a cause of action, or  
23 state what relief Perez requests if he prevails. Without this necessary information, the Court  
24 cannot determine if it has jurisdiction over the parties or justify dragging a party into federal  
25 court. *See Morrison v. United States*, 270 F. App’x 514, 515 (9th Cir. 2008) (affirming  
26 Rule 8 dismissal of *pro se* complaint that “did not allege sufficient facts or jurisdictional  
27 basis for any federal claim for relief”); *Maiman v. Talbott*, No. 09-cv-0012, 2010 WL  
28 11484000, at \*5 (C.D. Cal. Feb. 8, 2010) (“[P]laintiffs must give the defendants they haul

1 into court a clear statement about what the defendants allegedly did wrong.”). The Court  
2 gave Perez notice of these deficiencies when it dismissed his Original Complaint, but his  
3 First Amended Complaint ultimately still fails to state a claim on which relief can be  
4 granted. *See Tabbutt v. JP Morgan Chase*, No. 18-cv-2799, 2018 WL 6589842, at \*2 (S.D.  
5 Cal. Dec. 14, 2018) (dismissing complaint proceeding IFP for failing to comply with Rule  
6 8). For these reasons, the Court has no choice but to dismiss Perez’s civil action.

7 **III. Conclusions and Orders**

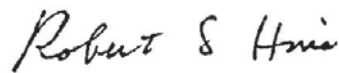
8 As explained above, the Court:

9 1. **DENIES** Plaintiff’s renewed IFP Application, ECF No. 11; and

10 2. **DISMISSES WITHOUT PREJUDICE** Plaintiff’s First Amended  
11 Complaint [ECF No. 5] *sua sponte* for failing to state a claim upon which relief may be  
12 granted under 28 U.S.C. § 1915(e)(2)(B)(ii). The Clerk of Court shall **CLOSE** this case.  
13 Further, this Court certifies that any IFP appeal from this Order would not be taken “in  
14 good faith” pursuant to 28 U.S.C. § 1915(a)(3).

15 **SO ORDERED.**

16 Dated: August 5, 2022

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19 Hon. Robert S. Huie  
20 United States District Judge