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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ZACHARY MARNER,

12 Plaintiff,

13 v.

14 FARMERS INSURANCE, et al.,

15 Defendants.
16
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Case No.: 24-cv-1469-RSH-BLM

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING CASE WITHOUT
PREJUDICE**

[ECF No. 2]

18
19 On August 16, 2024, Plaintiff Zachary Marner, proceeding pro se, filed this civil
20 action against Farmers Insurance d/b/a Bristol West Insurance, Luis Alvarez, and David
21 Coddie. ECF No. 1. At the time of filing, Plaintiff did not prepay the civil filing fees
22 required by 28 U.S.C. § 1914(a); instead, he filed a Motion to Proceed in Forma Pauperis
23 (“IFP”) pursuant to 28 U.S.C. § 1915(a). ECF No. 2.

24 **I. MOTION TO PROCEED IFP**

25 Generally, all parties instituting a civil action in this court must pay a filing fee. *See*
26 28 U.S.C. § 1914(a); CivLR 4.5(a). However, under 28 U.S.C. § 1915(a), the court may
27 authorize the commencement, prosecution or defense of any suit without payment of fees
28 if the plaintiff submits an affidavit, including a statement of all his or her assets, showing

1 that he or she is unable to pay filing fees or costs. “An affidavit in support of an IFP
2 application is sufficient where it alleges that the affiant cannot pay the court costs and still
3 afford the necessities of life.” *Escobedo v. Applebees*, 787 F. 3d 1226, 1234 (9th Cir. 2015).
4 “[A] plaintiff seeking IFP status must allege poverty with some particularity, definiteness,
5 and certainty.” *Id.* (internal quotation marks omitted). The granting or denial of leave to
6 proceed IFP in civil cases is within the sound discretion of the district court. *Venerable v.*
7 *Meyers*, 500 F.2d 1215, 1216 (9th Cir. 1974) (citations omitted).

8 In Plaintiff’s IFP application, he states that until last October, he had a monthly
9 income of \$10,700. He also states that over the past year his average monthly income has
10 been \$3,814.00, and that he currently has over \$6,000 between cash and three checking
11 accounts. Plaintiff resides in Aurora, Colorado, and has equity in a home subject to a
12 mortgage. He owns a 2018 Subaru Outback outright, and is making payments on a 2022
13 Subaru Forester. He states that he expects to receive no money or income of any kind going
14 forward; but he claims monthly expenses for, among other things, a gym membership,
15 subscriptions, continuing education, and regular expenses for the operation of a business.
16 Based on the foregoing, the Court is not persuaded that Plaintiff lacks the funds to pay the
17 filing fee and “still afford the necessities of life.” *Escobedo*, 787 F.3d at 1234. Plaintiff’s
18 application to proceed IFP is denied. ECF No. 2.

19 **II. SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)(B)**

20 When reviewing an IFP application, the Court must also review the underlying
21 complaint to determine whether it may proceed. A complaint filed by any person seeking
22 to proceed IFP pursuant to 28 U.S.C. § 1915(a) is subject to *sua sponte* review and
23 dismissal should the Court determine, inter alia, that it is frivolous, malicious, or fails to
24 state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B); *Calhoun v.*
25 *Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B)
26 are not limited to prisoners.”). “The standard for determining whether a plaintiff has failed
27 to state a claim for relief under which one can be granted under 28 U.S.C. §
28 1915(e)(2)(B)(ii) is the same as the [Federal Rule of Civil Procedure (“Rule”) 12(b)(6)]

1 standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir.
2 2012). Although detailed factual allegations are not required, “[t]hreadbare recitals of the
3 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
4 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Determining whether a complaint states a
5 plausible claim for relief [is] . . . a context-specific task that requires the court to draw on
6 its judicial experience and common sense.” *Id.*

7 The Complaint here is handwritten, and in places illegible. Plaintiff alleges that his
8 2018 Subaru Outback was damaged in a flood on January 22, 2024, and that he thereafter
9 filed a claim with his insurer, Bristol West. ECF No. 1 at 3. What occurred next is more
10 difficult to follow. The Complaint appears to allege that his insurer first acknowledged, but
11 then denied, the claim; stole and impounded the vehicle; attempted to have Plaintiff jailed
12 or put in a mental institution, resulting in him being placed on a three-day mental health
13 hold; sent Plaintiff to pick up his own vehicle in an area near the U.S.-Mexico border, in
14 the hopes that Plaintiff would be killed there; damaged the vehicle’s electrical system, GPS,
15 and radio; and denied that Plaintiff had paid his insurance premiums. *Id.* Plaintiff alleges
16 violations of his constitutional and civil rights without further elaboration of how those
17 rights were violated, and accuses his insurer of conspiring with and bribing officers of the
18 U.S. Department of Homeland Security. *Id.* at 2. He seeks damages for, among other things,
19 commissions he lost while subject to the three-day mental health hold; as well as moving
20 expenses, although it is not clear to the Court why he is claiming these. *Id.* at 3-4. The
21 Complaint does not appear to mention the individual defendants, Alvarez and Coddie.

22 These allegations are lacking in the factual specificity that would allow the Court to
23 conclude that he has plausibly alleged a claim for relief. Additionally, Plaintiff has not
24 identified or specified a cause of action, which constitutional or civil rights of his have
25 been violated, or a basis for federal jurisdiction. Accordingly, the Complaint is dismissed
26 for failure to state a claim.

1 **III. LEAVE TO AMEND**

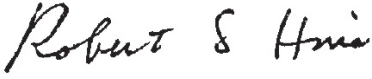
2 “A district court should not dismiss a pro se complaint without leave to amend
3 unless ‘it is absolutely clear that the deficiencies of the complaint could not be cured by
4 amendment.’” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (quoting *Schucker v.*
5 *Rockwood*, 846 F.2d 1202, 1204 (9th Cir.1988)). The Court grants Plaintiff leave to file an
6 amended complaint addressing the deficiencies identified herein.

7 **IV. CONCLUSION**

8 For the above reasons, the Court **DENIES** Plaintiff’s motion to proceed IFP [ECF
9 No. 2] and **DISMISSES** the Complaint with leave to amend. If Plaintiff wishes to proceed
10 with this lawsuit, he must do the following within *thirty (30) days* of the date of this Order:
11 (1) pay the filing fee, and (2) file an amended complaint. Plaintiff’s amended complaint
12 must be complete by itself, without reference to his original pleading. If Plaintiff fails to
13 do either of these, the Court will dismiss this action and close the case.

14 **IT IS SO ORDERED.**

15 Dated: August 30, 2024



Hon. Robert S. Huie
United States District Judge