

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

NAOMI NEUTS,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF VETERANS AFFAIRS,

Defendant.

Civ. No. 6:21-cv-00393-AA

OPINION & ORDER

AIKEN, District Judge.

This case was originally filed by Zylar Sean Neuts and Katherine Jazzmine Libby, both minors and proceeding *pro se*. ECF No. 1. On April 7, 2021, this Court dismissed the Complaint with leave to amend. ECF No. 6. In addition to explaining the deficiencies in the Complaint, the Court advised Neuts and Libby that, as minors, they needed the assistance of a guardian, representative, or next friend to file a federal case. The Court deferred ruling on the IFP petition. ECF No. 2.

On May 7, 2021, Plaintiffs filed an Amended Complaint in which their mother, Naomi Neuts, appears as their guardian. ECF No. 7. For the reasons set forth below, the Amended Complaint, ECF No. 7, is dismissed with leave to amend and Plaintiff shall be given thirty (30) days to file a second amended complaint. The Court shall defer ruling on Plaintiff's IFP petition pending submission of a second amended complaint.

LEGAL STANDARD

Generally, all parties instituting any civil action in United States District Court must pay a statutory filing fee. 28 U.S.C. § 1914(a). However, the federal IFP statute, 28 U.S.C. § 1915(a)(1), provides indigent litigants an opportunity for meaningful access to federal courts despite their inability to pay the costs and fees associated with that access. To authorize a litigant to proceed IFP, a court must make two determinations. First, a court must determine whether the litigant is unable to pay the costs of commencing the action. 28 U.S.C. § 1915(a)(1). Second, it must assess whether the action is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune to such relief. 28 U.S.C. § 1915(e)(2)(B).

In regard to the second of these determinations, district courts have the power under 28 U.S.C. § 1915(e)(2)(B) to screen complaints even before service of the complaint on the defendants, and must dismiss a complaint if it fails to state a claim. Courts apply the same standard under 28 U.S.C. § 1915(e)(2)(B) as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive a motion to dismiss under the federal pleading standards, the complaint must include a short and plain statement of the claim and “contain sufficient factual matter, accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard . . . asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* The court is not required to accept legal conclusions, unsupported by alleged facts, as true. *Id.*

Pro se pleadings are held to less stringent standards than pleadings by attorneys. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). That is, the court should construe pleadings by *pro se* plaintiffs liberally and afford the plaintiffs the benefit of any doubt. *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988). Additionally, a *pro se* litigant is entitled to notice of the deficiencies in the complaint and the opportunity to amend, unless the complaint's deficiencies cannot be cured by amendment. *Id.*

DISCUSSION

The facts of the case, as set forth in the Amended Complaint and the Court's prior Order, are unchanged, although Plaintiff has clarified that the intended Defendant is the United States Department of Veterans Affairs. Plaintiff seeks to collect child support ordered in an Oregon state court judgment from federal veteran's benefits paid to Derek Neuts. As with the original Complaint, Plaintiff brings claims for (1) failure to pay legal child support obligations pursuant to 18 U.S.C. § 228; (2) criminal contempt pursuant to 18 U.S.C. § 402; and (3) aiding and abetting, for which Plaintiff cites 18 U.S.C. § 2. Am. Compl. 7.

As the Court explained in its prior Order, federal criminal statutes (such as those contained in Chapter 18 of the United States Code) do not generally create a private right of action or provide a basis for civil liability. *Abcarian v. Levine*, 972 F.3d 1019, 1026 (9th Cir. 2020). Federal criminal statutes are generally enforced by the United States through a criminal prosecution. In the specific case of a claim for failure to pay child support, the Second Circuit has held that although 18 U.S.C. § 228 "was intended to benefit custodial parents and children victimized by non-payment of state-ordered support obligations, and although pursuit of private actions might further the goals of the [Child Support Recovery] Act, the Act does not create a federal right but merely criminalizes conduct that infringes the state-created rights," and does not provide a private

right of action. *Alaji Salahuddin v. Alaji*, 232 F.3d 305, 311-12 (2d Cir. 2000); *see also Cammack v. Foschini*, A-17-MC-557-SS, 2017 WL 8132000, at *2 (W.D. Tex. June 13, 2017) (The Child Support Recovery Act “is a criminal statute and does not create an implied private right of action on behalf of custodial parents.”); *Warren v. Scales*, 1:18CV24, 2018 WL 6839787, at *2 (M.D.N.C. Mar. 16, 2018) (18 U.S.C. § 228 “outlines the criminal offense and punishment for failure to pay child support obligations,” but “there is no private right of action pursuant to this criminal statute.”). As with the original Complaint, the Amended Complaint fails to state a claim and must be dismissed.

As before, the Court recognizes that Plaintiff is proceeding *pro se* and is entitled to a degree of latitude that would not be accorded to an attorney. The Amended Complaint also indicates that Plaintiff is diligently seeking the assistance of counsel, which may help Plaintiff in stating her claims. Dismissal shall therefore be with leave to amend and Plaintiff shall be given thirty days to file a second amended complaint.

CONCLUSION

For the reasons set forth above, the Amended Complaint, ECF No. 7, is DISMISSED with leave to amend. Plaintiff shall have thirty (30) days in which to file a second amended complaint. Plaintiff is advised that failure to timely file an amended complaint will result in entry of a judgment of dismissal without prejudice. The Court will defer ruling on Plaintiff’s IFP petition, ECF No. 2, pending submission of a second amended complaint.

It is so ORDERED and DATED this 12th day of May 2021.

/s/Ann Aiken
ANN AIKEN
United States District Judge