

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

PATRICK LOUIS HENDERSON and
CHRISTINE DIANE HENDERSON,

Plaintiffs,

v.

OREGON DEPARTMENT OF HUMAN
SERVICES,

Defendant.

Case No.: 6:19-cv-00724-MK

FINDINGS AND RECOMMENDATION

RE: PLAINTIFFS' APPLICATION TO
PROCEED IN FORMA PAUPERIS AND
MOTION FOR APPOINTMENT OF
PRO BONO COUNSEL

KASUBHAI, Magistrate Judge:

Plaintiff Christine Diane Henderson previously applied to this Court to proceed *in Forma Pauperis* (“IFP”). The Court denied her application in the Findings and Recommendation of June 12, 2019 (“F&R”) and the Order of July 2, 2019 (“Order”). Plaintiffs’ Complaint was dismissed without prejudice. Order 3 (ECF No. 10). The Court granted Plaintiffs 30 days from the date of the Order to file an Amended Complaint curing the deficiencies outlined in the F&R. *Id.* Plaintiffs filed a second Complaint before the Court issued the Order. ECF No. 9. Plaintiffs then filed a second application to proceed IFP as Exhibit 1 to a filing styled as “(Orange binder

titled) Final Exhibits” which contains numerous other documents. ECF No. 14 Ex. 1. Plaintiffs also filed a Motion for Appointment of *Pro Bono* Counsel. ECF No. 12.

For the reasons stated below, this Court should deny Plaintiffs’ Application to Proceed IFP and Motion for Appointment of *Pro Bono* Counsel.

BACKGROUND

Plaintiffs, acting *pro se*, filed the second Complaint. Because Plaintiffs did not file any other document that can be construed as a complaint within 30 days following the Order, the Court construes the second Complaint filed before the issuance of the Order as an Amended Complaint. Plaintiffs allege in the Amended Complaint that Plaintiff Patrick Henderson (“Mr. Henderson”) is a totally incapacitated individual. Am. Compl. 2 (ECF No. 9). Plaintiff Christine Henderson (“Ms. Henderson”) is Mr. Henderson’s “LITTLE SISTER, APPOINTED GUARDAIN[sic], PAYEE, AND CRISIS PSW.” *Id.* (capitalized letters supplied).

The Amended Complaint attaches six hundred and sixty-two pages of exhibits. *See* Am. Compl. (ECF No. 9). Plaintiffs also subsequently filed an “orange binder” as “Final Exhibits” and a notification. ECF Nos. 14-15. In the Amended Complaint, Plaintiffs allege nearly three pages of facts under the heading of “FACTS AROUND PREHEARING/ON GOING [sic] PROTECTIVE SERVICE COMPLAINT.” Plaintiffs also ask the Court to “REFER TO BLUE 3 RING [sic] BINDER FOR LIST OF ALLIGATIONS [sic] AND TIME LINE [sic] FOR EVENTS LEADING UP TO THE COUNTLESS REQUESTS FOR INVESTIGATIONS REGARDING [sic] VARIOUS ASPECTS OF PATRICK HENDERSONS [sic] CASE UP UNTIL REQUEST OF INVESTIGATION ...” *Id.* at 3 (capitalized letters in the original).

Under the heading “**FIRST COUNT OF ABUSE NEGLECT AND FINANCIAL EXPLOITATION,**” Plaintiffs allege violations of ADA II and III, Section 504, Medicare and

Medicaid fraud, practicing medicine without license, unlawful practice of law, evidence tampering, witness tampering, coercion of Ms. Henderson to murder Mr. Henderson by putting him in hospice, and conspiracy with Karen Adkinson to murder Plaintiffs' father. *Id.* at 6-7 (font style in the original). For example, Plaintiffs allege

DHS USES A TOOL CALLED THE PASSR THAT IS [sic] UNCONSTITUTIONAL VIOLATES CLIENTS CIVIL RIGHTS, ADA II, ADA [III]-ACCESS TO HEALTH CARE, SECTION 504, HOUSING DISCRIMINATION IN THE FORM OF STERRING, CONFLICTS WITH CONSTITUTIONALITY OF THE STATE OF OREGONS STATUTES AND FEDERAL LAW, [] AND SEVERAL OTHER US ACTS.

DHS'S CHOICE OF COERSION [sic] TACTICS TO COMMIT MEDICARE AND MEDICAID FRAUD, IN PATRICKS CASE, DHS IS ALLOWING EMPLOYEES TO AAT [sic] AS DEBT COLLECTORS AND ACCOUNTANTS WITH OUT [sic] PROPER LICENSING WITH THE STATE ALLOWING THEM TO WRIRTE [sic] FRUADULANT DEBTS USING FOODSTAMP [sic] AND CASH ASSISTANCE RULES RATHER THAN MEDICAL BENEFIT CRITERIA WHICH VILATES [sic] DHS INTERNAL RULES OF ALL MEDICAL DEBTS ARE TO BE "[sic] OFFSET BY THE MEDICARE AND MEDICAID MONIES WITHHELD EVERY MONTH.

DHS EMPLOYEES ARE ALSO PRACTCING MEDICINE WITHOUT BEING CREDENTIALLED WITH THE STATE. DHS EMPLOYEES ARE MAKING MEDICLA [sic] DECISIONS ABOUT CLIENTS WELL BEING DENYING MEDICAL SERVICES AND SUPPORTS TO CLIENTS AND DISREGARDING MEDICAL REQUIREMENTS OF LICENSED PHYSICAINS [sic] IN CHARGE OF THE CLIENTS PERSONAL CARE.

DHS EMPLOYEES ARE TRYING PRACTICE LAW WITHOUT BEING CREDENTIALLED WITH THE STATE BY AGAIN SUPPOSENLY [sic] DECIDING THE WELL BEING OF THEIR ASSIGNED CLIENTS BY DENYING SERVICES AND REDUSING [sic] SUPPORTS.

...

Id. (capitalized letters in the original).

Plaintiffs next allege that DHS breached the "case management agreement." *Id.* at 7-13. Plaintiffs also allege that "the collective bargaining agreement between the DHS and the service employees international union" "break[s] several labor laws and also conflict with state and

federal labor laws which makes the contract invalid as well as illegal.” *Id.* at 14-15 (capitalized letters in the original).

LEGAL STANDARD

Generally, all parties instituting any civil action in a 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 the 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, the court determines whether the litigant is unable to pay the costs of commencing the action. 28 U.S.C. § 1915(a)(1). Second, the court determines whether the action is “frivolous or malicious; fails to state a claim upon which relief may be granted; or seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

1. Financial Status

“The right to proceed *in forma pauperis* is not an unqualified one; it is a privilege, rather than a right.” *Jefferson v. United States*, 277 F.2d 723, 724 (9th Cir. 1960) (citations omitted). The Court shall dismiss a case if it determines that the allegation of poverty is untrue. 28 U.S.C. § 1915(e)(2)(A). While a plaintiff need not be completely destitute to qualify for IFP status, a plaintiff must allege poverty with “some particularity, definiteness and certainty.” *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015) (citations omitted).

In *Escobedo*, the Court found that the fee for filing a complaint was roughly forty percent of the plaintiff’s monthly income before expenses. *Id.* at 1235. After rent and debt payments, the plaintiff would have to dedicate two-months’ worth of her remaining funds to pay the fee; she would have to forgo eating to save up the filing fee. *Id.* While “there is no formula set forth by

statute, regulation, or case law” that determines whether an applicant qualifies for IFP status, a fee in a different context that represented the average amount required to feed an adult for a week and the wages of more than half a day of work based on the federal minimum wage was found to be a “vital amount of cash” for many people. *Id.* (citations omitted). The Ninth Circuit determined that the district court judge in that case had abused his discretion when he disallowed IFP status by assuming the plaintiff’s husband, who had income, contributed to plaintiff’s bills and living expenses. *Id.* The Ninth Circuit found that Plaintiff Escobedo herself “was plainly indigent” and should have been granted IFP status. *Id.*

2. Failure to State a Claim

District courts have the power under 28 U.S.C. § 1915(e)(2)(B) to screen complaints even before the 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 state 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.” *Id.* (citing *Twombly*, 550 U.S. at 556). In determining facial plausibility, courts use a less stringent standard liberally construed in favor of the plaintiff for *pro se* complaints, but still allow for dismissal for failure to state a claim if no set of facts would entitle the plaintiff to relief. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

DISCUSSION

In the IFP application, Ms. Henderson represents that Mr. Henderson is her older brother and “Patrick is ... 100% incapacitated.” Appl. To Proceed *in Forma Pauperis* ¶¶ 3, 9 (ECF No. 2). Based on these statements, Ms. Henderson’s representation that she is Mr. Henderson’s “guardian” in the complaint, and based on the facts alleged in the complaint, the Court construes that Ms. Henderson is not a plaintiff but rather filed the complaint on behalf of Mr. Henderson as his representative.

1. Financial Status

Plaintiffs list in the second IFP application the sole income of “SSI [\$]750.00.” Application to Proceed *in Forma Pauperis* ¶ 4d (ECF No. 14-1). The application does not list any other asset or resource. *Id.* at ¶¶ 3-7. Monthly expenses list rent, car payment and insurance with a total of \$745. *Id.* at ¶ 8. The monthly expenses are nearly the entire amount of the monthly income. There are barely any livable funds remaining after the monthly expenses. The Court should find that Plaintiffs are unable to pay the costs of commencing the action.

2. Failure to State a Claim

A complaint must contain more than facts creating a suspicion of a legally cognizable right. *Twombly*, 550 U.S. at 555. “[F]or a complaint to survive a motion to dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. United States Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (citing *Twombly*, 550 U.S. at 557).

As a preliminary matter, the Court does not address Plaintiffs’ allegations of criminal acts in this civil matter. As to the alleged civil causes of actions, Plaintiffs support their causes of actions with multiple pages of statements in the Amended Complaint and numerous documents

including six hundred and sixty-two pages of exhibits attached to the Amended Complaint, a blue three-ring binder, an orange three-ring binder of nearly two hundred pages, and a “notification” of additional statements. As far as the Court discerns from the extensive and rambling statements in the Amended Complaint, Plaintiffs allege that DHS provided care to Mr. Henderson, Mr. Henderson fell, Ms. Henderson filed a complaint with an unidentified agency, an investigator from Linn County investigated Mr. Henderson’s fall but ignored Ms. Henderson’s complaint, “everyone on the team” agreed to transfer Mr. Henderson’s care from Linn County to Lane County, and Mr. Henderson lost care because of the delay of Lane County Developmental Disability Services or its failure to take certain actions. Am. Compl. 3-6 (ECF No. 9). Although Plaintiffs submitted a large volume of exhibits, the Court does not have the duty to “scour the record” in search of facts to state a cognizable claim. *See Keenan v. Allen*, 91 F.3d 1275, 1279 (9th Cir. 1996) (stating that the court is not obligated to scour the record in search of potential arguments).

The facts stated in the Amended Complaint are not sufficient for the Court to draw the reasonable inference that there were ADA violations, Section 504 violations, Medicare and Medicaid fraud, unlawful practice of medicine, unlawful practice of law, breach of contract, or invalid or illegal contract. Besides the facts summarized above, the Amended Complaint generally contains conclusory statements of such violations.

Additionally, based on the allegations, Plaintiffs lack standing to bring an action arising out of “the collective bargaining agreement between the DHS and the service employees international union” because Plaintiffs do not allege any facts to support that they are a party to, or that they are a third-party beneficiary, of the collective bargaining agreement. *See* Am. Compl. 14-15 (ECF No. 9); *see also Whitmore v. Arkansas*, 495 U.S. 149, 155, 110 S.Ct. 1717, 1723,

109 L.Ed.2d 135 (1990) (“It is well established . . . that before a federal court can consider the merits of a legal claim, the person seeking to invoke the jurisdiction of the court must establish the requisite standing to sue.”).

For these reasons, the Court should find that Plaintiffs failed to state a claim upon which relief may be granted.

Recommendation

The Court recommends that Plaintiffs’ Amended Complaint be DISMISSED without prejudice, and Plaintiffs’ Application to Proceed *in Forma Pauperis* and Motion for Appointment of *Pro Bono* Counsel be DENIED as moot. Plaintiffs should be given thirty days to file an optional second amended complaint.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Federal Rule of Appellate Procedure 4(a)(1) should not be filed until entry of the district court’s judgment or appealable order.

The Findings and Recommendation will be referred to a district judge. Objections to this Findings and Recommendation, if any, are due fourteen (14) days from today’s date. *See* Fed. R. Civ. P. 72. Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.1991).

DATED this 6th day of September 2019.

s/ Mustafa T. Kasubhai
MUSTAFA T. KASUBHAI
United States Magistrate Judge