



1 leave to proceed *in forma pauperis* (“IFP”) is granted by the Court. *See Rodriguez v. Cook*, 169 F.3d  
2 1178, 1177 (9th Cir. 1999).

3 If a plaintiff seeks to proceed *in forma pauperis*, the Court is required to review the complaint,  
4 and shall dismiss the case at any time if the Court determines that the allegation of poverty is untrue, or  
5 the action or appeal is “frivolous, malicious or fails to state a claim on which relief may be granted; or  
6 ... seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. 1915(e)(2).  
7 A claim is frivolous “when the facts alleged arise to the level of the irrational or the wholly incredible,  
8 whether or not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*,  
9 504 U.S. 25, 32-33 (1992); *see also Neitzke v. Williams*, 490 U.S. 319, 325, 328 (1989) (finding claims  
10 may be dismissed as “frivolous” where the allegations are “fanciful” or “describe[e] fantastic or  
11 delusional scenarios”).

12 Here, the Court recommends Plaintiff’s application to proceed in forma pauperis be **DENIED**  
13 because, as discussed below, the allegations of the complaint fail to allege a claim upon which relief  
14 may be granted by this Court.

## 15 **II. Background**

16 At some time in the past, Plaintiff stayed at the Bakersfield Rescue Mission. (Doc. 1 at 1)  
17 While there, Mission policies prohibited residents from drinking alcohol or doing drugs. *Id.* If tests  
18 determined a resident was under the influence of alcohol or drugs, he would be excluded from the  
19 Mission for five days. *Id.*

20 At some point, the air conditioner at the mission did not work. (Doc. 1 at 1) Later, it started  
21 working when it was too cold for it. *Id.* Despite this, residents were required to bathe or they would  
22 not be permitted to stay. *Id.* Plaintiff claims that, as a result of showering, he caught a cold. *Id.*  
23 Finally, Plaintiff complains that while at the mission, he was informed by Mission staff that he ate too  
24 much and to stop doing this and he did. *Id.*

## 25 **II. Jurisdiction**

26 The district court is a court of limited jurisdiction, and is empowered only to hear disputes  
27 “authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,  
28 377 (1994); *Exxon Mobil Corp v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005). The federal courts

1 are “presumed to lack jurisdiction in a particular case, unless the contrary affirmatively appears.” A-Z  
2 *Int’l. v. Phillips*, 323 F.3d 1141, 1145 (9th Cir. 2003).

3 A federal court “ha[s] an independent obligation to address sua sponte whether [it] has subject-  
4 matter jurisdiction.” *Dittman v. California*, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the obligation of  
5 the district court “to be alert to jurisdictional requirements.” *Grupo Dataflux v. Atlas Global Group*,  
6 L.P., 541 U.S. 567, 593 (2004). Without jurisdiction, the district court cannot decide the merits of a  
7 case or order any relief. *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d  
8 1376, 1380 (9th Cir. 1988). The burden of establishing jurisdiction rests upon plaintiff as the party  
9 asserting jurisdiction. *Kokkonen*, 511 U.S. at 377; *see also Hagans v. Lavine*, 415 U.S. 528, 543 (1974)  
10 (acknowledging that a claim may be dismissed for lack of jurisdiction if it is “so insubstantial,  
11 implausible, . . . or otherwise completely devoid of merit as not to involve a federal controversy within  
12 the jurisdiction of the District Court”).

### 13 **III. Discussion and Analysis**

14 Though Plaintiff complains about conditions at the Bakersfield Rescue Mission and,  
15 apparently, dislikes the policies implemented there—daily bathing, abstinence from drugs and alcohol,  
16 eating too much, etc.—this is insufficient to demonstrate that this Court has authority to act. Indeed,  
17 Plaintiff fails to identify any claims that would invoke this Court’s jurisdiction.

18 To state a claim for a violation of civil rights, Plaintiff must identify an action that violates the  
19 Constitution of the United States or another federal law, and taken by a person acting under color of  
20 state law. Here, the Bakersfield Rescue Mission and its employees do not act under color of authority.  
21 Rather, in general, individuals—such as those working at homeless shelters or rescue missions—are  
22 private parties and do not act under color of authority with actions attributable to the government. See  
23 *Price v. Hawaii*, 939 F.2d 702, 707-09 (9th Cir. 1991). Thus, the Court lacks jurisdiction over this  
24 matter.

### 25 **IV. Findings and Recommendations**

26 Because the Court lacks jurisdiction over the matter, the Court **RECOMMENDS**:

- 27 1. The motion to proceed in forma pauperis (Doc. 2) be **DENIED**;
- 28 2. The action be **DISMISSED** without prejudice for lack of subject matter jurisdiction; and

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4. The Clerk of Court be directed to close this action.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. **Within 14 days after being served** with these findings and recommendations, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that 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 (9<sup>th</sup> Cir. 1991).

IT IS SO ORDERED.

Dated: March 7, 2016

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE