

1 indisputably meritless legal theory or where the factual contentions are “clearly baseless.”
2 Neitzke, 490 U.S. at 327. Thus, the term “frivolous,” when applied to a complaint, “embraces not
3 only the inarguable legal conclusion, but also the fanciful factual allegation.” Id. at 325.

4 Normally, the court “must accept as true all of the factual allegations contained in the
5 complaint.” Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citing Bell Atlantic Corp. v. Twombly,
6 550 U.S. 544, 555–56 (2007)). However, “a finding of factual frivolousness is appropriate when
7 the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are
8 judicially noticeable facts available to contradict them.” Denton v. Hernandez, 504 U.S. 25, 33
9 (1992). Therefore, the in forma pauperis statute “accords judges . . . the unusual power to pierce
10 the veil of the complaint's factual allegations and dismiss those claims whose factual contentions
11 are clearly baseless.” Id. Among those “are claims describing fantastic or delusional scenarios,
12 claims with which federal district judges are all too familiar.” Id. at 328. This portion of the
13 statute “is designed largely to discourage the filing of, and waste of judicial and private resources
14 upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of
15 bringing suit and because of the threat of sanctions for bringing vexatious suits under Federal
16 Rule of Civil Procedure 11.” Id. at 327.

17 The court does not exercise this “unusual power” lightly or often. Indeed, the court takes
18 very seriously the following admonition of the Supreme Court:

19 An in forma pauperis complaint may not be dismissed, however,
20 simply because the court finds the plaintiff's allegations unlikely.
21 Some improbable allegations might properly be disposed of on
22 summary judgment, but to dismiss them as frivolous without any
23 factual development is to disregard the age-old insight that many
24 allegations might be “strange, but true; for truth is always strange,
25 Stranger than fiction.” Lord Byron, *Don Juan*, canto XIV, stanza
26 101 (T. Steffan, E. Steffan & W. Pratt eds. 1977).

24 Denton, 504 U.S. at 33 (emphases added). Nevertheless, when it is appropriate to do so—that is,
25 when the allegations go well beyond “unlikely” or “improbable” and enter the realm of
26 “irrational,” “wholly incredible” or “delusional” —the court carries out the intent of the law, and
27 dismisses claims meeting the Neitzke standard. Denton, 504 U.S. at 33 (“[A] finding of factual
28 frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly

1 incredible”).

2 Plaintiff’s alleges that he is the victim of a vast government conspiracy originating with
3 President Richard Nixon and extending to President Barack Obama and Governor Jerry Brown.
4 ECF No. 1 at 2. Plaintiff claims that the government surgically inserted a microchip into his brain
5 as an infant in violation of his Eighth Amendment rights, and have since engaged in a campaign
6 to undercut plaintiff’s credibility by slandering his good name. *Id.* The court finds plaintiff’s
7 allegations regarding defendants’ conduct are so incredible that they need not be accepted as true.
8 In accordance with the foregoing, the court finds that amendment of plaintiff’s complaint would
9 be futile. The undersigned will therefore recommend that these claims be dismissed with
10 prejudice.

11 In accordance with the above, IT IS HEREBY ORDERED that plaintiff’s application to
12 proceed in forma pauperis, ECF No. 2, is GRANTED.

13 Further, IT IS HEREBY RECOMMENDED that all claims against all defendants be
14 DISMISSED with prejudice.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
17 days after being served with these findings and recommendations, plaintiff may file written
18 objections with the court. Such a document should be captioned “Objections to Magistrate
19 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within
20 the specified time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951
21 F.2d 1153 (9th Cir. 1991).

22 Dated: November 10, 2015

23 /s/ Gregory G. Hollows

24 UNITED STATES MAGISTRATE JUDGE

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