

1 bound to deny a motion seeking leave to proceed in forma pauperis.”).

2 Moreover, the court must dismiss an in forma pauperis case at any time if the allegation of
3 poverty is found to be untrue or if it is determined that the action is frivolous or malicious, fails to
4 state a claim on which relief may be granted, or seeks monetary relief against an immune
5 defendant. See 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an
6 arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v.
7 Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a
8 complaint as frivolous where it is based on an indisputably meritless legal theory or where the
9 factual contentions are clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

10 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to
11 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
12 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as
13 true the material allegations in the complaint and construes the allegations in the light most
14 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
15 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
16 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
17 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
18 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
19 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

20 The minimum requirements for a civil complaint in federal court are as follows:

21 A pleading which sets forth a claim for relief . . . shall contain (1) a
22 short and plain statement of the grounds upon which the court’s
23 jurisdiction depends . . . , (2) a short and plain statement of the
claim showing that the pleader is entitled to relief, and (3) a demand
for judgment for the relief the pleader seeks.

24 FED. R. CIV. P. 8(a).

25 Moreover, jurisdiction is a threshold inquiry that must precede the adjudication of any
26 case before the district court. Morongo Band of Mission Indians v. Cal. State Bd. of
27 Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988). Federal courts are courts of limited
28 jurisdiction and may adjudicate only those cases authorized by federal law. Kokkonen v.

1 Guardian Life Ins. Co., 511 U.S. 375, 377 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136-37
2 (1992). “Federal courts are presumed to lack jurisdiction, ‘unless the contrary appears
3 affirmatively from the record.’” Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting
4 Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 546 (1986)).

5 Lack of subject matter jurisdiction may be raised by the court at any time during the
6 proceedings. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir.
7 1996). A federal court “ha[s] an independent obligation to address sua sponte whether [it] has
8 subject-matter jurisdiction.” Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the
9 obligation of the district court “to be alert to jurisdictional requirements.” Grupo Dataflux v.
10 Atlas Global Group, L.P., 541 U.S. 567, 593 (2004). Without jurisdiction, the district court
11 cannot decide the merits of a case or order any relief. See Morongo, 858 F.2d at 1380.

12 The burden of establishing jurisdiction rests upon plaintiff as the party asserting
13 jurisdiction. Kokkonen, 511 U.S. at 377; see also Hagans v. Lavine, 415 U.S. 528, 543 (1974)
14 (acknowledging that a claim may be dismissed for lack of jurisdiction if it is “so insubstantial,
15 implausible, . . . or otherwise completely devoid of merit as not to involve a federal controversy
16 within the jurisdiction of the District Court”); Bell v. Hood, 327 U.S. 678, 682-83 (1946)
17 (recognizing that a claim is subject to dismissal for want of jurisdiction where it is “wholly
18 insubstantial and frivolous” and so patently without merit as to justify dismissal for lack of
19 jurisdiction); Franklin v. Murphy, 745 F.2d 1221, 1227 n.6 (9th Cir. 1984) (holding that even
20 “[a] paid complaint that is ‘obviously frivolous’ does not confer federal subject matter jurisdiction
21 . . . and may be dismissed sua sponte before service of process.”).

22 Here, plaintiff’s complaint alleges that this action was brought pursuant to 42 U.S.C. §
23 1983. Title 42 U.S.C. § 1983 provides that,

24 [e]very person who, under color of [state law] ... subjects, or causes
25 to be subjected, any citizen of the United States ... to the
26 deprivation of any rights, privileges, or immunities secured by the
27 Constitution and laws, shall be liable to the party injured in an
28 action at law, suit in equity, or other proper proceeding for redress.

27 In order to state a cognizable claim under § 1983 the plaintiff must allege facts
28 demonstrating that he was deprived of a right secured by the Constitution or laws of the United

1 States and that the deprivation was committed by a person acting under color of state law. West
2 v. Atkins, 487 U.S. 42, 48 (1988). It is the plaintiff's burden in bringing a claim under § 1983 to
3 allege, and ultimately establish, that the named defendants were acting under color of state law
4 when they deprived him of a federal right. Lee v. Katz, 276 F.3d 550, 553-54 (9th Cir. 2002).

5 Here, plaintiff's complaint alleges that defendant Eddie Cuevas, identified as plaintiff's
6 bail bondsman, "cosigned for a (sic) apartment" for plaintiff and then, "without consent" entered
7 the apartment "and took all properties" from the residence because plaintiff "was late [with]
8 payments." (Compl. (Dkt. No. 1) at 3.) Plaintiff's complaint contains no allegations suggesting
9 that the named defendant was acting under color of state law when the allegedly wrongful
10 conduct occurred. See United States v. Poe, 556 F.3d 1113, 1124 (10th Cir. 2009) ("Because the
11 bounty hunters did not intend to assist law enforcement, they are not state actors"); Ouzts v.
12 Maryland Nat. Ins. Co., 505 F.2d 547, 555 (9th Cir. 1974) ("the bondsman was acting to protect
13 his own private financial interest and not to vindicate the interest of the state"); Dixon v.
14 Wesbrook, No. 1:11-cv-1290 AWI JLT, 2012 WL 6160797, at *6 (E.D. Cal. Dec. 11, 2012)
15 ("The Ninth Circuit has found that bounty hunters and bail bond agents are not state actors acting
16 under color of state law for purposes of Section 1983."); Erwin v. Byrd's Bail Bonding, C/A No.
17 2:10-1948 CWH RSC, 2010 WL 3463881, at *2 (D. S.C. Aug. 5, 2010) ("It is well-settled that
18 bail bonding companies and bail bondsmen do not act under color of state law."); Leverton v.
19 Garner, No. Civ. A. G-05-295, 2006 WL 1350243, at *2 (S.D. Tex. May 15, 2006) ("Bondsmen
20 are private citizens who do not act 'under color of state law'").

21 Accordingly, plaintiff's complaint should be dismissed for lack of subject matter
22 jurisdiction.

23 LEAVE TO AMEND

24 The undersigned has carefully considered whether plaintiff may amend his pleading to
25 state a claim over which the court would have subject matter jurisdiction. "Valid reasons for
26 denying leave to amend include undue delay, bad faith, prejudice, and futility." California
27 Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988). See also
28 Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983)

1 (holding that while leave to amend shall be freely given, the court does not have to allow futile
2 amendments). In light of the obvious lack of subject matter jurisdiction, the undersigned finds
3 that it would be futile to grant plaintiff leave to amend in this case.

4 Accordingly, IT IS HEREBY RECOMMENDED that:

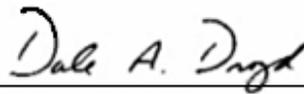
5 1. Plaintiff's November 25, 2014 application to proceed in forma pauperis (Dkt.
6 No. 2) be denied;

7 2. Plaintiff's November 25, 2014 complaint (Dkt. No. 1) be dismissed without
8 leave to amend; and

9 3. This action be dismissed.

10 These findings and recommendations will be submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
12 days after being served with these findings and recommendations, plaintiff may file written
13 objections with the court. A document containing objections should be titled "Objections to
14 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
15 objections within the specified time may, under certain circumstances, waive the right to appeal
16 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 Dated: May 1, 2015

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19 _____
20 DALE A. DROZD
21 UNITED STATES MAGISTRATE JUDGE

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