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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 MELVIN JOSEPH SIMMONS, Jr.,

No. 2:17-cv-2276-EFB P

12 Petitioner,

13 v.

ORDER

14 SCOTT KERNAN,

15 Respondent.  
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17 Petitioner, a state prisoner proceeding pro se on a petition for a writ of habeas corpus  
18 pursuant to 28 U.S.C. § 2254, has filed an application to proceed in forma pauperis. ECF No. 4.  
19 For the reasons stated hereafter, the petition must be dismissed with leave to amend and the  
20 application to proceed in forma pauperis will be denied.

21 Application to Proceed In Forma Pauperis

22 The court has reviewed petitioner's application and finds that he has sufficient funds to  
23 pay the five dollar filing fee for a federal habeas action. The Ninth Circuit has held that  
24 "permission to proceed in forma pauperis is itself a matter of privilege and not a right; denial of  
25 an in forma pauperis status does not violate the applicant's right to due process." *Franklin v.*  
26 *Murphy*, 745 F.2d 1221, 1231 (9th Cir.1984) (citing *Weller v. Dickson*, 314 F.2d 598, 600 (9th  
27 Cir.1963)). The court has broad discretion to grant or deny an application to proceed in forma  
28 pauperis. *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir.1990). Here, petitioner's application

1 indicates that, as of November 16, 2017, his inmate account had a balance of \$1560.74. ECF No.  
2 4 at 2. Thus, the court concludes that he can afford the five dollar fee and his application will be  
3 denied on this basis.

#### 4 Screening

5 A habeas petition is appropriately filed by “a person in custody pursuant to the judgment  
6 of a State court only on the ground that he is in custody in violation of the Constitution or laws or  
7 treaties of the United States.” 28 U.S.C. § 2254(a). A judge “entertaining an application for a  
8 writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to  
9 show cause why the writ should not be granted, unless it appears from the application that the  
10 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. A petition must be  
11 dismissed if, on initial review, the court finds that “it plainly appears . . . that the petitioner is not  
12 entitled to relief in the district court.” Rule 4, Rules Governing § 2254 Proceedings.

13 An application for federal habeas relief must specify all grounds for relief, state facts  
14 supporting each ground, and state the relief requested. Rule 2, Rules Governing § 2254  
15 Proceedings. Rule 8 of the Federal Rules of Civil Procedure requires “a short and plain statement  
16 of [each] claim showing that the pleader is entitled to relief” and “a demand for the relief sought.”  
17 While the court must liberally construe the allegations of a prisoner proceeding without counsel  
18 (*see Roy v. Lampert*, 465 F.3d 964, 970 (9th Cir. 2006)), the court cannot grant relief based on  
19 conclusory allegations unsupported by specific facts. *Jones v. Gomez*, 66 F.3d 199, 204-05 (9th  
20 Cir. 1995); *James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994).

21 Petitioner’s claims are largely incomprehensible. His petition, though typed, is dense and  
22 does not appear to adhere to any organizational structure. In his first ground for relief petitioner  
23 states that the writ supersedes “a void judgment creditor’s power to levy execution.” ECF No. 1  
24 at 5. The supporting facts for this claim are a collection of non-sequiturs. Petitioner states that he  
25 is bringing this claim to “[m]ake void the badge of slavery and involuntary bailment.” *Id.* He  
26 references “a private right of action to enforce a real right that is connected with Melvin Joseph  
27 Simmons,” a “presumption of a child without parents the direct an (sic) primary care that gave

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1 rise to the injuries,” and the English “right of notice of the charges.” *Id.* It is entirely unclear  
2 what the basis for this claim is or how it relates to petitioner’s custody.

3 Petitioner’s other claims fare no better. He references, *inter alia*, : (1) “[a] private spirituel  
4 (sic) person deprived of liberty by fraud in the factum Los Angeles County Super. Ct. . . .”; (2)  
5 his possession of “[l]and wrongfully taken by de facto segregation”; (3) that he is suffering  
6 “[c]ontinuing general irreparable moratory incidental foreseeable reliance”; (4) that he has been  
7 subjected to a “civil death sentence on a living person without a trial by special legislative acts”;  
8 and (5) “copyright infringement upon petitioner’s intellectual property by fraudulent joinder  
9 which constitute fraud upon the court.” *Id.* at 5-11.

10 Rule 8, Fed. R. Civ. P., requires the pleader to set forth his averments in a simple, concise,  
11 and direct manner. *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996). Further, Rule 2 of  
12 the Rules Governing § 2254 Cases in the U.S. District Courts requires habeas petitioners to  
13 “specify all the grounds of relief available” and “state the facts supporting each ground.” *See*  
14 *Mayle v. Felix*, 545 U.S. 644, 655-56 (2005) (noting that Rule 2(c) demands that habeas  
15 petitioner’s plead their claims with particularity so that district courts can determine whether the  
16 state should be ordered to show cause why the writ should not be granted or whether the petition  
17 should be summarily dismissed without ordering a responsive pleading). The current petition  
18 does not comply with these requirements and will be dismissed with leave to amend. If petitioner  
19 elects to amend he must file a petition which is comprehensible and which states his claims  
20 simply.

### 21 Conclusion

22 Based on the foregoing, it is ORDERED that:

- 23 1. Petitioner’s application to proceed in forma pauperis (ECF No. 4) is DENIED;
- 24 2. Petitioner shall submit the five dollar filing fee within thirty days of the date this order  
25 is filed;
- 26 3. The petition is DISMISSED with leave to amend;

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1           4. Within thirty days of this order's entry petitioner may submit an amended petition  
2 which remedies the deficiencies identified in this order;

3           5. Failure to comply with this order may result in dismissal of the case; and

4           6. The Clerk of Court is directed to send petitioner the Petition for a Writ of Habeas  
5 Corpus form used in this court.

6 DATED: October 4, 2018.

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8 EDMUND F. BRENNAN  
9 UNITED STATES MAGISTRATE JUDGE  
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