

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
10

11 MICHAEL A. BRUZZONE,

12 Plaintiff,

13 v.

14 INTEL CORPORATION,

15 Defendant.  
16

No. 2:18-cv-0865 KJM DB PS

ORDER

17 Plaintiff, Michael Bruzzone, is proceeding in this action pro se. This matter was referred  
18 to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). On  
19 April 10, 2018, plaintiff filed a complaint and motion to proceed in forma pauperis pursuant to 28  
20 U.S.C. § 1915. (ECF Nos. 1 & 2.) On September 28, 2018, the undersigned issued an order  
21 dismissing plaintiff's complaint with leave to amend. (ECF No. 3.)

22 On October 18, 2018, defendants ARM Inc., and ARM Holdings PLC filed a motion to  
23 dismiss plaintiff's complaint and/or a motion for a more definitive statement, and a motion to  
24 declare plaintiff a vexatious litigant. (ECF Nos. 7 & 8.) Those motions are noticed for hearing  
25 before the undersigned on November 16, 2018.

26 Defendants are advised that the court is required to screen complaints brought by parties  
27 proceeding in forma pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d  
28 1122, 1129 (9th Cir. 2000) (en banc). “A district court may deny leave to proceed in forma

1 pauperis at the outset if it appears from the face of the proposed complaint that the action is  
2 frivolous or without merit.’’ Minetti v. Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998)  
3 (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also  
4 McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th Cir. 2014) (“the  
5 district court did not abuse its discretion by denying McGee’s request to proceed IFP because it  
6 appears from the face of the amended complaint that McGee’s action is frivolous or without  
7 merit”); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the District Court  
8 to examine any application for leave to proceed in forma pauperis to determine whether the  
9 proposed proceeding has merit and if it appears that the proceeding is without merit, the court is  
10 bound to deny a motion seeking leave to proceed in forma pauperis.”).

11 The court must dismiss an in forma pauperis case at any time if the allegation of poverty is  
12 found to be untrue or if it is determined that the action is frivolous or malicious, fails to state a  
13 claim on which relief may be granted, or seeks monetary relief against an immune defendant. See  
14 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an arguable basis in law or  
15 in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221,  
16 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a complaint as frivolous  
17 where it is based on an indisputably meritless legal theory or where the factual contentions are  
18 clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

19 Here, the undersigned has already dismissed plaintiff’s complaint. Thus, there is no  
20 complaint to dismiss nor one from which the court could evaluate if plaintiff is vexatious. And  
21 the time for plaintiff to file an amended complaint has not run. If plaintiff files an amended  
22 complaint, without paying the filing fee, the undersigned will then screen the amended complaint  
23 pursuant to the statute. See 28 U.S.C. § 1915(e)(2).

24 If the undersigned finds that the amended complaint is not frivolous or malicious, states a  
25 claim on which relief may be granted, and does not seek monetary relief against an immune  
26 defendant, the undersigned will grant plaintiff’s motion for leave to proceed in forma pauperis,  
27 and order service upon the appropriate defendants. If defendant ARM Inc., or defendant ARM  
28 Holdings PLC are named in the amended complaint and the undersigned finds service of the


1 amended complaint appropriate on either defendant, that defendant may then bring a renewed  
2 motion to dismiss and/or a motion to declare plaintiff's vexatious. At this time, however,  
3 defendants' motions are premature.

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. Defendants' October 18, 2018 motion to dismiss (ECF No. 7) and motion to declare  
6 plaintiff vexatious (ECF No. 8) are denied without prejudice to renewal; and

7 2. The November 16, 2018 hearing of defendants' motions is vacated.

8 Dated: October 18, 2018

9  
10   
11 DEBORAH BARNES  
12 UNITED STATES MAGISTRATE JUDGE  
13  
14  
15  
16  
17  
18  
19  
20

21 DLB:6  
22 DB/orders/orders.pro se/bruzzo0865.mtd.pm.ord  
23  
24  
25  
26  
27  
28