



1 **I. Plaintiff's Application to Proceed In Forma Pauperis**

2 Plaintiff's in forma pauperis application makes the financial showing required by 28  
3 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma  
4 pauperis status does not complete the inquiry required by the statute. ““A district court may deny  
5 leave to proceed in forma pauperis at the outset if it appears from the face of the proposed  
6 complaint that the action is frivolous or without merit.”” Minetti v. Port of Seattle, 152 F.3d  
7 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th  
8 Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th  
9 Cir. 2014) (“the district court did not abuse its discretion by denying McGee’s request to proceed  
10 IFP because it appears from the face of the amended complaint that McGee’s action is frivolous  
11 or without merit”); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the  
12 District Court to examine any application for leave to proceed in forma pauperis to determine  
13 whether the proposed proceeding has merit and if it appears that the proceeding is without merit,  
14 the court is bound to deny a motion seeking leave to proceed in forma pauperis.”).

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

23 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to  
24 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
25 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as  
26 true the material allegations in the complaint and construes the allegations in the light most  
27 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.  
28 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245

1 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by  
2 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true  
3 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western  
4 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

5 The minimum requirements for a civil complaint in federal court, as explained by Rule 8  
6 of the Federal Rules of Civil Procedure (“Rules”), are as follows:

7 A pleading which sets forth a claim for relief . . . shall contain (1) a  
8 short and plain statement of the grounds upon which the court’s  
9 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.

10 Fed. R. Civ. P. 8(a).

## 11 **II. Plaintiff’s Complaint**

12 “[T]he in forma pauperis statute . . . ‘accords judges not only the authority to dismiss a  
13 claim based on an indisputably meritless legal theory, but also the unusual power to pierce the  
14 veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are  
15 clearly baseless.’” Denton v. Hernandez, 504 U.S. 25, 32 (1992) (quoting Neitzke, 490 U.S. at  
16 327). “Examples of the latter class are claims describing fantastic or delusional scenarios, claims  
17 with which federal district judges are all too familiar.” Neitzke, 490 U.S. at 328.

18 Here, the complaint alleges that the defendant is following plaintiff “everywhere with  
19 space satellites with powerful beams locked on to him” and that they “hit him while he slept with  
20 hammer, awaken him constantly keep him awake threaten insult and slander him in hundreds of  
21 rock and roll songs.” (Compl. (ECF No. 1) at 6.) Moreover, on March 13, 2018, defendant  
22 “beamed maybe 50 people being run over on him they smash their run over faces a hundred  
23 people being murdered tortured on him.” (Id.)

24 In this regard, the complaint’s allegations are delusional and frivolous. See Denton, 504  
25 U.S. at 33 (“a finding of factual frivolousness is appropriate when the facts alleged rise to the  
26 level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts  
27 available to contradict them”).

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1 **III. Leave to Amend**

2 For the reasons stated above, plaintiff's complaint should be dismissed. The undersigned  
3 has carefully considered whether plaintiff may amend the complaint to state a claim upon which  
4 relief can be granted. "Valid reasons for denying leave to amend include undue delay, bad faith,  
5 prejudice, and futility." California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d  
6 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau,  
7 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the  
8 court does not have to allow futile amendments).

9 Here, given the defects noted above, the undersigned finds that granting plaintiff leave to  
10 amend would be futile.

11 **CONCLUSION**

12 Accordingly, for the reasons stated above, IT IS HEREBY RECOMMENDED that:

- 13 1. Plaintiff's May 11, 2018 application to proceed in forma pauperis (ECF No. 2) be  
14 denied;
- 15 2. Plaintiff's May 11, 2018 complaint (ECF No. 1) be dismissed without prejudice; and
- 16 3. This action be dismissed.

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

24 Dated: October 10, 2018

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27 DEBORAH BARNES  
28 UNITED STATES MAGISTRATE JUDGE

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