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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

CHADERICK A. INGRAM,  
Plaintiff,  
v.  
CITY OF SAN FRANCISCO, et al.,  
Defendants.

Case No. 12-cv-1932 NC  
Case No. 12-cv-1934 NC

**ORDER DISMISSING  
COMPLAINTS FOR FAILURE  
TO STATE A CLAIM; DENYING  
REQUESTS TO PROCEED IN  
FORMA PAUPERIS; DENYING  
REQUESTS FOR APPOINTMENT  
OF COUNSEL; DENYING  
APPLICATION FOR  
APPOINTMENT OF GUARDIAN  
AD LITEM**

TERRIE ANNE WINGO,  
Plaintiff,  
v.  
CITY OF SAN FRANCISCO, et al.,  
Defendants.

Pro se plaintiffs Chaderick Ingram and Terrie Wingo bring these actions against the City of San Francisco and the San Francisco Police Department under 42 U.S.C. § 1983 for alleged violations of their civil rights. All parties have consented to this Court’s jurisdiction under 28 U.S.C. § 636(c).

The Court has before it a number of motions including the City’s motions to dismiss plaintiffs’ first amended complaints under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim; the City’s motions to dismiss plaintiffs’ second amended complaints under Federal Rule of Civil Procedure 12(b)(6) for failure to state a

1 claim; Ingram’s application for appointment of Wingo as guardian ad litem; and  
2 plaintiffs’ requests for appointment of counsel. For the sake of judicial economy, the  
3 Court addresses the claims contained in both complaints at this time, based on the  
4 motions before it and the Court’s discretion to review in forma pauperis complaints under  
5 28 U.S.C. § 1915(e)(2).

6 Finding that plaintiffs’ complaints (i) fail to state a claim upon which relief can be  
7 granted and (ii) are frivolous, the Court DISMISSES the complaints under 28 U.S.C. §  
8 1915(e)(2)(B). Because the Court finds the asserted claims to be frivolous, the Court  
9 DENIES plaintiffs’ requests for appointment of counsel. Finally, as Wingo is not an  
10 attorney nor is she represented by an attorney, the Court DENIES Ingram’s request for  
11 appointment of Wingo as guardian ad litem.

## 12 I. BACKGROUND

### 13 A. Factual Allegations Asserted in the Complaints

14 Pro se plaintiffs Ingram and Wingo allege that they were arrested on August 29,  
15 2011. *See* Ingram Second Amended Complaint (“Ingram SAC”) at 4-5, Case No. 12-cv-  
16 1934, Dkt. No. 11; *see also* Wingo Second Amended Complaint (“Wingo SAC”) at 2,  
17 Case No. 12-cv-1932, Dkt. No. 13. Plaintiffs’ complaints are nearly identical except that  
18 Ingram alleges he was in the backseat of a car “minding his own business” when police  
19 officers arrested him for “no reason on charges that were later dismissed.” *See* Ingram  
20 SAC at 4-5. Wingo alleges that she was in the back seat of a car when an “accident  
21 happened,” that the police “automatically assum[ed] that she was on probation or parole  
22 while searching plaintiff[’]s purse,” that police officers approached Wingo with their guns  
23 drawn, arrested her for no reason, handcuffed her roughly, and incarcerated her “for two  
24 days for no reason on Geary Street.” Wingo SAC at 2-3.

25 Plaintiffs both assert that defendants acted in violation of plaintiffs’ civil rights by  
26 defaming plaintiffs; using excessive force; unreasonably searching plaintiffs; using  
27 excessive harassment to detain plaintiffs; unlawfully arresting plaintiffs; falsely  
28 imprisoning plaintiffs; and violating plaintiffs’ right to assemble. Ingram SAC at 6-8;

1 Wingo SAC at 4-9.

2 Plaintiffs each seek a monetary judgment against defendants—Ingram in the amount  
3 of \$99,900,000,000,000,000,000,000,000 and Wingo in the amount of  
4 \$514,000,000,000,000,000,000. *See* Ingram SAC at 10; Wingo SAC at 10.

5 **B. Procedural History**

6 Ingram and Wingo commenced these 42 U.S.C. § 1983 actions in state court.  
7 Def.’s Mot. Dismiss SAC at 2, Dkt. No. 13. The City removed these actions to federal  
8 court on April 19, 2012. *See* Not. Removal, Dkt. No. 1. The Court then ordered the cases  
9 related. *See* Order Relating Case, Case No. 12-cv-1934, Dkt. No. 5

10 On April 26, 2012, the City moved to dismiss plaintiffs’ first amended complaints  
11 under Rule 12(b)(6) for failure to state a claim. *See* Def.’s Mot. Dismiss FAC, Case No.  
12 12-cv-1934, Dkt. No. 6; Def.’s Mot. Dismiss FAC, Case No. 8. In response, plaintiffs  
13 filed second amended complaints, which are essentially duplicative of their first amended  
14 complaints. *See* Ingram SAC; *see also* Wingo SAC. The only substantive differences  
15 include that (i) both plaintiffs assert that they have been granted leave to proceed in forma  
16 pauperis (“IFP”);<sup>1</sup> (ii) Ingram now asserts that, due to his mental disability, he is unable to  
17 represent himself; and (iii) Ingram increases his monetary demand from \$900 quadrillion  
18 to \$99.9 sextillion. *See id.*

19 On May 31, 2012, Ingram filed an application for appointment of guardian ad  
20 litem requesting the Court name Terrie Wingo as his guadrían ad litem to represent his  
21 interests as he is “incompetent.” Appl. Appt. Guard. Ad Litem, Case No. 12-cv-01934,  
22 Dkt. No. 17.

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26 <sup>1</sup> Plaintiffs both state that they “proceed[] in forma pauperis as order fee waiver  
27 being granted shows on record.” Ingram SAC at 1; Wingo SAC at 1. Neither Ingram nor  
28 Wingo, however, have filed applications to proceed in forma pauperis, and the Court has  
not granted any fee waiver in these cases.

1 **II. STANDARD OF REVIEW**

2 Under 28 U.S.C. § 1915(a)(1), “any court of the United States may authorize the  
3 commencement, prosecution or defense of any suit, action or proceeding . . . without  
4 prepayment of fees or security thereof.” 28 U.S.C. § 1915(a)(1). “Any person wishing  
5 the Court to authorize prosecution or defense of the action without payment of fees or  
6 security, pursuant to 28 United States Code § 1915, must submit . . . an Ex Parte Motion  
7 to Proceed In Forma Pauperis, pursuant to Civil L.R. 7-11.” Civil L.R. 3-10(a).

8 Under 28 U.S.C. § 1915(e)(2), the court must dismiss a complaint at any time if  
9 the court determines that the pleading is frivolous or malicious, fails to state a claim on  
10 which relief may be granted, or seeks monetary relief against an immune defendant. 28  
11 U.S.C. § 1915(a). In order to properly state a claim for relief, a complaint must contain  
12 more than “labels and conclusions”; it must contain factual allegations sufficient to “raise  
13 a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
14 544, 555 (2007).

15 A complaint is legally frivolous when it lacks an arguable basis in law or in fact.  
16 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221,  
17 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a complaint as  
18 frivolous where it is based on an indisputably meritless legal theory or where the factual  
19 contentions are clearly baseless. *Neitzke*, 490 U.S. at 327; 28 U.S.C. § 1915(e) (stating  
20 that the court “is not bound, as it usually is when making a determination based solely on  
21 the pleadings, to accept without question the truth of the plaintiff’s allegations.”).

22 **III. DISCUSSION**

23 **A. Motions to Proceed IFP**

24 When a plaintiff moves to proceed IFP, the court first “grants or denies IFP status  
25 based on the plaintiff’s financial resources alone and then independently determines  
26 whether to dismiss the complaint” under 28 U.S.C. § 1915(e)(2). *Franklin*, 745 F.2d at  
27 1226 n.5.

28 Here, plaintiffs each include a sentence in their complaints indicating that

1 “Plaintiff can[’]t afford an attorney as order fee waiver being granted shows on record.”  
2 Ingram SAC at 1; Wingo SAC at 1. The Court has never received an application from  
3 Ingram or Wingo to proceed IFP, and plaintiffs have both failed to submit an affidavit  
4 which includes a statement of assets as required by § 1915(a). *See* 28 U.S.C. § 1915(a);  
5 *see also* Civil L.R. 3-10(a). Accordingly, the Court finds that plaintiffs do not meet the  
6 28 U.S.C. § 1915(a) requirements and DENIES plaintiffs’ requests to proceed IFP.

7 **B. Plaintiffs’ Claims Are Dismissed under 28 U.S.C. § 1915(e)(2).**

8 The IFP statute provides that a district court shall dismiss a case if at any time the  
9 court determines the action (1) fails to state a claim on which relief may be granted or (2)  
10 is frivolous. 28 U.S.C. § 1915(e)(2).

11 **1. Plaintiffs Fail to Assert Claims Upon Which Relief Can be Granted.**

12 Under 28 U.S.C. § 1915(e)(2), a court may dismiss the case at any time if it  
13 determines the plaintiff failed to state a claim on which relief may be granted. *Barren v.*  
14 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). “A plaintiff must allege facts, not  
15 simply conclusions, that show that an individual was personally involved in the  
16 deprivation of his civil rights.” *See Denton*, 504 U.S. at 32. A court will deny any  
17 motion that fails to present a legal and factual basis. *Id.* In addition, the court need not  
18 accept as true factual allegations in IFP complaints. *Id.* (court may reject allegations that  
19 are “completely baseless” which the court finds “fanciful,” “fantastic” or “delusional.”).

20 Here, plaintiffs’ complaints fail to state facts against each defendant who allegedly  
21 violated their rights. *See* Ingram SAC; *see also* Wingo SAC. In their complaints,  
22 plaintiffs allege, among other things, that defendants “willingly, knowingly, wrongfully,  
23 and unlawfully harassed plaintiff, through the use of defamation of character while using  
24 excessive force, not securing his rights depriving his privileges.” Ingram SAC at 3.  
25 Plaintiffs also contend that defendants “showed no remorse for plaintiff and witness’,  
26 which is unlawfully wrong due to the fact that plaintiff is not now on probation nor  
27 parole.” *Id.* Plaintiffs’ complaints lack sufficient factual allegations to state any  
28 cognizable claim on which relief can be granted. Accordingly, the Court DISMISSES the

1 plaintiffs' complaints for failure to state a claim under 28 U.S.C. § 1915(e)(2).

2 **2. Plaintiffs' Claims Are Also Frivolous.**

3 An action is "frivolous where it lacks an arguable basis either in law or in fact."  
4 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The determination of whether a claim is  
5 frivolous is within the sound discretion of the district court. *Denton*, 504 U.S. at 34  
6 ("[T]he [IFP] statute's instruction that an action may be dismissed if the court is  
7 'satisfied' that it is frivolous indicates that frivolousness is a decision entrusted to the  
8 discretion of the court entertaining the in forma pauperis petition.").

9 Here, Ingram and Wingo seek relief from defendants for an alleged wrongful  
10 arrest. Ingram SAC at 3; Wingo SAC at 2. Plaintiffs' vague allegations that defendants  
11 forced plaintiffs to be quiet, harassed, engaged in excessive force, falsely imprisoned, and  
12 falsely arrested plaintiffs fail to allege specific constitutional or civil rights violations.  
13 Ingram seeks \$99,900,000,000,000,000,000,000 in damages and Wingo seeks  
14 \$514,000,000,000,000,000,000,000 in damages. Ingram SAC at 10; Wingo SAC at 10. The  
15 Court finds plaintiff's amended complaints frivolous as they lacks any basis either in law  
16 or in fact, and their monetary demand crosses the line into frivolous litigation. *See*  
17 *Denton*, 504 U.S. at 33 (explaining that "a finding of factual frivolousness is appropriate  
18 when the facts alleged rise to the level of the irrational or wholly incredible.").

19 **C. Plaintiffs' Requests for Appointment of Counsel Are Denied.**

20 As a general matter, there is no right to counsel in civil actions. *Palmer v. Valdez*,  
21 560 F.3d 965, 970 (9th Cir. 2009); *see also Gardner v. Madden*, 352 F.2d 792, 793 (9th  
22 Cir. 1965) (noting that the appointment of counsel in civil cases is "a privilege and not a  
23 right"). Under 28 U.S.C. § 1915(e)(1), however, "[t]he court may request an attorney to  
24 represent any person unable to afford counsel." 28 U.S.C. § 1915(e)(1); *see also Franklin*  
25 *v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984) (district court has discretion to designate  
26 counsel to represent an indigent civil litigant). But the Court may do so only where  
27 "exceptional circumstances" exist. *See Agyeman v. Corrs. Corp. of Am.*, 390 F.3d 1101,  
28 1103 (9th Cir. 2004). In determining whether exceptional circumstances are present, the

1 Court must consider a plaintiff’s likelihood of success on the merits and the “complexity  
2 of the legal issues involved.” *Agyeman*, 390 F.3d at 1103.

3 Here, although plaintiffs may have found it difficult to articulate their claims pro  
4 se, plaintiffs have neither demonstrated a likelihood of success on the merits nor shown  
5 that the complexity of the issues involved is sufficient to require designation of counsel.  
6 *See Agyeman*, 390 F.3d at 1103. Accordingly, the Court DENIES plaintiffs’ requests for  
7 appointment of counsel.

8 **D. Ingram’s Application for Appointment of Wingo as his Guardian is Denied.**

9 Ingram states in the operative complaint that he is a “documented mentally  
10 disabled recipient” and reiterates in his application for appointment of guardian ad litem  
11 that “plaintiff is incompetent.” SAC at 1; Appl. Appt. Guard. Ad Litem. As a mentally  
12 incompetent litigant, Ingram is unable to proceed on his own behalf. Fed. R. Civ. Proc.  
13 17(c). Ingram may proceed only after appointment of a guardian ad litem. *Id.* While  
14 persons deemed incompetent litigants may have potentially meritorious claims and  
15 therefore warrant the appointment of a guardian ad litem under Rule 17(c), after review of  
16 Ingram’s rambling and incoherent complaint, the Court finds the asserted claims to be  
17 frivolous and not worthy of appointment of guardian ad litem. Moreover, Ingram’s  
18 application for appointment of Wingo as his guardian ad litem also fails as an individual  
19 cannot bring an action on behalf of an incompetent litigant without first retaining an  
20 attorney herself. *See Johns v. Cnty. of San Diego*, 114 F.3d 874, 877 (9th Cir. 1997)  
21 (minors must be represented by attorney); *see also Meeker v. Kercher*, 782 F.2d 153, 154  
22 (10 Cir. 1986) (“[I]t is not in the interest of minors or incompetents that they be represented  
23 by non-attorneys.”). As Wingo is unrepresented by counsel, Ingram’s request for  
24 appointment of Wingo as guardian ad litem is DENIED.

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1 **IV. CONCLUSION**

2 Because plaintiffs' complaints are frivolous, devoid of factual support, and fail to  
3 state a claim upon which relief can be granted, they must be dismissed under 28 U.S.C. §  
4 1915(e)(2)(B). As further amendment would be futile, the complaints are DISMISSED  
5 with prejudice. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). Plaintiffs'  
6 request to proceed in forma pauperis are DENIED. Ingram's request for appointment of  
7 Wingo as his guardian ad litem is DENIED. Plaintiffs' requests for appointment of  
8 counsel are also DENIED. The motion to dismiss hearings scheduled for July 11, 2012  
9 are hereby VACATED.

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11 IT IS SO ORDERED.

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13 DATED: June 5, 2012

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16 NATHANAEL M. COUSINS  
17 United States Magistrate Judge  
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