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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT HEIZELMAN,	
vs.	Plaintiff,
GOVERNOR BUTCH OTTER, et al.,	
Defendants.	

CASE NO. 09CV2128-LAB (NLS)

**ORDER GRANTING MOTION TO  
PROCEED *IN FORMA PAUPERIS*  
AND DISMISSING CASE**

Robert Heizelman filed this action against Idaho Governor Butch Otter, Idaho Senator Mike Crapo, and the ACLU on September 29, 2010. Now pending is Mr. Heizelman’s Motion to Proceed *In Forma Pauperis* (“IFP”).

**I. IFP Motion**

All parties instituting a civil action in a district court of the United States, except for habeas petitioners, must pay a filing fee of \$350. See 28 U.S.C. § 1914(a). A party is excused from paying the fee, however, if the Court grants leave to proceed IFP pursuant to 28 U.S.C. 1915(a). Mr. Heizelman has submitted an IFP application that amply demonstrates his inability to pay the \$350 filing fee. He is unemployed, has no money saved, owns no real estate or financial instruments, and owes the State of Idaho \$25,000. His Motion to Proceed *In Forma Pauperis* is therefore **GRANTED**.

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1 **II. Initial Screening**

2 Pursuant to 28 U.S.C. § 1915(e), the Court must screen each civil action commenced  
3 pursuant to 28 U.S.C. § 1915(a) and dismiss the action if the Court finds it is frivolous or  
4 malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief  
5 from an immune defendant. 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 45  
6 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”);  
7 *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (28 U.S.C. § 1915(e) “not  
8 only permits but requires” the court to sua sponte dismiss an IFP complaint that fails to state  
9 a claim).

10 A complaint must plead facts that “raise a right to relief above the speculative level  
11 on the assumption that all of the complaint’s allegations are true.” *Bell Atlantic Corp. v.*  
12 *Twombly*, 550 U.S. 544, 555 (2007). “[S]ome threshold of plausibility must be crossed at the  
13 outset” before a case can go forward. *Id.* at 558 (internal quotations omitted). A claim has  
14 “facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
15 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*  
16 *Iqbal*, — U.S. —, 129 S.Ct. 1937, 1949 (2009). “The plausibility standard is not akin to a  
17 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has  
18 acted unlawfully.” *Id.*

19 While a court must draw all reasonable inferences in the plaintiff’s favor, it need not  
20 “necessarily assume the truth of legal conclusions merely because they are cast in the form  
21 of factual allegations.” *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9<sup>th</sup> Cir.  
22 2003) (internal quotations omitted). In fact, no legal conclusions need to be accepted as  
23 true. *Ashcroft*, 129 S.Ct. at 1949. A complaint doesn’t suffice “if it tenders ‘naked  
24 assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* That includes a mere formulaic  
25 recitation of the elements of a cause of action; this will not do either. *Bell Atlantic Corp.*, 550  
26 U.S. at 555.

27 With the above standards in mind, Mr. Heizelman’s complaint is patently inadequate  
28 as pled, even though the Court has a duty to liberally construe a pro se litigant’s pleadings,

1 see *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988). It reads  
2 as a running, stream-of-consciousness commentary of grievances against various parties,  
3 with no unifying theme or discernable legal claims. Though legible, it is incoherent and  
4 unintelligible on the whole. Mr. Heizelman appears to take issue with prison conditions he  
5 allegedly endured, property theft he allegedly suffered, and various conspiracies of which  
6 he believes he is a victim, but he fails to plead concrete, intelligible facts that add structure  
7 and content to these grievances.

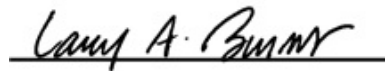
8 Mr. Heizelman's complaint is therefore **DISMISSED**. The Court finds it is frivolous  
9 and fails to state a claim upon which relief can be granted. The Court also finds that  
10 amendment would be futile, so this dismissal is **WITH PREJUDICE**, and **WITHOUT LEAVE**  
11 **TO AMEND**.

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13 **IT IS SO ORDERED.**

14 DATED: October 20, 2010

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**HONORABLE LARRY ALAN BURNS**  
United States District Judge

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