

1 For the following reasons, the Court **GRANTS** Plaintiff’s motion to proceed
2 IFP and **DISMISSES WITH PREJUDICE** his Complaint as frivolous.

3
4 **I. MOTION FOR LEAVE TO PROCEED IFP**

5 Under 28 U.S.C. § 1915, a litigant who because of indigency is unable to pay
6 the required fees or security to commence a legal action may petition the court to
7 proceed without making such payment. The determination of indigency falls within
8 the district court’s discretion. *Cal. Men’s Colony v. Rowland*, 939 F.2d 854, 858 (9th
9 Cir. 1991) (holding that “Section 1915 typically requires the reviewing court to
10 exercise its sound discretion in determining whether the affiant has satisfied the
11 statute’s requirement of indigency”), *rev’d* on other grounds, 506 U.S. 194 (1993).
12 It is well-settled that a party need not be completely destitute to proceed IFP. *Adkins*
13 *v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40 (1948). To satisfy the
14 requirements of 28 U.S.C. § 1915(a), “an affidavit [of poverty] is sufficient which
15 states that one cannot because of his poverty pay or give security for costs . . . and
16 still be able to provide himself and dependents with the necessities of life.” *Id.* at 339.
17 At the same time, however, “the same even-handed care must be employed to assure
18 that federal funds are not squandered to underwrite, at public expense . . . the
19 remonstrances of a suitor who is financially able, in whole or in material part, to pull
20 his own oar.” *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984).

21 District courts, therefore, tend to reject IFP applications where the applicant
22 can pay the filing fee with acceptable sacrifice to other expenses. See, e.g., *Stehouwer*
23 *v. Hennessey*, 841 F. Supp. 316, 321 (N.D. Cal. 1994) (finding that the district court
24 did not abuse its discretion in requiring a partial fee payment from a prisoner who
25 had a \$14.61 monthly salary and who received \$110 per month from family), vacated
26 in part on other grounds by *Olivares v. Marshall*, 59 F.3d 109 (9th Cir. 1995).
27 Moreover, “in forma pauperis status may be acquired and lost during the course of
28 litigation.” *Wilson v. Dir. of Div. of Adult Insts.*, No. CIV S-06-0791, 2009 WL

1 311150, at *2 (E.D. Cal. Feb. 9, 2009) (citing Stehouwer, 841 F. Supp. at 321); see
2 also Allen v. Kelly, 1995 WL 396860, at *2 (N.D. Cal. June 29, 1995) (holding that
3 a plaintiff who was initially permitted to proceed in forma pauperis should be
4 required to pay his \$120 filing fee out of a \$900 settlement). Finally, the facts as to
5 the affiant’s poverty must be stated “with some particularity, definiteness, and
6 certainty.” United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981).

7 Having read and considered Plaintiff’s application, the Court finds that
8 Plaintiff meets the requirements in 28 U.S.C. § 1915 for IFP status. Plaintiff is
9 unemployed and receives \$934.00 per month in disability. (IFP Mot. ¶¶ 1–2, ECF
10 No. 2.) He states the Screen Actors Guild and Hollywood owe him \$240 billion, but
11 the Court will disregard that amount as not reasonably collectible. (Id. ¶ 6.) Further,
12 Plaintiff does not have any assets aside from two 20-year-old cars. (Id. ¶ 5.) His
13 expenses approximate or exceed his minimal income. (Id. ¶ 8.) Under these
14 circumstances, the Court finds that requiring Plaintiff to pay the court filing fees
15 would impair his ability to obtain the necessities of life. See Adkins, 335 U.S. at 339.

16 In light of the foregoing, the Court **GRANTS** Plaintiff’s application for leave
17 to proceed IFP (ECF No. 2).

18
19 **II. SCREENING UNDER 28 U.S.C. § 1915(e)**

20 Under 28 U.S.C. § 1915(e)(2)(B)(i), the court must dismiss an action where
21 the plaintiff is proceeding IFP if the court determines that the action “is frivolous or
22 malicious.” An IFP complaint “is frivolous if it has ‘no arguable basis in fact or law.’”
23 *O’Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990) (quoting *Franklin v. Murphy*,
24 745 F.2d 1221, 1228 (9th Cir. 1984)). This standard grants the court “the unusual
25 power to pierce the veil of the complaint’s factual allegations and dismiss those
26 claims whose factual contentions are clearly baseless.” *Neitzke v. Williams*, 490 U.S.
27 319, 327 (1989). Consequently, “a court is not bound, as it usually is when making a
28

1 determination based solely on the pleadings, to accept without question the truth of
2 the plaintiff’s allegations.” *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).

3 Clearly baseless factual allegations include those “that are ‘fanciful,’
4 ‘fantastic,’ and ‘delusional.’” *Denton*, 504 U.S. at 32–33 (quoting *Neitzke v.*
5 *Williams*, 490 U.S. 319, 325, 327, 328 (1989)). Accordingly, “a finding of factual
6 frivolousness is appropriate when the facts alleged rise to the level of the irrational
7 or the wholly incredible, whether or not there are judicially noticeable facts available
8 to contradict them.” *Id.* at 33. These outlandish claims are those “with which federal
9 district judges are all too familiar.” *Neitzke*, 490 U.S. at 328. Thus, district courts
10 have dismissed as frivolous an assortment of complaints containing clearly baseless
11 factual allegations. See, e.g., *Frost v. Vasan*, No. 16-cv-05883 NC, 2017 WL
12 2081094, at *1 (N.D. Cal. May 15, 2017) (secret conspiracy involving a U.S. Senator,
13 a university, and the CIA); *Suess v. Obama*, No. CV 17-01184-JAK (DTB), 2017
14 WL 1371289, at *2 (C.D. Cal. Mar. 10, 2017) (conspiracy involving former President
15 Barack Obama, the CIA, and the FBI); *Demos v. United States*, 2010 WL 4007527,
16 at *2 (D. Ore. Oct. 8, 2010) (kidnapping involving law enforcement officers
17 disguised as pirates).

18 Here, Plaintiff seeks \$150 billion in damages for Geico and others allegedly,
19 among other things, damaging his car, making terrorist threats, and conspiring
20 against him. Specifically, Plaintiff alleges he “has been illegally forced to sleep in
21 his vehicle and has had his legal monies illegally seized by and from Wells Fargo
22 Bank, [the Screen Actors Guild], criminal blacks/so-called African Americans, cops,
23 and females et. al.” (ECF No. 1 at 6:4–7.) These persons have allegedly impersonated
24 Plaintiff, stalked him, and sabotaged his 1997 silver Mercedes, but there has been
25 “no legal resolution or legal arrests of these heinous criminals.” (*Id.* at 6:7–13.)
26 Plaintiff also alleges his Complaint has been “illegally altered” or “tampered” with
27 by criminals electronically. (*Id.* at 6:21–33.) In addition, Plaintiff appends various
28 letters to his Complaint, including one to then-President Barack Obama about

1 “terrorists operating Star Wars technology (invisible/cloaking device)” in various
2 locations throughout California and Nevada. (ECF No. 1-1.)

3 Having reviewed the allegations in Plaintiff’s Complaint and its attached
4 exhibits, the Court concludes they are fantastical and clearly baseless. See Neitzke,
5 490 U.S. at 325; see also 28 U.S.C. § 1915(e)(2)(B)(i); DeRock v. Sprint-Nextel, 603
6 F. App’x 556, 558 (9th Cir. 2015) (affirming dismissal of nine actions as either
7 frivolous or failing to state a claim because the plaintiff alleged “unsupported legal
8 conclusions and fanciful factual allegations”). In addition, because the Complaint is
9 frivolous, the Court does not grant Plaintiff leave to amend. See Lopez v. Smith, 203
10 F.3d 1122, 1127 n.8 (9th Cir. 2000) (“When a case may be classified as frivolous or
11 malicious, there is, by definition, no merit to the underlying action and so no reason
12 to grant leave to amend.”).

13
14 **III. CONCLUSION**

15 For the foregoing reasons, the Court **GRANTS** Plaintiff’s motion to proceed
16 in forma pauperis (ECF No. 2). Further, the Court **DISMISSES WITH**
17 **PREJUDICE** Plaintiff’s Complaint as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i).

18 **IT IS SO ORDERED.**

19
20 **DATED: August 21, 2017**


Hon. Cynthia Bashant
United States District Judge