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

10
11 MONTOREY DANYELL HARPER,
12 Plaintiff,

13 v.

14 UNITED STATES, *et al.*,
15
16 Defendants.

Case No. 17-cv-01974-BAS-MDD
Case No. 17-cv-01975-BAS-WVG
Case No. 17-cv-01980-BAS-BGS
Case No. 17-cv-01987-BAS-NLS

ORDER:

**(1) GRANTING MOTIONS FOR
LEAVE TO PROCEED IN
FORMA PAUPERIS (ECF No. 2)**

AND

**(2) DISMISSING ACTIONS AS
FRIVULOUS UNDER 28 U.S.C. §
1915(e)(2)**

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21 Pending before the Court are four actions filed by Plaintiff Montorey Danyell
22 Harper, proceeding *pro se*: Case No. 17-cv-01974-BAS-MDD; Case No. 17-cv-
23 01975-BAS-WVG; Case No. 17-cv-01980-BAS-BGS; and Case No. 17-cv-01987-
24 BAS-NLS. Plaintiff also filed identical motions seeking leave to proceed *in forma*
25 *pauperis* (“IFP”) in each action. (ECF Nos. 2.) For the reasons outlined below, the
26 Court **GRANTS** each of Plaintiff’s IFP motions, and **DISMISSES WITH**
27 **PREJUDICE** all four complaints as frivolous.
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1 **I. MOTIONS FOR LEAVE TO PROCEED IFP**

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

18 District courts, therefore, tend to reject IFP applications where the applicant
19 can pay the filing fee with acceptable sacrifice to other expenses. *See e.g., Stehouwer*
20 *v. Hennessey*, 841 F. Supp. 316, 321 (N.D. Cal. 1994), *vacated in part on other*
21 *grounds, Olivares v. Marshall*, 59 F.3d 109 (9th Cir. 1995) (finding that a district
22 court did not abuse its discretion in requiring a partial fee payment from a prisoner
23 who had a \$14.61 monthly salary and who received \$110 per month from family).
24 Moreover, "*in forma pauperis* status may be acquired and lost during the course of
25 litigation." *Wilson v. Dir. of Div. of Adult Insts.*, No. CIV S-06-0791, 2009 WL
26 311150, at *2 (E.D. Cal. Feb. 9, 2009) (citing *Stehouwer*, 841 F. Supp. at 321); *see*
27 *also Allen v. Kelly*, 1995 WL 396860, at *2 (N.D. Cal. June 29, 1995) (holding that
28 a plaintiff who was initially permitted to proceed *in forma pauperis* should be

1 required to pay his \$120 filing fee out of a \$900 settlement). Finally, the facts as to
2 the affiant's poverty must be stated "with some particularity, definiteness, and
3 certainty." *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981).

4 While Plaintiff may not meet the requirements under 28 U.S.C. § 1915 for IFP
5 status for one action, having read and considered Plaintiff's four applications
6 together, the Court finds that Plaintiff does meet the requirements. He has a monthly
7 income of \$4,230—\$2,915 from disability payments and \$1,315 from other sources.
8 (ECF No. 2 at 2.) Plaintiff has \$1,495 on a pre-paid card, but no other assets. (*Id.* at
9 2.) Plaintiff states he has monthly expenses of \$3,965 (though only itemizes \$3,880
10 of expenses). His expenses include housing (\$2,670), food (\$800), clothing (\$80),
11 laundry and dry cleaning (\$80), transportation (\$100), and "recreation, entertainment,
12 newspapers, magazines, etc." (\$100). (*Id.* at 4.) He does not list any expenses for
13 medical expenses, though he states he is disabled. (*Id.* at 4-5.) Weighing the income
14 against expenses, Plaintiff has a monthly net gain of approximately \$265. Under
15 these circumstances and considering that Plaintiff would have to pay filing fees in
16 four actions, the Court finds that requiring Plaintiff to pay the court filing fees would
17 impair his ability to obtain the necessities of life. *See Adkins*, 335 U.S. at 339.

18 In light of the foregoing, the Court **GRANTS** Plaintiff's applications to
19 proceed *in forma pauperis*. (ECF Nos. 2.)
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21 **II. SCREENING UNDER 28 U.S.C. § 1915(e)**

22 Under 28 U.S.C. § 1915(e)(2)(B)(i), the court must dismiss an action where
23 the plaintiff is proceeding IFP if the court determines that the action "is frivolous or
24 malicious." An IFP complaint "is frivolous if it has 'no arguable basis in fact or law.'" *O'Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990) (quoting *Franklin v. Murphy*,
25 745 F.2d 1221, 1228 (9th Cir. 1984)). This standard grants the court "the unusual
26 power to pierce the veil of the complaint's factual allegations and dismiss those
27 claims whose factual contentions are clearly baseless." *Neitzke v. Williams*, 490 U.S.
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1 319, 327 (1989). Consequently, “a court is not bound, as it usually is when making a
2 determination based solely on the pleadings, to accept without question the truth of
3 the plaintiff’s allegations.” *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).

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

19 Here, though it is difficult to decipher, Plaintiff alleges the following for each
20 action:

21 **Case No. 17-cv-01974-BAS-MDD:** Plaintiff files this action against the
22 United States, Washington, DC, the United Nations, and New York City. Plaintiff
23 alleges that the President-elect of France and “his audience” “singled out” Plaintiff.
24 (Compl. at 1.) He further alleges that, because the French President-elect allegedly
25 gave a part of his speech off script, the election was “perverted as young blacks where
26 shown to darkened and looked pale,” which Plaintiff interpreted as a showing of an
27 “assault” of the French people. (*Id.*) Therefore, Plaintiff states that he includes
28 “France as property” because neither Defendants nor the President-elect stated that

1 “something is wrong with the world.” (*Id.* at 2.) Plaintiff “demands an unlimited
2 enormous enormous amount.” (*Id.*)

3 **Case No. 17-cv-01975-BAS-WVG:** Plaintiff files this action against the
4 United States, the United Nations, NATO, and the City of San Diego. He alleges that
5 an assault occurred that “has more to do with ego than anything else and it is brazened
6 since it is a lie,” and that Defendants are being “demeaning and scary.” (Compl. at
7 1.) Plaintiff further alleges that he lacks information to describe the “attack” because
8 he lacks “common knowledge in circles of Obama and Trump.” (*Id.*) He does cite to
9 an email he sent (to whom is not stated) where he alleges that “Obama [is] assaulting
10 now like he is in a classified room setting with generals . . . and that its pressure from
11 him to get something started. He will be sued in US courts and the US. So, Obama is
12 pressuring others.” (*Id.* at 2.) Because of these allegations, Plaintiff further alleges
13 that he is “just stuck here to go through it” and has suffered mental anguish. (*Id.*)
14 Plaintiff requests “enormous enormous unlimited amount [of] money.” (*Id.*)

15 **Case No. 17-cv-01980-BAS-BGS:** Plaintiff files this action against the United
16 States, Washington, DC, the United Nations, and New York City, though he lists
17 additional defendants in his Complaint, including the States of Virginia and North
18 Carolina, Ralphs, and the San Diego Police Department. Plaintiff alleges that he can
19 “tell when people who should be regular store goers . . . become a tool of the hate”
20 of Defendants, who are allegedly angry about Plaintiff’s lawsuits and “particular
21 stereotypical social norms of the plaintiff or former norms like veganism and
22 running.” (Compl. at 1-2.) Plaintiff requests “unlimited amount of money and that it
23 be enormous enormous.” (Compl. at 2.)

24 **Case No. 17-cv-01987-BAS-NLS:** Plaintiff files this action against the United
25 States, Washington, DC, the United Nations, New York City, NATO, the City of San
26 Diego, US Congress, and US Senate. He states that “spiritual assaults” have
27 contaminated food, water, health, and noise, causing him “very very bad[]” harm.
28 (Compl. at 2.) He further alleges that “the assaults include well known people” and

1 that “it is a weapon as described to the FBI.” (*Id.*) He further cites to and quotes an
2 email he sent to the “government” on June 17, 2017 on the same topic. (*Id.*) (stating,
3 among other things, that various government officials are “not going to get away with
4 it,” referring to the spiritual assaults). Lastly, Plaintiff alleges that hotels where
5 Plaintiff stays are “being moved or [are] moving” and “mak[ing] these attacks already
6 bad worse by projecting themselves and the plaintiff can see them and they’re yelling,
7 spitting, fighting and hurting the plaintiff.” (*Id.*)

8 Having reviewed the allegations in Plaintiff’s four complaints, the Court
9 concludes each complaint is fantastical and clearly baseless. *See Neitzke*, 490 U.S. at
10 325; *see also* 28 U.S.C. § 1915(e)(2)(B)(i); *DeRock v. Sprint-Nextel*, 603 F. App’x
11 556, 558 (9th Cir. 2015) (affirming dismissal of nine actions as either frivolous or
12 failing to state a claim because the plaintiff alleged “unsupported legal conclusions
13 and fanciful factual allegations”). In addition, because each complaint is frivolous,
14 the Court does not grant Plaintiff leave to amend. *See Lopez v. Smith*, 203 F.3d 1122,
15 1127 n.8 (9th Cir. 2000) (“When a case may be classified as frivolous or malicious,
16 there is, by definition, no merit to the underlying action and so no reason to grant
17 leave to amend.”).

18 19 **III. CONCLUSION**

20 For the foregoing reasons, the Court **GRANTS** Plaintiff’s motions to proceed
21 *in forma pauperis*. (ECF Nos. 2.) Further, the Court **DISMISSES WITH**
22 **PREJUDICE** Plaintiff’s four complaints as frivolous under 28 U.S.C. §
23 1915(e)(2)(B)(i).

24 **IT IS SO ORDERED.**

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26 **DATED: October 3, 2017**


Hon. Cynthia Bashant
United States District Judge