

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 ROBERT HATCHER, aka ROBERT L.
12 JACKSON, Booking #17182375,
13 Plaintiff,

14 vs.

15 ANGELA K. AURTHUR;
16 LULA AURTHUR;
17 MICHELLE OBAMA, Former First Lady,
18 Defendants.
19
20

Case No.: 3:18-cv-00491-LAB-KSC

ORDER:

**1) DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
[ECF No. 2]**

AND

**2) DISMISSING CIVIL ACTION
AS FRIVOLOUS PURSUANT
TO 28 U.S.C. § 1915(e)(2)(B)(i)**

21 ROBERT HATCHER (“Plaintiff”), currently detained at the San Diego Central
22 Jail (“SDCJ”), identifying himself as a Blackfoot Indian, and proceeding pro se, has filed
23 a civil rights complaint pursuant to 42 U.S.C. § 1983 against what appear to be two
24 private individuals alleged to reside in Indiana, and Michelle Obama, the former First
25 Lady of the United States. *See* Compl., ECF No. 1 at 2. Plaintiff seeks to bring “criminal
26 charges” against the Defendants for stalking, conspiracy, bribery, murder, and fraud
27 “across state lines.” *Id.* at 4-6.

28 ///

1 Plaintiff has not prepaid the \$400 filing fee required to commence civil action
2 pursuant to 28 U.S.C. § 1914(a), instead has he filed a Motion to Proceed In Forma
3 Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See* ECF No. 2.

4 **I. Motion to Proceed IFP**

5 All parties instituting any civil action, suit or proceeding in a district court of the
6 United States, except an application for writ of habeas corpus, must pay a filing fee of
7 \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to
8 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
9 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the
10 plaintiff is a prisoner at the time of filing, he may be granted leave to proceed IFP, but he
11 nevertheless remains obligated to pay the entire fee in “increments,” *see Williams v.*
12 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his action is
13 ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d
14 844, 847 (9th Cir. 2002). A “prisoner” is defined as “any person” who at the time of
15 filing is “incarcerated or detained in any facility who is accused of, convicted of,
16 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
17 conditions of parole, probation, pretrial release, or diversionary program.” 28 U.S.C.
18 § 1915(h); *Taylor*, 281 F.3d at 847.

19 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must
20 also submit a “certified copy of the[ir] trust fund account statement (or institutional
21 equivalent) ... for the 6-month period immediately preceding the filing of the complaint.”
22 28 U.S.C. § 1915(a)(2). From the certified trust account statement, the Court assesses an
23 initial payment of 20% of (a) the average monthly deposits in the account for the past six
24 months, or (b) the average monthly balance in the account for the past six months,
25 whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1), (4);
26 *see Taylor*, 281 F.3d at 850. Thereafter, the institution having custody of the prisoner
27 collects subsequent payments, assessed at 20% of the preceding month’s income, in any

28 ///

1 month in which the prisoner's account exceeds \$10, and forwards them to the Court until
2 the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

3 While Plaintiff has filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a),
4 he has not attached a certified copy of his SDCJ trust account statements for the 6-month
5 period immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2);
6 S.D. CAL. CIVLR 3.2. Section 1915(a)(2) clearly requires that prisoners "seeking to bring
7 a civil action ... without prepayment of fees ... *shall* submit a certified copy of the trust
8 fund account statement (or institutional equivalent) ... for the 6-month period
9 immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2) (emphasis
10 added).

11 Without Plaintiff's trust account statements, Plaintiff's IFP Motion (ECF No. 2) is
12 incomplete and must be **DENIED** because the Court is unable to assess the appropriate
13 amount of the initial filing fee statutorily required to initiate the prosecution of this
14 action. *See* 28 U.S.C. § 1915(b)(1).

15 **II. Screening of Complaint pursuant to 28 U.S.C. § 1915(e)(2)**

16 In addition, while the Court would ordinarily grant Plaintiff leave to correct his IFP
17 Motion's deficiencies, it instead finds it appropriate to screen his Complaint pursuant to
18 28 U.S.C. § 1915(e)(2) because at the time of filing Plaintiff was, and remains,
19 "incarcerated or detained in any facility [because he] is accused of, convicted of,
20 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
21 conditions of parole, probation, pretrial release, or diversionary program." *Olivas v.*
22 *Nevada ex rel. Dept. of Corr.*, 856 F.3d 1281, 1284 (9th Cir. 2017) (citing 28 U.S.C.
23 § 1915(h), 1915A(c); 42 U.S.C. § 1997e(h)).

24 **A. Standard of Review**

25 If a prisoner's complaint "seeks redress from a governmental entity or officer or
26 employee of a governmental entity," the Court "shall review" the pleading "as soon as
27 practicable after docketing," and "dismiss the complaint, or any portion of the complaint,
28 if [it] ... is frivolous, malicious, or fails to state a claim upon which relief may be

1 granted.” 28 U.S.C. § 1915A(a), (b)(1); *Nordstrom v. Ryan*, 762 F.3d 903, 907 n.1 (9th
2 Cir. 2014).

3 Here, Plaintiff seeks to bring criminal charges pursuant to 42 U.S.C. § 1983 against
4 two private citizens and the former First Lady. *See* ECF No. 1 at 2. He does not seek
5 redress from or name current governmental actors as Defendants. *Id.* at 1-2. Therefore,
6 § 1915A(a)’s screening provisions do not apply. *See Chavez v. Robinson*, 817 F.3d 1162,
7 1168 (9th Cir. 2016) (“Section 1915A mandates early review ... for all complaints ‘in
8 which a prisoner seeks relief from a governmental entity...”) (quoting § 1915A(a)); *see*
9 *also Thompson v. Hicks*, 213 Fed. Appx. 939, 2007 WL 106785 at *3 (11th Cir. 2007)
10 (noting that because a private defendant was not a “governmental entity” as described in
11 § 1915A, prisoner’s complaint as to that defendant was not subject to dismissal under
12 § 1915A).

13 However, because Plaintiff has filed a motion requesting leave to proceed IFP
14 pursuant to 28 U.S.C. § 1915(a), his Complaint *is* still subject to a sua sponte review, and
15 mandatory dismissal, if it is “frivolous, malicious, fail[s] to state a claim upon which
16 relief may be granted, or seek[s] monetary relief from a defendant immune from such
17 relief,” regardless of whether he seeks redress from a “governmental entity.” *See* 28
18 U.S.C. § 1915(e)(2)(B); *Coleman v. Tollefson*, 135 S. Ct. 1759, 1763 (2015) (pursuant to
19 28 U.S.C. § 1915(e)(2) “the court shall dismiss the case at any time if the court
20 determines that—(A) the allegation of poverty is untrue; or (B) the action or appeal—(i)
21 is frivolous or malicious; [or] (ii) fails to state a claim on which relief may be granted.”);
22 *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (“[S]ection 1915(e) not
23 only permits, but requires a district court to dismiss an in forma pauperis complaint that
24 fails to state a claim.”).

25 “The standard for determining whether a plaintiff has failed to state a claim upon
26 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
27 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668
28 F.3d 1108, 1112 (9th Cir. 2012). To survive a motion to dismiss, the complaint must

1 contain “a short and plain statement of the claim showing that the pleader is entitled to
2 relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
4 statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
5 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining whether a
6 complaint states a plausible claim for relief [is] . . . a context-specific task that requires
7 the reviewing court to draw on its judicial experience and common sense.” *Id.* The “mere
8 possibility of misconduct” falls short of meeting this plausibility standard. *Id.*; *see also*
9 *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

10 “When there are well-pleaded factual allegations, a court should assume their
11 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
12 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
13 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
14 allegations of material fact and must construe those facts in the light most favorable to
15 the plaintiff.”). However, while the court “ha[s] an obligation where the petitioner is pro
16 se, particularly in civil rights cases, to construe the pleadings liberally and to afford the
17 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
18 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not
19 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*
20 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

21 B. Plaintiff’s Allegations

22 As noted above, Plaintiff claims he is a Blackfoot Indian, and he seeks to bring a
23 criminal prosecution against two Indiana citizens and the former First Lady of the United
24 States based on charges of “stalking, conspiracy, bribery, murder, fraud,” and false
25 impersonation. *See* ECF No. 1 at 2-5. He adds no further detail and fails to allege any
26 factual basis for these purported violations.

27 ///

28 ///

1 C. 42 U.S.C. § 1983

2 Section 1983 is a “vehicle by which plaintiffs can bring federal constitutional and
3 statutory challenges to actions by state and local officials.” *Anderson v. Warner*, 451 F.3d
4 1063, 1067 (9th Cir. 2006). To state a claim under 42 U.S.C. § 1983, a plaintiff must
5 allege two essential elements: (1) that a right secured by the Constitution or laws of the
6 United States was violated, and (2) that the alleged violation was committed by a person
7 acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe v. Frye*,
8 789 F.3d 1030, 1035-36 (9th Cir. 2015).

9 First, to the extent Plaintiff seeks to bring charges based on alleged criminal acts
10 perpetrated against him as a “victim” and Blackfoot Indian, *see* ECF No. 1 at 4, 6-7,
11 section 1983 offers him no recourse. *See Campbell v. Burt*, 141 F.3d 927, 930 (9th Cir.
12 1998) (violations of state law alone do not support a claim of liability under § 1983);
13 *Alexandre v. Phibbs*, 116 F.3d 482 (9th Cir. 1997) (unpub.) (section 1983 claims may not
14 be predicated upon the violation of criminal statutes); *see also Buckheit v. Dennis*, 713 F.
15 Supp. 2d 910, 919 (N.D. Cal. 2010) (citing *Doe v. Connecticut Dept. Of Child & Youth*
16 *Services*, 911 F.2d 868, 869 (2nd Cir. 1990) (“A violation of state law neither gives
17 plaintiffs a § 1983 claim nor deprives defendants of the defense of qualified immunity to
18 a proper § 1983 claim.”)); *Ward v. City of Barstow, et al.*, 2017 WL 4877389, at *16
19 (C.D. Cal. June 23, 2017) (finding alleged violation of the California Penal Code “cannot
20 form the basis of a federal claim under § 1983” as a matter of law), *report and*
21 *recommendation adopted sub nom. Ward v. City of Barstow*, 2017 WL 4877239 (C.D.
22 Cal. Oct. 27, 2017).

23 What is more, Plaintiff’s suit is plainly frivolous. *See O’Loughlin v. Doe*, 920 F.2d
24 614, 617 (9th Cir. 1990) (“An in forma pauperis complaint is frivolous if it has no
25 arguable basis in fact or law.” (citation and internal quotation marks omitted). A pleading
26 is “factual[ly] frivolous[.]” if “the facts alleged rise to the level of the irrational or the
27 wholly incredible, whether or not there are judicially noticeable facts available to
28 contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 25-26 (1992). Section 1915 gives

1 courts “the unusual power to pierce the veil” of a Complaint like Plaintiff’s and to
2 “dismiss those claims whose factual contentions are clearly baseless.” *Neitzke v.*
3 *Williams*, 490 U.S. 319, 327 (1989)). Clearly baseless factual allegations include those
4 “that are ‘fanciful,’ ‘fantastic,’ and ‘delusional.’” *Denton*, 504 U.S. at 32-33 (quoting
5 *Neitzke*, 490 U.S. at 325, 327, 328).

6 While conclusory, disjointed, and incoherent, Plaintiff’s suit clearly has no basis in
7 law, and his claims appear grounded in delusion, are facially irrational, and wholly
8 incredible. Therefore, Plaintiff’s Complaint demands sua sponte dismissal pursuant to 28
9 U.S.C. § 1915(e)(2)(b)(i). *See Denton*, 504 U.S. at 25-26; *Neitzke*, 490 U.S. at 324; *see*
10 *also Suess v. Obama*, 2017 WL 1371289, at *2 (C.D. Cal. Mar. 10, 2017) (dismissing as
11 frivolous complaint alleging conspiracy among President, CIA, and FBI to torment
12 plaintiff over six year period); *Frost v. Vasan*, No. 16-CV-05883 NC, 2017 WL 2081094,
13 at *1 (N.D. Cal. May 15, 2017) (dismissing as frivolous claims against a United States
14 Senator, a university, two corporate entities, and additional unspecified defendants for
15 having allegedly conspired with a secret elite group of businessmen and the CIA to
16 torment him); *Sierra v. Moon*, 2012 WL 423483, at *2 (E.D. Cal. Feb. 8, 2012)
17 (dismissing as frivolous an alleged conspiracy by defendants with ex-military and CIA to
18 defraud plaintiffs’ interests and murder him); *Demos v. United States*, 2010 WL 4007527,
19 at *2 (D. Ore. Oct. 8, 2010) (dismissing as frivolous complaint alleging plaintiff was
20 captured by pirates disguised as law enforcement officers); *Reid v. Mabus*, 2015 WL
21 9855875, at *1 (D. Ore. Nov. 16, 2015) (dismissing complaint alleging a massive
22 conspiracy targeting 300,000 individuals with “electronic harassment”).

23 If a Plaintiff’s claims are frivolous, “there is by definition no merit to the
24 underlying action and so no reason to grant leave to amend.” *Lopez*, 203 F.3d at 1127 n.8.

25 **III. Conclusion and Order**

26 Accordingly, the Court:

- 27 1. **DENIES** Plaintiff’s Motion to Proceed IFP [ECF No. 2];
- 28 2. **DISMISSES** this civil action as frivolous pursuant to 28 U.S.C.

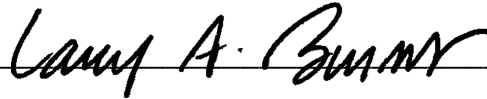
1 § 1915(e)(2)(B)(i) and **DENIES** leave to amend as futile. *See Rosati v. Igbinoso*, 791
2 F.3d 1037, 1039 (9th Cir. 2015) (leave to amend is not required if it is “absolutely clear
3 that the deficiencies of the complaint could not be cured by amendment.”) (citation
4 omitted).

5 3. **CERTIFIES** that an IFP appeal from this Order would be frivolous, and
6 therefore not taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v.*
7 *United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir.
8 1977) (indigent appellant is permitted to proceed IFP on appeal only if appeal would not
9 be frivolous); and

10 4. **DIRECTS** the Clerk of Court to close the file.

11 **IT IS SO ORDERED.**

12
13 Dated: March 21, 2018



14 HON. LARRY ALAN BURNS
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26
27
28