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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 DONALD RAY BLACKSHER, II,  
12 CDCR #AV-1847,

13 Plaintiff,

14 v.

15 DONALD J. TRUMP; GAVIN  
16 NEWSOM; ALL CDCR MENTAL AND  
17 MEDICAL HEALTH; ALL LAW  
18 ENFORCEMENT AGENCIES,

19 Defendants.  
20

Case No.: 3:21-cv-0206-MMA-MDD

**ORDER DISMISSING CIVIL  
ACTION PURSUANT TO 28 U.S.C.  
§ 1915A(b)(1), DENYING LEAVE TO  
PROCEED IN FORMA PAUPERIS,  
AND DENYING MOTION TO  
APPOINT COUNSEL AS MOOT**

[Doc. No. 2]

21 Plaintiff Donald Ray Blacksher, II, a California inmate currently incarcerated at the  
22 Richard J. Donovan Correctional Facility (“RJD”) located in San Diego, California, and  
23 proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. *See*  
24 Doc. No. 1. Plaintiff did not pay the filing fee required by 28 U.S.C. § 1914(a) to  
25 commence a civil action when he filed his complaint; instead, he has filed a copy of his  
26 inmate trust account statement which the Court liberally construes to be a request for  
27 leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See* Doc.  
28 No. 3. In addition, Plaintiff has filed a motion to appoint counsel. *See* Doc. No. 2.

1 **I. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

2 The Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A, obligates the  
3 Court to review complaints filed by anyone “incarcerated or detained in any facility who  
4 is accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or  
5 the terms or conditions of parole, probation, pretrial release, or diversionary program,”  
6 “as soon as practicable after docketing” and regardless of whether the prisoner prepays  
7 filing fees or moves to proceed IFP. *See* 28 U.S.C. § 1915A(a), (c). Pursuant to this  
8 provision of the PLRA, the Court is required to review prisoner complaints which “seek[]  
9 redress from a governmental entity or officer or employee of a government entity,” and to  
10 dismiss those, or any portion of those, which are “frivolous, malicious, or fail[] to state a  
11 claim upon which relief may be granted,” or which “seek monetary relief from a  
12 defendant who is immune.” 28 U.S.C. § 1915A(b)(1)-(2); *Resnick v. Hayes*, 213 F.3d  
13 443, 446-47 (9th Cir. 2000); *Hamilton v. Brown*, 630 F.3d 889, 892 n.3 (9th Cir. 2011).  
14 “The purpose of § 1915A is ‘to ensure that the targets of frivolous or malicious suits need  
15 not bear the expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th  
16 Cir. 2014) (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir.  
17 2012)).

18 The Court finds Plaintiff’s entire complaint is patently frivolous. There are no  
19 coherent factual allegations contained within the complaint. A pleading is “factual[ly]  
20 frivolous[]” if “the facts alleged rise to the level of the irrational or the wholly incredible,  
21 whether or not there are judicially noticeable facts available to contradict them.” *Denton*  
22 *v. Hernandez*, 504 U.S. 25, 25-26 (1992).

23 “[A] complaint, containing as it does both factual allegations and legal  
24 conclusions, is frivolous where it lacks an arguable basis either in law or in fact. . . .  
25 [The] term ‘frivolous,’ when applied to a complaint, embraces not only the inarguable  
26 legal conclusion, but also the fanciful factual allegation.” *Neitzke v. Williams*, 490 U.S.  
27 319, 325 (1989). When determining whether a complaint is frivolous, the court need not  
28 accept the allegations as true, but must “pierce the veil of the complaint’s factual

1 allegations,” *id.* at 327, to determine whether they are “‘fanciful,’ ‘fantastic,’ [or]  
2 ‘delusional,’” *Denton*, 504 U.S. at 33 (quoting *Neitzke*, 490 U.S. at 328).

3 Here, the Court finds that Plaintiff’s claims “rise to the level of the irrational or the  
4 wholly incredible,” *Denton*, 504 U.S. at 33, and as such, his Complaint requires dismissal  
5 as frivolous and without leave to amend. *See Lopez v. Smith*, 203 F.3d 1122, 1127 n.8  
6 (9th Cir. 2000) (en banc) (noting that if a claim is classified as frivolous, “there is by  
7 definition no merit to the underlying action and so no reason to grant leave to amend.”).

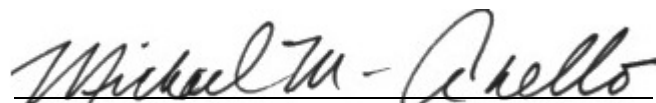
8 **II. Conclusion and Order**

9 Good cause appearing, the Court:

- 10 1. **DISMISSES** Plaintiff’s complaint as frivolous pursuant to 28 U.S.C. § 1915A  
11 and without leave to amend;
- 12 2. **DENIES AS MOOT** Plaintiff’s request for leave to proceed IFP and motion  
13 to appoint counsel (Doc. Nos. 2, 3);
- 14 3. **CERTIFIES** that an IFP appeal from this Order would also be frivolous and  
15 therefore, could not be taken in good faith pursuant to 28 U.S.C.  
16 § 1915(a)(3). *See Coppedge v. United States*, 369 U.S. 438, 445 (1962);  
17 *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant is  
18 permitted to proceed IFP on appeal only if appeal would not be frivolous);  
19 and,
- 20 4. **DIRECTS** the Clerk of Court to enter judgment accordingly and close the  
21 case.

22 **IT IS SO ORDERED.**

23 DATE: February 16, 2021

24   
25 HON. MICHAEL M. ANELLO  
26 United States District Judge  
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