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2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5 BRIAN DAVID MATTHEWS,
6 Plaintiff,

7 v.

8 STATE OF WASHINGTON,
9 Defendant.

CASE NO. C14-5762 BHS

ORDER DENYING PLAINTIFF'S
MOTION TO PROCEED *IN*
FORMA PAUPERIS AND
DISMISSING COMPLAINT

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11 This matter comes before the Court on Plaintiff Brian David Matthews's
12 ("Matthews") motion to proceed *in forma pauperis* (Dkt. 1) and proposed complaint
13 (Dkt. 1-1).

14 On September 23, 2014, Matthews filed the instant motion and proposed
15 complaint alleging that the State of Washington is infringing upon his protected
16 tradename, which is his actual name, "Brian D. Matthews." Dkt. 1-1.

17 The district court may permit indigent litigants to proceed *in forma pauperis* upon
18 completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the
19 Court has broad discretion in denying an application to proceed *in forma pauperis*. *Weller*
20 *v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963). "A district
21 court may deny leave to proceed *in forma pauperis* at the outset if it appears from the
22

1 face of the proposed complaint that the action is frivolous or without merit.” *Tripati v.*
2 *First Nat’l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987).

3 A federal court may dismiss *sua sponte* pursuant to Fed. R. Civ. P. 12(b)(6) when
4 it is clear that the plaintiff has not stated a claim upon which relief may be granted. *See*
5 *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir.1987) (“A trial court may
6 dismiss a claim *sua sponte* under Fed.R.Civ.P. 12(b)(6).... Such a dismissal may be made
7 without notice where the claimant cannot possibly win relief.”). *See also Mallard v.*
8 *United States Dist. Court*, 490 U.S. 296, 307–08 (1989) (there is little doubt a federal
9 court would have the power to dismiss frivolous complaint *sua sponte*, even in absence of
10 an express statutory provision). A complaint is frivolous when it has no arguable basis in
11 law or fact. *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984).

12 In this case, the Court concludes that Matthews’s complaint is frivolous.
13 Matthews essentially argues that any time the state of Washington uses his name, they are
14 violating rights to his protected property. There is no arguable basis in law or fact for
15 such a proposition. Therefore, the Court **DENIES** Matthews’s motion to proceed *in*
16 *forma pauperis* and **DISMISSES** his complaint *sua sponte*.

17 **IT IS SO ORDERED.**

18 Dated this 29th day of September, 2014.

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21 **BENJAMIN H. SETTLE**
22 United States District Judge

CLOSED

**U.S. District Court
 United States District Court for the Western District of Washington (Tacoma)
 CIVIL DOCKET FOR CASE #: 3:14-cv-05762-BHS**

Matthews v. State of Washington
 Assigned to: Judge Benjamin H. Settle
 Cause: 15:1051 Trademark Infringement

Date Filed: 09/23/2014
 Date Terminated: 09/29/2014
 Jury Demand: None
 Nature of Suit: 840 Trademark
 Jurisdiction: Federal Question

Plaintiff

Brian David Matthews

represented by **Brian David Matthews**
 796769
 STAFFORD CREEK CORRECTIONS
 CENTER
 191 CONSTANTINE WAY
 ABERDEEN, WA 98520
 PRO SE

V.

Defendant

State of Washington

Date Filed	#	Docket Text
09/23/2014	<u>1</u>	MOTION for Leave to Proceed in forma pauperis, filed by Brian David Matthews. (Attachments: # <u>1</u> Proposed Complaint, # <u>2</u> Civil Cover Sheet, # <u>3</u> Letter to Clerk)(MET) (Entered: 09/25/2014)
09/29/2014	<u>2</u>	ORDER by Judge Benjamin H. Settle denying <u>1</u> Motion for Leave to Proceed in forma pauperis and dismissing complaint.(TG; cc mailed to plaintiff) (Entered: 09/29/2014)

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