

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICARDO JOSE CALDERON LOPEZ, d/b/a STARLIGHT CONSULTING SERVICES, et al., v. SUNSET HOUSING SOLUTIONS, L.P.,	PLAINTIFF(S)	CASE NUMBER
		CV 18-1098-ODW (AGRx)
	DEFENDANT(S)	ORDER RE REQUEST TO PROCEED <i>IN FORMA PAUPERIS</i>

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby GRANTED.

Date

United States Magistrate Judge

IT IS RECOMMENDED that the Request to Proceed *In Forma Pauperis* be DENIED for the following reason(s):

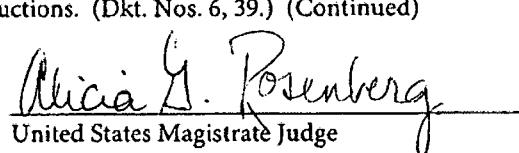
Inadequate showing of indigency District Court lacks jurisdiction
 Legally and/or factually patently frivolous Immunity as to _____
 Other: Res judicata based on dismissal with prejudice of prior case no. CV 13-9025-ODW (AGRx).

Comments:

In 2013, Calderon Lopez filed a lawsuit on behalf of Starlight Entertainment Enterprises, Inc. against landlord, Sunset Housing Solutions, L.P., in case no. CV 13-9025-ODW (AGRx). The gist of the complaint was that Sunset improperly intruded into his residence, resulting in what the complaint called "breach of contract - invasion of privacy" and "identity theft." The 2013 complaint was dismissed with prejudice after Starlight failed to file an amended complaint in accordance with the court's instructions. (Dkt. Nos. 6, 39.) (Continued)

Feb. 23, 2018

Date

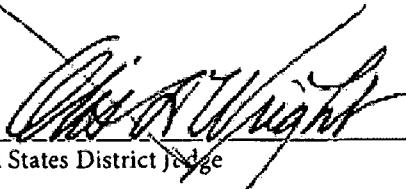


Alicia G. Rosenberg
United States Magistrate Judge
IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby:

GRANTED
 DENIED (see comments above). IT IS FURTHER ORDERED that:
 Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.
 This case is hereby DISMISSED immediately.
 This case is hereby REMANDED to state court.

February 26, 2018

Date



United States District Judge



Calderon Lopez, et al., v. Sunset Housing Solutions, L.P.
No. 18-1098-ODW (AGRx)
Page 2

(Continued)

The court had previously warned that “[f]ailure to file an amended complaint by that date will result in dismissal of this action with prejudice.” (Dkt. No. 37.)

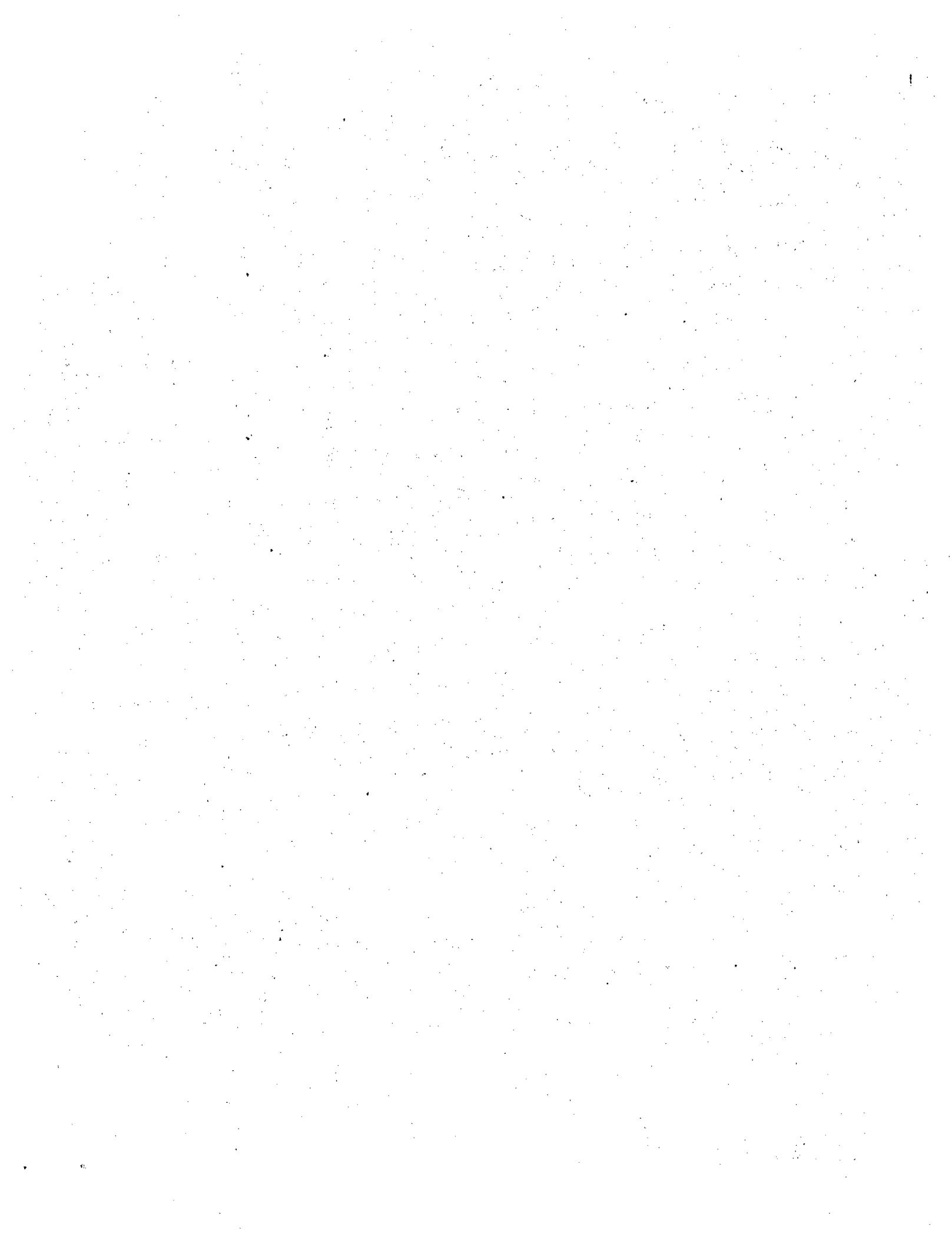
Calderon Lopez subsequently filed a complaint against Sunset Housing Solutions, L.P., among other defendants, in CV Case No. 15-3063 DSF (AGRx). The court granted Sunset’s motion to dismiss complaint based on res judicata and, alternatively, failure to state a claim. (*Id.*, Dkt. No. 25.)

On February 8, 2018, Calderon Lopez, “d/b/a Starlight Consulting Services” filed another complaint against Sunset Housing Solutions, L.P. Although the caption includes “Starlight Entertainment Enterprises, Inc.” as a plaintiff, the complaint is not signed on its behalf. The complaint alleges causes of action for breach of contract - intrusion, identity theft, bad faith retention of security deposit, breach of covenant of good faith and fair dealing, unfair business practices and breach of fiduciary duty.

Plaintiff’s complaint against Sunset Housing Solutions, L.P., is barred by res judicata. The prior action, CV No. 13-9025 ODW (AGRx), was dismissed with prejudice, which is “an adjudication on the merits.” *See Fed. R. Civ. P. 41(b).* “The preclusive effect of a federal-court judgment is determined by federal common law.” *Taylor v. Sturgell*, 553 U.S. 880, 891 (2008). The res judicata doctrine is intended to “protect against ‘the expense and vexation attending multiple lawsuits, conserv[e] judicial resources, and foste[r] reliance on judicial action by minimizing the possibility of inconsistent decisions.’” *Id.* (citation omitted).

Res judicata applies when an “earlier suit: (1) reached a final judgment on the merits; (2) involved the same cause of action or claim; and (3) involved identical parties or privies.” *Leon v. IDX Systems Corp.*, 464 F.3d 951, 962 (9th Cir. 2006). The bar also precludes claims and issues that could have been litigated and decided in the first action, even if they were not. *Arduini v. Hart*, 774 F.3d 622, 630-31 (9th Cir. 2014).

All three elements are met. A final adjudication on the merits was reached in the 2013 case. Both the 2013 case and the instant action involve claims by Plaintiff against the former landlord arising from the same transactional nucleus of facts. *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 714 (9th Cir. 2001). The current claims either were actually litigated or could have been litigated in the 2013 case. Both actions involve an identity or privity between parties. Privity “is a legal conclusion designating a person



Calderon Lopez, et al., v. Sunset Housing Solutions, L.P.
No. 18-1098-ODW (AGRx)
Page 3

so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved.” *In re Schimmels*, 127 F.3d 875, 881 (9th Cir. 1997) (internal quotation marks omitted). Parties are in privity when there is a substantial identity between the party and nonparty, and the non-party’s “interests were represented adequately by a party in the original suit.” *Id.* Starlight Entertainment Enterprises, Inc. is a named plaintiff in both suits. The 2013 complaint sought damages on behalf of Calderon Lopez, and the allegations closely associate Calderon Lopez and Starlight. The current complaint expressly cites the 2013 action (Compl. at 15.)

To the extent Plaintiff seeks relief from dismissal of the 2013 action, he must file a motion for relief from dismissal in that case based on Fed. R. Civ. P. 59, 60 or other grounds.



FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUL 13 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**RICARDO J. CALDERON-LOPEZ, DBA
Starlight Consulting Services,**

Plaintiff-Appellant,

and

**STARLIGHT ENTERTAINMENT
ENTERPRISES, INC.,**

Plaintiff,

v.

SUNSET HOUSING SOLUTIONS, L.P.,

Defendant-Appellee.

No. 18-55266

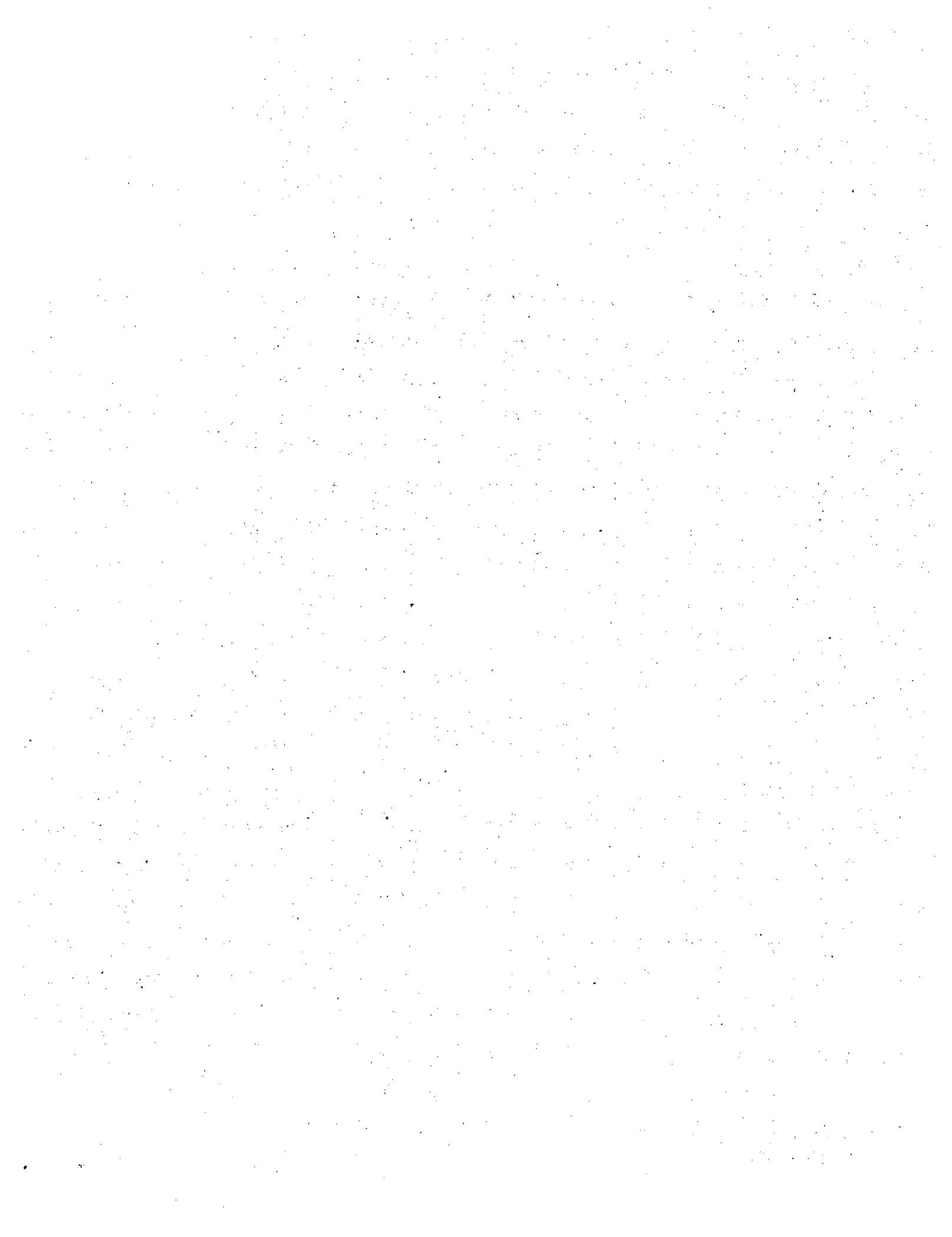
D.C. No. 2:18-cv-01098-ODW-
AGR
Central District of California,
Los Angeles

ORDER

Before: CANBY, W. FLETCHER, and CALLAHAN, Circuit Judges.

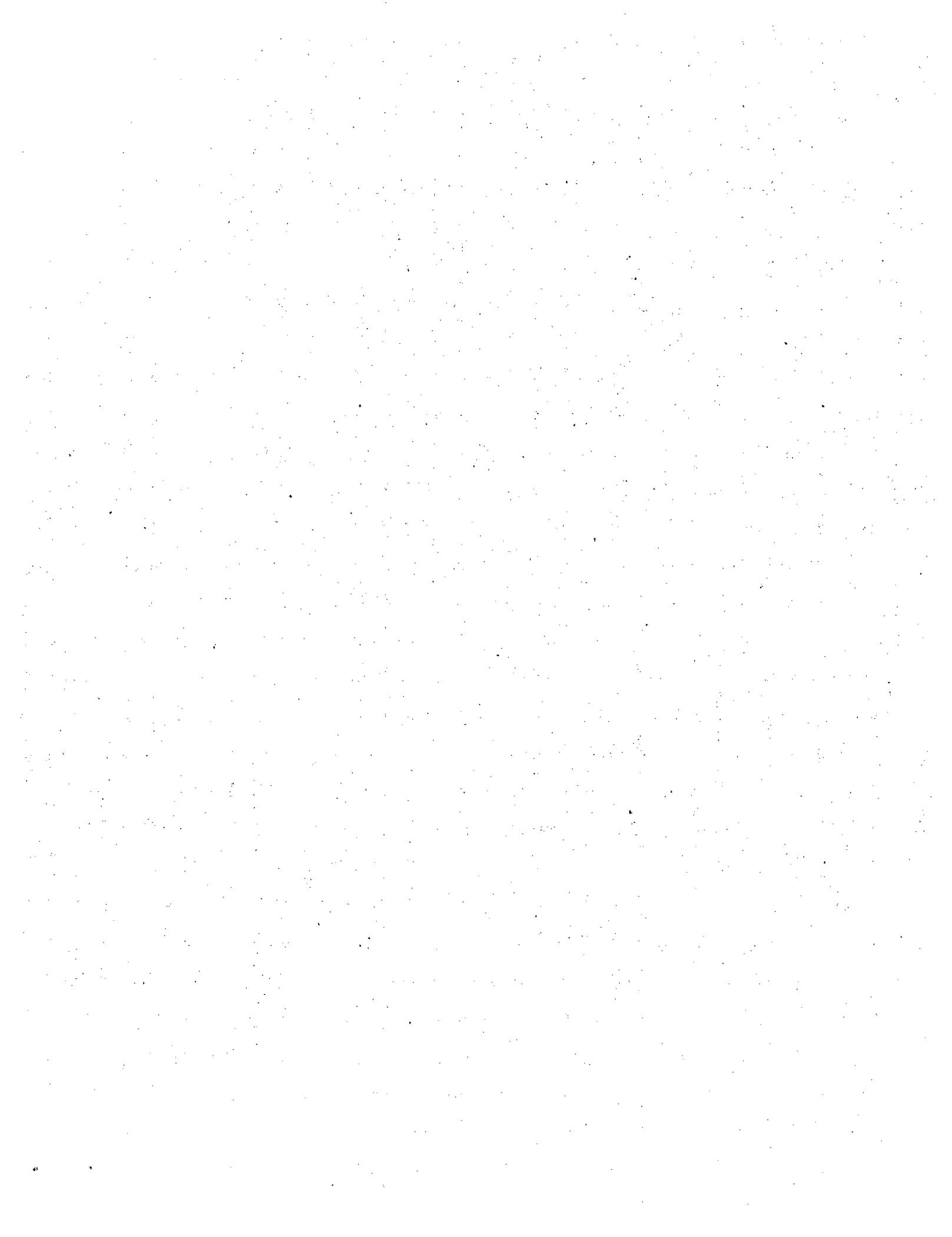
On May 9, 2018, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, the response to the May 9, 2018 order, and the opening brief received on April 26, 2018, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 4), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).



All other pending motions and requests are denied as moot.

DISMISSED.



**Additional material
from this filing is
available in the
Clerk's Office.**