

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC GIANNINI and JIHAD
BENSEBAHIA,

Plaintiffs,

v.

ROSENBERG, DAVID, individually and
in his/her official capacity as Justice of the
Superior Court of Yolo County,

Defendant.

No. 2:16-cv-3003 TLN DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiffs, Eric Giannini and Jihad Bensebahia, are proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Pending before the court is plaintiffs’ complaint and plaintiff Eric Giannini’s motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 1 & 2.) Therein, plaintiffs challenge the manner in which the defendant, a Superior Court Judge, issued a ruling.

The court is required to screen complaints brought by parties proceeding in forma pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Here, plaintiffs’ complaint is deficient. Accordingly, for the reasons stated below, the undersigned will recommend that plaintiff Eric Giannini’s application to proceed in forma pauperis be denied and plaintiffs’ complaint be dismissed without leave to amend.

1 **I. Plaintiffs’ Application to Proceed In Forma Pauperis**

2 Filing fees must be paid unless each plaintiff applies for and is granted leave to proceed in
3 forma pauperis. Here, plaintiff Jihad Bensebahia has not submitted an application to proceed in
4 forma pauperis.

5 Plaintiff Eric Giannini’s in forma pauperis application makes the showing required by 28
6 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma
7 pauperis status does not complete the inquiry required by the statute. ““A district court may deny
8 leave to proceed in forma pauperis at the outset if it appears from the face of the proposed
9 complaint that the action is frivolous or without merit.”” Minetti v. Port of Seattle, 152 F.3d
10 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th
11 Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th
12 Cir. 2014) (“the district court did not abuse its discretion by denying McGee’s request to proceed
13 IFP because it appears from the face of the amended complaint that McGee’s action is frivolous
14 or without merit”); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the
15 District Court to examine any application for leave to proceed in forma pauperis to determine
16 whether the proposed proceeding has merit and if it appears that the proceeding is without merit,
17 the court is bound to deny a motion seeking leave to proceed in forma pauperis.”).

18 Moreover, the court must dismiss an in forma pauperis case at any time if the allegation of
19 poverty is found to be untrue or if it is determined that the action is frivolous or malicious, fails to
20 state a claim on which relief may be granted, or seeks monetary relief against an immune
21 defendant. See 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an
22 arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v.
23 Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a
24 complaint as frivolous where it is based on an indisputably meritless legal theory or where the
25 factual contentions are clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

26 To state a claim on which relief may be granted, the plaintiff must allege “enough facts to
27 state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
28 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as

1 true the material allegations in the complaint and construes the allegations in the light most
2 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
3 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245
4 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
5 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
6 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
7 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

8 The minimum requirements for a civil complaint in federal court are as follows:

9 A pleading which sets forth a claim for relief . . . shall contain (1) a
10 short and plain statement of the grounds upon which the court's
11 jurisdiction depends . . . , (2) a short and plain statement of the
claim showing that the pleader is entitled to relief, and (3) a demand
for judgment for the relief the pleader seeks.

12 Fed. R. Civ. P. 8(a).

13 **II. Plaintiffs' Complaint**

14 Plaintiffs' "bring this suit pursuant to" 42 U.S.C. § 1983. (Compl. (ECF No. 1) at 1.) The
15 complaint alleges:

16 On 22 November 2016 Rosenberg, David individually and in
17 his/her official capacity as Justice of the Superior Court of Yolo,
18 County did act in such a way that he incorrectly applied,
19 disregarded the process of that application, mis-used, abused, or
20 disparaged the application of a tentative ruling pursuant to Local
Rule 11.4 at the Superior Court of California, County of Yolo at or
after 2:55 PM with respect to a Motion to Compel filed by the
Plaintiffs on 18 November 2016 in CV UD 16 1275 . . .

21 (Id. at 2.)

22 However, unless the action was "taken in the complete absence of all jurisdiction," judges
23 are absolutely immune from civil liability for actions taken in their judicial capacity. Mireles v.
24 Waco, 502 U.S. 9, 11-12 (1991). In this regard, "[a] judge is not deprived of immunity because
25 he takes actions which are in error, are done maliciously, or are in excess of his authority." Meek
26 v. County of Riverside, 183 F.3d 962, 965 (9th Cir. 1999); see also Stump v. Sparkman, 435 U.S.
27 349, 355-56 (1978) ("judges of courts of superior or general jurisdiction are not liable to civil
28 actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are

1 alleged to have been done maliciously or corruptly.”); Wagenknecht v. U.S., 533 F.3d 412, 418
2 fn.5 (6th Cir. 2008) (“A judge who acts in excess of his jurisdiction is immune from suit, whereas
3 a judge who acts in a clear absence of any jurisdiction might not be immune from suit.”); Wolfe
4 v. Strankman, 392 F.3d 358, 366 (9th Cir. 2004) (§ 1983 grants “judicial immunity from suit for
5 injunctive relief for acts taken in a judicial capacity”).

6 Accordingly, plaintiffs’ complaint should be dismissed for failure to state a claim upon
7 which relief can be granted.

8 **III. Leave to Amend**

9 The undersigned has carefully considered whether plaintiffs may amend the complaint to
10 state a claim upon which relief could be granted. “Valid reasons for denying leave to amend
11 include undue delay, bad faith, prejudice, and futility.” California Architectural Bldg. Prod. v.
12 Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass’n
13 v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to
14 amend shall be freely given, the court does not have to allow futile amendments). In light of the
15 deficiencies noted above, the undersigned finds that it would be futile to grant plaintiffs leave to
16 amend in this case.

17 **CONCLUSION**

18 Accordingly, for the reasons stated above, IT IS HEREBY RECOMMENDED that:

- 19 1. Plaintiff Eric Giannini’s December 23, 2016 application to proceed in forma pauperis
20 (ECF No. 2) be denied;
- 21 2. Plaintiffs’ December 23, 2016 complaint (ECF No. 1) be dismissed without leave to
22 amend; and
- 23 3. This action be dismissed.

24 These findings and recommendations will be submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
26 days after being served with these findings and recommendations, plaintiffs may file written
27 objections with the court. A document containing objections should be titled “Objections to
28 Magistrate Judge’s Findings and Recommendations.” Plaintiffs are advised that failure to file


1 objections within the specified time may, under certain circumstances, waive the right to appeal
2 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3

4 Dated: May 17, 2017

5

6



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 DLB:6
DB/orders/orders.pro se/giannini3003.ifp.den.f&rs

26

27

28