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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 AUSTIN JANSEN,

9 Plaintiff,

10 v.

11 MONTY COBB; COUNTY OF MASON,

12 Defendants.

Case No. 3:23-cv-05840-TMC

ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS AND DENYING  
PLAINTIFF'S MOTIONS FOR SUMMARY  
JUDGMENT

13  
14 Before the Court are pro se Plaintiff Austin Jansen's amended motion for summary  
15 judgment (Dkt. 12), Defendant County of Mason's ("Mason County" or "the County") motion to  
16 dismiss (Dkt. 14), and Mr. Jansen's second motion for summary judgment (Dkt. 18). Having  
17 considered the motions, associated responses (Dkt. 19, 20), and reply (Dkt. 23), the Court  
18 GRANTS Defendants' motion to dismiss but gives Mr. Jansen leave to amend his disability  
19 discrimination claim and DENIES Mr. Jansen's motion for summary judgment.

20 **I. BACKGROUND**

21 On September 18, 2023, Mr. Jansen filed his complaint against Defendants alleging  
22 violations of his civil and constitutional rights due to: (1) Judge Cobb's conduct as a Washington  
23 State Superior Court judge presiding over an underlying case involving Mr. Jansen in Mason  
24 County (the "underlying case"), Dkt. 1 at 8-9, and (2) Mason County allowing "Constitutional

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND DENYING PLAINTIFF'S MOTIONS FOR  
SUMMARY JUDGMENT - 1

1 Violations / Disability Discrimination to be upheld,” *id.* at 9. On November 11, 2023, Mr. Jansen  
2 moved for summary judgment. Dkt. 12. On November 20, 2023, Defendants moved to dismiss  
3 for failure to state a claim. Dkt. 14. On December 2, 2023, Mr. Jansen filed an amended motion  
4 for summary judgment, *see* Dkt. 18, much like his initial motion for summary judgment, *see*  
5 Dkt. 12.

6 Mr. Jansen’s complaint alleges that Judge Cobb allowed the underlying case to proceed  
7 with insufficient service of process. Dkt. 1 at 8. Mr. Jansen also alleges that Judge Cobb denied  
8 him sufficient time to file a response in the underlying case and wrongfully failed to terminate  
9 the case when the opposing corporate party admitted it did not have a business license. *Id.*  
10 Mr. Jansen also asserts that he was the victim of disability discrimination because Judge Cobb  
11 denied him adequate accommodations for a severe traumatic brain injury (“TBI”) by failing to  
12 provide Mr. Jansen (among other things): court-appointed counsel, sufficient time to respond to  
13 filings, and assistance with communications. *See id.* at 9, 13–15. Lastly, Mr. Jansen alleges that  
14 Mason County wrongfully upheld Judge Cobb’s adjudication of the underlying case and failed to  
15 remedy the disability discrimination he suffered during those proceedings. *See id.* Mr. Jansen’s  
16 motions for summary judgment summarize the above claims but have no supporting evidence.  
17 *See* Dkt. 12, 18.

18 Mason County’s motion to dismiss asserts that Mr. Jansen has failed to state a claim  
19 against the County because counties cannot overrule or “nullify” judges and are not vicariously  
20 liable for their actions. Dkt. 14 at 2. Mason County also argues Mr. Jansen has not sufficiently  
21 alleged direct liability against the County because he has identified no policy or custom as the  
22 “moving force” behind the alleged violations he suffered. *Id.* Mason County asserts that  
23 Mr. Jansen has alleged no violations of his constitutional or other rights by the County. *Id.*  
24

1 Mr. Jansen responds that the County remains liable because he alleges it employs Judge  
2 Cobb. Dkt. 20. He also asserts that judicial immunity should not apply to Judge Cobb because  
3 the actions taken during the underlying case were wrongful and therefore “out of the scope” of  
4 Judge Cobb’s official judicial capacity. *Id.* at 3. Mr. Jansen also argues that Judge Cobb  
5 committed fraud upon the Mason County Superior Court in the underlying case, and that the  
6 underlying judgment is therefore invalid. *See id.* at 4.

7 In Defendants’ joint reply (Dkt. 23) to Mr. Jansen’s response (Dkt. 20), they maintain  
8 that because of judicial immunity, Mr. Jansen’s claims against Judge Cobb should be dismissed  
9 because they all concern actions Judge Cobb took in his official judicial capacity presiding over  
10 the underlying case. Dkt. 23. Defendants also reassert that Mr. Jansen’s claims against Mason  
11 County should be dismissed because it is not vicariously liable for Judge Cobb’s actions and Mr.  
12 Jansen does not establish any county policy or custom of violating his rights. *Id.* at 2. Neither  
13 Mr. Jansen nor Defendants address Mr. Jansen’s disability discrimination claims in their filings  
14 concerning Defendants’ motion to dismiss. *See* Dkt. 14, 20, 23.

## 15 II. DISCUSSION

16 The Court limits its inquiry to Mason County’s motion to dismiss because resolving the  
17 county’s motion also resolves Mr. Jansen’s motions for summary judgment.

### 18 A. Legal standard for motions to dismiss.

19 A party’s “motion to dismiss for failure to state a claim” is governed by Federal Rule of  
20 Civil Procedure 12(b)(6) (also called a “Rule 12(b)(6) motion”). Under Rule 12(b)(6), the Court  
21 may dismiss a complaint that either fails to present a valid legal theory or that alleges a valid  
22 legal theory but fails to provide sufficient facts to support it. *Shroyer v. New Cingular Wireless*  
23 *Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citation omitted).

1 A complaint does not need “detailed” facts to survive a Rule 12(b)(6) motion, *Bell Atl.*  
2 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007), but it must contain facts that can plausibly support  
3 a claim “on its face” if the facts are accepted as true. *See Boquist v. Courtney*, 32 F.4th 764, 773  
4 (9th Cir. 2022) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009)). A claim is plausible “on  
5 its face” if the facts provided allow the Court to draw a reasonable inference that the defendant is  
6 liable for the alleged misconduct. *Id.* (quoting *Iqbal*, 556 U.S. at 678).

7 The Court accepts all factual allegations as true and draws all reasonable inferences in  
8 favor of the nonmoving party when evaluating a Rule 12(b)(6) motion. *Retail Prop. Tr. v. United*  
9 *Bhd. of Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014). Additionally, if a  
10 plaintiff is pro se, the Court “‘construe[s] the pleadings liberally’ and ‘afford[s] the petitioner the  
11 benefit of any doubt.’” *Boquist*, 32 F.4th at 774 (quoting *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th  
12 Cir. 2010)). But the Court does not assume the truth of legal conclusions presented as facts, *see*  
13 *Twombly*, 550 U.S. at 555, and mere conclusory statements are not enough to support a claim.  
14 *Iqbal*, 556 U.S. at 678. “A liberal construction of a pro se complaint [ . . . ] does not mean that the  
15 court will supply essential elements of a claim that are absent from the complaint.” *Boquist*, 32  
16 F.4th at 774 (citing *Litmon v. Harris*, 768 F.3d 1237, 1241 (9th Cir. 2014)).

17 If there are multiple defendants, the complaint must explain specifically what each  
18 defendant did rather than make general allegations against them as a group. *See In re Nexus 6P*  
19 *Prods. Liab. Litig.*, 293 F. Supp. 3d 888, 908 (N.D. Cal. 2018) (“Plaintiffs must identify what  
20 action each Defendant took that caused Plaintiffs’ harm, without resort to generalized allegations  
21 against Defendants as a whole.”) (internal quotations and citation omitted).

22 **B. Pro se claims can be amended to cure defects where possible.**

23 Federal Rule of Civil Procedure 15(a)(2) states that a party may amend its pleading only  
24 with the opposing party’s written consent or the court’s permission. *See Fed. R. Civ. P. 15(a)(2).*

1 Courts “should freely give leave when justice so requires.” *Id.* Pro se complaints are held to “less  
2 stringent standards than formal pleadings drafted by lawyers,” *Haines v. Kerner*, 404 U.S. 519,  
3 520 (1972), and pro se parties should be “freely given” the opportunity to amend unless there is  
4 undue delay, bad faith, or a repeated failure to fix defects—or unless it is impossible for any  
5 amendments to produce a viable claim. *See Foman v. Davis*, 371 U.S. 178, 182 (1962).

6 **C. Judicial immunity requires dismissal of the claims against Judge Cobb.**

7 Judges typically cannot be sued for judicial acts. *See Lund v. Cowan*, 5 F.4th 964, 971  
8 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 900 (2022). This principle is called judicial immunity.  
9 The Court evaluates if something is a judicial act based on whether: (1) it is a normal judicial  
10 function, (2) it took place within the judge’s chambers, (3) it centered on a case pending before  
11 the judge, and (4) it arose directly out of confrontation with the judge in their official capacity.  
12 *Id.* (quoting *Duvall v. Cnty. Of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001)).

13 The Supreme Court has noted that even informal actions taken by a judge can be a  
14 “judicial act.” *Id.* at 971. And even a judge’s mistakes are covered under judicial immunity if the  
15 error related to the functions normally performed by a judge. *Id.* at 972. Allowing judges’ errors  
16 to fall outside the scope of their job would fundamentally contradict the goal of judicial  
17 immunity, which is to allow independence to make decisions without fear of liability to “the  
18 grievances of litigants.” *Id.* at 971.

19 In this case, Mr. Jansen argues that Judge Cobb erroneously allowed the underlying case  
20 to proceed, despite insufficient service of process, and then failed to terminate the case when the  
21 opposing corporate party admitted it lacked a business license. Dkt. 1 at 8. Mr. Jansen asserts  
22 that because these actions were wrongful, they were “out of the scope” of Judge Cobb’s official  
23 judicial capacity and not covered by judicial immunity. Dkt. 20 at 3.

1 But Judge Cobb’s management of the underlying case—including his alleged decisions to  
2 allow it to proceed regardless of service requirements or the licensing status of a corporate  
3 party—falls well within the general functions performed by a judge. It was Judge Cobb’s  
4 capacity as a judge that required him to decide whether to proceed with or terminate the  
5 underlying case. This means Judge Cobb is covered by judicial immunity for those actions.  
6 Mr. Jansen cannot overcome Judge Cobb’s judicial immunity simply by alleging Judge Cobb’s  
7 decisions were wrongful. Accordingly, Mr. Jansen has failed to state a claim for Judge Cobb’s  
8 actions in the underlying case and Defendants’ motion to dismiss the claims against Judge Cobb  
9 is granted. This claim cannot be fixed by amendment because no additional facts or legal  
10 arguments would overcome Judge Cobb’s judicial immunity. *See Foman*, 371 U.S at 182.

11 **D. Mr. Jansen has not stated a constitutional claim against Mason County.**

12 Mr. Jansen’s claims for violations of his constitutional rights are brought under 42 U.S.C.  
13 § 1983 (also referred to as “Section 1983”). A county can be liable under Section 1983 for  
14 violating constitutional rights if a plaintiff shows the county had a policy or custom of violating  
15 or acting with deliberate indifference to the plaintiff’s rights. *See Monell v. Dep’t of Soc. Servs.*,  
16 436 U.S. 658, 690–91 (1978); *see also Larez v. City of Los Angeles*, 946 F.2d 630, 646–47 (9th  
17 Cir. 1991). The plaintiff must show that: (1) a constitutional violation occurred and (2) county  
18 policy or custom was a “moving force” behind the violation. *See Bd. of Cnty. Comm’rs v. Brown*,  
19 520 U.S. 397, 404 (1997). A county is not liable under Section 1983 simply because it employed  
20 someone who caused a constitutional violation. *See Lockett v. Cnty. of Los Angeles*, 977 F.3d  
21 737, 741 (9th Cir. 2020) (“*Monell* claims cannot predicate [a] municipal[ity’s] liability for  
22 constitutional violations of its officers under the theory of respondeat superior.”).

23 Mr. Jansen claims that Mason County “allowed” constitutional violations against him to  
24 occur. Dkt. 1 at 9. Mr. Jansen also claims that Mason County is liable for the alleged wrongful

1 conduct of Judge Cobb because “the County of Mason is responsible for fifty percent of [Judge  
2 Cobb’s] salary” and is therefore “under their direct employment.” Dkt. 20 at 3–4. But as  
3 explained above, Mason County cannot be liable for any alleged constitutional violations by  
4 Judge Cobb simply because the County employed him. *See Lockett*, 977 F.3d at 741. Mr. Jansen  
5 has not identified a county policy or custom that caused a violation of his constitutional rights;  
6 instead, all his allegations against the County under Section 1983 are based on the actions of  
7 Judge Cobb. Accordingly, the Court dismisses Mr. Jansen’s constitutional claims against Mason  
8 County. This claim cannot be fixed by amendment because no additional facts would make  
9 Mason County liable based on its employment of Judge Cobb. *See Foman*, 371 U.S at 182.

10 **E. Mr. Jansen has not stated an ADA claim against Mason County but may**  
11 **amend his complaint.**

12 Section 12132 of the Americans with Disabilities Act (“ADA”) forbids the exclusion of  
13 individuals with disabilities from participation in or receipt of benefits from “the services,  
14 programs, or activities of a public entity,” and prohibits “discrimination by any such entity”  
15 based on disability. 42 U.S.C. § 12132. Washington state implements the ADA in state courts  
16 with Washington State General Rule 33, which requires “reasonable modifications in policies,  
17 practices, and procedures” in “each court service, program, or activity.” Wash. Gen. R. 33.  
18 Requests for accommodation “should be made in advance whenever possible.” *Id.*

19 A plaintiff can prove a public program or service violated Section 12132 of the ADA if  
20 he can show he is (1) a “qualified individual with a disability” who was, (2) excluded from or  
21 denied the benefits of a public entity’s services, programs, or activities, or was otherwise  
22 discriminated against, (3) because of his disability. *Duvall*, 260 F.3d at 1135 (citing *Weinreich v.*  
23 *Los Angeles Cnty. Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997)). When a plaintiff  
24 “has alerted the public entity to his need for accommodation . . . the public entity is on notice that

1 an accommodation is required.” *Id.* at 1139. Under the ADA, a public entity *can* be liable for the  
2 acts of its employees. *Id.* at 1141 (finding that a disabled individual presented sufficient evidence  
3 that county employees were deliberately indifferent to his need for accommodation). Judicial  
4 immunity, however, prevents the County for being liable for the actions of an employee if the  
5 employee is a judge and acting in that capacity. *See Lund*, 5 F.4th at 973. The County remains  
6 liable for the violations of any other employees.

7 Neither Mr. Jansen nor Defendants address his claim of disability discrimination in their  
8 filings on Defendants’ motion to dismiss. But Mr. Jansen pled that Mason County failed to  
9 accommodate his disabilities and claims he submitted evidence of disability to Judge Cobb and  
10 the Mason County Superior Court. *See Dkt. 1* at 14–15, 18, 51–56. Mr. Jansen’s complaint  
11 focuses on Judge Cobb’s actions, but the judge has judicial immunity.

12 Accordingly, the Court dismisses Mr. Jansen’s disability discrimination claim for now.  
13 But “before dismissing a pro se complaint the district court must provide the litigant with notice  
14 of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to  
15 amend effectively.” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012). “A district court  
16 should not dismiss a pro se complaint without leave to amend unless it is absolutely clear that the  
17 deficiencies of the complaint could not be cured by amendment.” *Id.* (internal quotation marks  
18 and citation omitted). It is not “absolutely clear” that Mr. Jansen cannot amend his disability  
19 discrimination claim to fix the deficiencies identified in this Order and provide adequate facts for  
20 his ADA claim. Under *Lund*, the County is not liable under the ADA for acts of Judge Cobb that  
21 are shielded by judicial immunity. *See Lund*, 5 F.4th at 973. But it is possible Mr. Jansen could  
22 allege additional facts demonstrating the involvement of other County employees in the alleged  
23 failure to accommodate his disability. The Court therefore grants Mr. Jansen leave to amend his  
24 ADA claim.



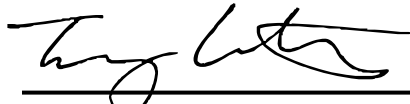
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**III. CONCLUSION**

For the reasons stated above, the Court GRANTS Defendants’ motion to dismiss. Dkt. 14. Mr. Jansen’s claims against Judge Cobb and his Section 1983 claims against Mason County are DISMISSED with prejudice. The Court GRANTS Mr. Jansen leave to amend his complaint for his disability discrimination claim against Mason County. Mr. Jansen must file his amended complaint, with Mason County as the only defendant, by January 26, 2024. If Mr. Jansen does not file an amended complaint, the Court will close this case. Mr. Jansen’s motions for summary judgment (Dkt. 12, 18) are DENIED as moot.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party’s last known address.

Dated this 4th day of January, 2024.

  
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Tiffany M. Cartwright  
United States District Court Judge