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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Rasool Kashkool,

) No. CV 09-1898-PHX-JAT

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Plaintiff,

) **ORDER**

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vs.

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John Rea; Jane Doe Rea,

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Defendants.

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Pending before the Court is Plaintiff's motion to proceed in forma pauperis under 28

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U.S.C. § 1915.

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A. 28 U.S.C. § § 1915(e)(2)

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Congress provided with respect to in forma pauperis cases that a district court "shall dismiss the case at any time if the court determines" that the "allegation of poverty is untrue" or that the "action or appeal" is "frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). While much of section 1915 outlines how prisoners can file proceedings in forma pauperis, section 1915(e) applies to all in forma pauperis proceedings, not just those filed by prisoners. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000)("section 1915(e) applies to all in forma pauperis complaints"). "It is also clear that section 1915(e) not only permits but requires a district court to dismiss an in forma pauperis complaint that fails to state a claim." *Id.* Therefore, this court must dismiss an in forma pauperis complaint if it fails to state a claim or if it is frivolous or malicious.

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Kennedy v. Andrews, 2005 WL 3358205, *2 (D. Ariz. 2005).

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1 **B. Plaintiff's complaint**

2 In this case, the Court has reviewed the Complaint and it appears to be frivolous.
3 Specifically, it sues the Honorable John Rea of the Maricopa County Superior Court for a
4 decision he made in a case in which Plaintiff was a party. Plaintiff disagrees with that
5 decision. In his prayer for relief, Plaintiff asks this Court to, "Fire this Judge from Superior
6 Court" and award, "pushing damage for amount of \$10,000,000." Doc. #1 at 2.

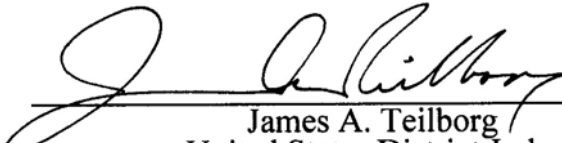
7 Judges are immune from suit for all actions taken in their judicial capacity, *Mireles*
8 *v. Waco*, 502 U.S. 9, 11-12 (1991); even if the decision was erroneous, *Cleavinger v. Saxner*,
9 474 U.S. 193, 199-200 (1985). Thus, Plaintiff cannot sue Judge Rea for a decision with
10 which Plaintiff disagrees. Additionally, this Court does not have the power or authority to
11 fire a Superior Court Judge; so, this Court cannot grant Plaintiff the relief he seeks. Finally,
12 "pushing damage" is not a kind of damage recognized by state or federal law.

13 **C. Conclusion**

14 Because Plaintiff's Complaint appears to seek monetary damages against a defendant
15 who is immune and fails to state a claim for injunctive relief that is within this Court's
16 power, the Court will not grant in forma pauperis status. Plaintiff will be given leave to file
17 an amended complaint, which the Court will then consider and determine whether in forma
18 pauperis status is appropriate. Therefore,

19 IT IS ORDERED that Plaintiff shall file an amended complaint within thirty days of
20 the date of this Order or this case will be dismissed for the reasons stated above.

21 DATED this 22nd day of September, 2009.

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25 James A. Teilborg
26 United States District Judge
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