

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Sheila Bilyeu,

10 Plaintiff,

11 v.

12 Leo Bernard Myers, Maricopa County
13 Superior Court, Judge Janice Crawford,
14 Judge Thomas L. LeClaire, The Cavanagh
15 Law Firm, Philip Gerard,

16 Defendants.

No. CV13-01484-PHX-DGC

ORDER

17 Plaintiff Sheila Bilyeu commenced this action by filing a pro se complaint against
18 Defendants on July 22, 2013. Doc. 1. Plaintiff alleges that Defendants mistreated her
19 and conspired against her during post-divorce proceedings with her former husband.
20 Doc. 1. Defendants move to dismiss the complaint pursuant to Federal Rules of Civil
21 Procedure 12(b)(1) and 12(b)(6). Docs. 8, 11, 13. The motions are fully briefed.
22 Docs. 12, 14, 20, 21. For the reasons that follow, the Court will grant the motions to
23 dismiss.

24 **I. Legal Standard.**

25 A motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) can
26 be either a facial or factual attack on the allegations. *Thornhill Publ'g Co. v. Gen. Tel. &*
27 *Elec. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). A facial attack occurs when the moving
28 party asserts that the allegations contained in the complaint are “insufficient on their face

1 to invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039
2 (9th Cir. 2004). A factual attack “disputes the truth of the allegations that, by themselves,
3 would otherwise invoke federal jurisdiction.” *Id.* If the attack is facial, the complaint’s
4 factual allegations are taken as true and construed in favor of the non-moving party.
5 *Jacobson v. Katzer*, 609 F.Supp.2d 925, 930 (N.D. Cal. 2009) (citing *Fed’n of African*
6 *Am. Contractors v. City of Oakland*, 96 F.3d 1204, 1207 (9th Cir. 1996)). If the attack is
7 factual, the plaintiff’s allegations are not entitled to a presumption of truthfulness, a court
8 may look beyond the pleadings to resolve factual disputes, and the plaintiff has the
9 burden of proving that jurisdiction exists. *Safe Air for Everyone*, 373 F.3d at 1039.

10 Dismissal is appropriate under Rule 12(b)(6) where the plaintiff fails to state a
11 claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Legal conclusions
12 couched as factual allegations “are not entitled to the assumption of truth.” *Ashcroft v.*
13 *Iqbal*, 556 U.S. 662, 679 (2009). To avoid a Rule 12(b)(6) dismissal, the complaint must
14 plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp.*
15 *v. Twombly*, 550 U.S. 554, 570 (2007). This plausibility standard “is not akin to a
16 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant
17 has acted unlawfully.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556).
18 “[W]here the well-pleaded facts do not permit the court to infer more than the mere
19 possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – ‘that the
20 pleader is entitled to relief.’” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

21 **II. Discussion.**

22 **A. Defendants Leo Bernard Myers, Philip Gerard, and The Cavanagh** 23 **Law Firm.**

24 In her complaint, Plaintiff expresses both her unhappiness with Myers’ conduct
25 during their marriage and her disagreements with the post-divorce proceedings conducted
26 in Maricopa County Superior Court. Doc. 1. She alleges that Myers probably knew of a
27 device allegedly implanted into her head by the government and had a duty to tell her
28 about the device and help her receive compensation. Doc. 1 at 2. The allegations against

1 Defendants Gerard and The Cavanagh Law Firm arise from Plaintiff's unhappiness with
2 Gerard's representation of Myers during the post-divorce proceedings. Doc. 1 at 3, 5-7.
3 The Court concludes lacks subject matter jurisdiction over these claims.

4 The Court has subject matter jurisdiction when the citizenship of each plaintiff is
5 diverse from the citizenship of each defendant. *See, e.g., Caterpillar, Inc. v. Lewis,*
6 519 U.S. 61, 68 (1996). Plaintiff lists her address as Flagstaff, Arizona, and argues that
7 because Myers is the first listed defendant, there is diversity of citizenship. Doc. 12 at 1.
8 Plaintiff misunderstands the complete diversity rule. The relevant statute requires
9 complete diversity between all parties, not just the first party named in the complaint.
10 28 U.S.C. § 1332(a)(1). Because there are multiple Arizona defendants named in the
11 complaint, and because Plaintiff is an Arizona resident, the Court lacks diversity
12 jurisdiction. *See, e.g., Wisconsin Dept. of Corr. V. Schacht,* 524 U.S. 381, 388 (1998).

13 The Court also lacks federal question jurisdiction. The Court has subject matter
14 jurisdiction "when a federal question is presented on the face of the plaintiff's properly
15 pleaded complaint." *Rivet v. Regions Bank of La.,* 522 U.S. 470, 475 (1998). Although
16 Plaintiff lists various federal statutes on the face of her complaint, the Court is unable to
17 discern any federal claim that could apply to Defendants Myers, Gerard, or The
18 Cavanagh Law Firm. A federal question does not exist "where the alleged claim under
19 the Constitution or federal statutes clearly appears to be immaterial and made solely for
20 the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and
21 frivolous." *Bell v. Hood,* 327 U.S. 678, 682-83 (1946). Plaintiff cites 18 U.S.C. §§ 73
22 and 241, both of which are criminal statutes inapplicable to parties in a civil case.
23 Plaintiff also cites 42 U.S.C. § 1983, but that civil rights statute does not apply to
24 Defendants because they are not "state actors." *See, e.g., Brunette v. Humane Soc'y of*
25 *Ventura County,* 294 F.3d 1205, 1209 (9th Cir. 2002).

26 The Court will grant Defendants Myers, Gerard, and The Cavanagh Law Firm's
27 motions to dismiss and will dismiss all claims against these defendants for lack of subject
28 matter jurisdiction. Under Rule 15 of the Federal Rules of Civil Procedure, the Court

1 should freely give leave to amend when justice so requires. Fed. R. Civ. P. 15(a)(2).
2 This Circuit has held that “[a] pro se litigant must be given leave to amend his or her
3 complaint unless it is absolutely clear that the deficiencies of the complaint could not be
4 cured by amendment.” *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623
5 (9th Cir. 1988) (quotation marks and citations omitted). In this case, it is at least possible
6 that Plaintiff can cure the jurisdictional defect: she can assert her claim in diversity
7 against Defendant Myers alone, or she can assert a viable federal claim against each
8 defendant. Although the Court doubts that either course ultimately will succeed, the
9 Court must afford Plaintiff the opportunity and therefore will grant leave to amend.

10 Plaintiff’s complaint attempts to address several different alleged wrongs in a
11 single long paragraph. In any amended complaint, Plaintiff must set forth separate claims
12 in separate counts, identifying the defendant alleged to be liable in each count.

13 **B. Defendants Judge Janice Crawford, Judge Thomas LeClaire, and**
14 **Maricopa County Superior Court.**

15 Plaintiff makes a number of allegations against Defendants Crawford, LeClaire,
16 and Maricopa County Superior Court regarding the post-divorce proceedings. In short,
17 Plaintiff disagrees with decisions made by the judges in connection with the proceedings
18 and alleges that they conspired against her with other defendants. The claims these
19 Defendants are barred as a matter of law and the Court will dismiss them with prejudice.

20 The face of Plaintiff’s complaint lists 42 U.S.C § 1983 among various other
21 federal and state statutes as grounds for relief. Doc. 1 at 1. Under § 1983, a plaintiff may
22 seek relief for federal constitutional violations by officials acting under color of state law.
23 *See, e.g., Brunette*, 294 F.3d at 1213. Because Defendants Crawford and LeClaire are the
24 only state actors listed as defendants, the Court construes Plaintiff’s § 1983 complaint to
25 be directed at these two defendants. Because a civil rights claim pursuant to § 1983
26 raises a federal question, the Court has subject matter jurisdiction.

27 All of Plaintiff’s claims against Defendants Crawford and LeClaire relate to
28 actions or omissions in the course and scope of their duties as judges. Judges “are

1 absolutely immune from liability for [their] judicial acts, even if [their] exercise of
2 authority is flawed[.]” *Stump v. Sparkman*, 435 U.S. 349, 359 (1978). For purposes of
3 judicial immunity, a judicial act is a function normally performed by a judge in his or her
4 official capacity. *See id.* at 362. Plaintiff alleges an “unfair final order” by Judge
5 LeClaire, (Doc. 1 at 7), that “Judge Crawford . . . tried to bully, gang up on, and [conspire
6 against her],” (*id.*), and expresses dissatisfaction with the guardian ad litem and the
7 psychiatrist appointed by Judge Crawford (Doc. 1 at 3). Each of these allegations relates
8 to acts performed by Judges Crawford and LeClaire in their official capacity as judges,
9 and her claims against Maricopa County Superior Court are based on the actions of these
10 judges. As a result, all claims against these Defendants are barred by absolute judicial
11 immunity. This defect in Plaintiff’s claims cannot be overcome by amending the
12 complaint, and the Court therefore will dismiss the claims against Crawford, LeClaire,
13 and Maricopa County Superior Court with prejudice.

14 **III. Plaintiff’s Obligations.**

15 Plaintiff must become familiar with, and follow, the Federal Rules of Civil
16 Procedure and the Rules of the United States District Court for the District of Arizona
17 (“Local Rules”), which may be obtained in the Clerk of Court’s office. For purposes of
18 the amended complaint, Plaintiff is directed to Rule 8 of the Federal Rules of Civil
19 Procedure. Rule 8(a) provides that a complaint “shall contain (1) a short and plain
20 statement of the grounds upon which the court’s jurisdiction depends, . . . (2) a short and
21 plain statement of the claim showing that the pleader is entitled to relief, and (3) a
22 demand for judgment for the relief the pleader seeks.” Fed. R. Civ. P. 8(a). These
23 pleading requirements shall be set forth in separate and discrete paragraphs. Rule 8(e)
24 provides that each such paragraph “shall be simple, concise, and direct.”
25 Fed. R. Civ. P. 8(e)(1). The forms contained in the Appendix to the Federal Rules of
26 Civil Procedure – which include forms regarding jurisdictional statements and sample
27 complaints on various causes of action – “are sufficient under the rules and are intended
28 to indicate the simplicity and brevity of statement which the rules contemplate.”

1 Fed. R. Civ. P. 84.

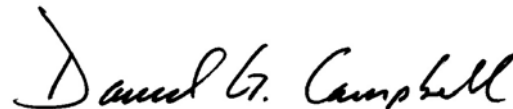
2 The amended complaint must give Defendants fair notice of what Plaintiff's claims
3 are and the grounds upon which they are based. *See Holgate v. Baldwin*, 425 F.3d 671,
4 676 (9th Cir. 2005). This includes some factual basis for the claims and the specific legal
5 theory supporting each claim. *See id.*; Fed. R. Civ. P. 8(a)(2). The amended complaint
6 must also provide a clear statement of this Court's jurisdiction and the relief Plaintiff
7 seeks. *See* Fed. R. Civ. P. 8(a)(1), (3).

8 If Plaintiff fails to prosecute this action or comply with the rules or any Court
9 order, the Court may dismiss the action with prejudice pursuant to Rule 41(b). *See Ferdik*
10 *v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992).

11 **IT IS ORDERED:**

- 12 1. Defendants' motions to dismiss (Docs. 8, 11, 13) are **granted**.
- 13 2. The complaint (Doc. 1) is **dismissed with prejudice** with respect to
14 Defendants Crawford, LeClaire, and Maricopa County Superior Court.
- 15 3. The complaint (Doc. 1) is **dismissed without prejudice** with respect to
16 Defendants Leo Bernard Myers, The Cavanagh Law Firm, and Philip
17 Gerard.
- 18 4. Plaintiff shall have until **November 1, 2013** to file an amended complaint
19 consistent with this order.
- 20 5. The Rule 16 Case Management Conference set for October 11, 2013 at
21 4:30 p.m. is **vacated**.

22 Dated this 10th day of October, 2013.

23
24
25 

26 _____
27 David G. Campbell
28 United States District Judge