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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Andre William Armstrong,
Plaintiff,
v.
Randall Warner,
Defendant.

No. CV-17-01726-PHX-DGC

ORDER

Randall Warner,
Defendant.

In IFP proceedings, a district court “shall dismiss the case at any time if the court determines that . . . the action . . . fails to state a claim on which relief can be granted[.]” 28 U.S.C. § 1915(e)(2). Section 1915(e)(2)(B)(ii) allows a district court to dismiss a claim *sua sponte*. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

Judges are absolutely immune from suits for damages for their judicial acts, except when those acts are taken “in the clear absence of all jurisdiction.” *Stump v. Sparkman*, 435 U.S. 349, 356-357 (1978); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986).

1 An act is “judicial” when it is a function normally performed by a judge and the parties
2 dealt with the judge in his or her judicial capacity. *Stump*, 435 U.S. at 362; *Crooks v.*
3 *Maynard*, 913 F.2d 699, 700 (9th Cir. 1990). In this case, Plaintiff’s allegations
4 regarding Defendant Warner are related to actions he performed in a judicial capacity.
5 Defendant Warner is therefore immune from suit. The Court finds that Plaintiff’s claims
6 cannot be cured by the allegation of additional facts and will therefore dismiss the
7 complaint without leave to amend. *Lopez*, 203 F.3d at 1127 (leave to amend should be
8 granted unless the district court “determines that the pleading could not possibly be cured
9 by the allegation of other facts”).

10 The Court will deny Plaintiff’s motion to appoint a guardian ad litem. Doc. 6. *See*
11 *Ingram v. City of San Francisco*, 2012 WL 3257805 (N.D. Cal. 2012) (declining to
12 appoint a guardian ad litem where plaintiff failed to raise meritorious claims); *Perri v.*
13 *Obama*, 2011 WL 685826, *3 (E.D.N.Y. 2011) (appointment of a guardian ad litem
14 would be futile where it appears that no guardian could save plaintiff’s claims from
15 dismissal); *M.F. ex rel. Branson v. Malott*, 2012 WL 1950274, *7 (S.D. Ohio 2012)
16 (appointment of a guardian ad litem would serve no useful purpose because it appears
17 that no guardian ad litem could save the complaint from dismissal); *see also Mandeville*
18 *v. Wertheimer*, 2002 WL 432689 (S.D.N.Y. 2002) (“When considering the appointment
19 of a guardian ad litem, the Court while seeking to protect a litigant’s interests, must also
20 be mindful of its obligation to avoid any potential waste of judicial resources through the
21 unnecessary appointment of a guardian ad litem.”).

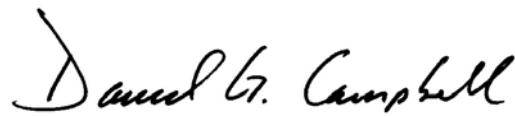
22 **IT IS ORDERED:**

23 1. Plaintiff’s application to proceed *in forma pauperis* (Doc. 2) is **granted**.
24 2. Plaintiff’s complaint (Doc. 1) is **dismissed with prejudice**.
25 3. Plaintiff’s motion to appoint guardian ad litem (Doc. 6) is **denied**.

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1 4. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3) and the Federal
2 Rule of Appellate Procedure 24(a)(3)(A), that any appeal of this decision
3 would not be taken in good faith.

4 Dated this 3rd day of July, 2017.

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9 David G. Campbell
10 United States District Judge

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