

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Nathaniel Bitsui,

10 Plaintiff,

11 v.

12 Michael Rassas, et al.,

13 Defendants.
14

No. CV-21-00200-PHX-DJH

AMENDED ORDER

15 Pending before the Court is Defendants Judge Michael Rassas and Judge Howard
16 Sukenic’s Motion to Dismiss (Doc. 15). They move to dismiss this action with prejudice.
17 *Pro se* Plaintiff Nathaniel Bitsui has filed a response in opposition (Doc. 19), and
18 Defendants have filed a Reply (Doc. 21). The matter is fully briefed. For the following
19 reasons, the Court will grant the Motion in part. The Court will dismiss Plaintiff’s
20 Complaint without prejudice, and it will dismiss Judge Rassas and Judge Sukenic from this
21 action with prejudice.

22 **I. Background**

23 This case appears to arise from a family court matter litigated in Maricopa County
24 Superior Court. The named Defendants are all judges, attorneys, and the State of Arizona.
25 (Doc. 1 at 1). Because so few facts are actually alleged, it is hard to tell the precise nature
26 of that case. What are plain are the allegations that Judge Rassas issued “illegal orders”
27 depriving Plaintiff of federal benefits. (*Id.* at 8). Judge Rassas allegedly “treated the
28 Plaintiff’s [federal benefits] as ‘income’ for support orders under Arizona law,” which

1 Plaintiff argues was beyond the Judge's authority. (*Id.*) The Complaint also alleges that
2 Judge Sukenic issued similar illegal orders. (*Id.* at 11). Plaintiff generally alleges that this
3 lawsuit is about "the fraud committed" by Defendants who were "fully aware" that they
4 lacked jurisdiction to adjudicate matters related to Plaintiff's federal benefits. (*Id.* at 13).

5 The Complaint's claims are brought under 42 U.S.C. §§ 1983, 1985 and "under
6 Common Law Torts." (*Id.* at 1). Plaintiff seeks declaratory and injunctive relief from the
7 state court order as well as damages. (*Id.* at 7). Judge Rassas and Judge Sukenic move to
8 dismiss the Complaint with prejudice. (Doc. 15 at 1). The Motion appears to be made
9 under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6).

10 **II. Legal Standard**

11 Complaints must plainly and briefly show the pleader is entitled to relief. Fed. R.
12 Civ. P. 8(a)(2). This standard does not require "'detailed factual allegations,' but it
13 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation."
14 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S.
15 544, 555 (2007)). Complaints must show "more than a sheer possibility that a defendant
16 has acted unlawfully." *Id.* The alleged facts must "raise a right to relief above the
17 speculative level" *Twombly*, 550 U.S. at 555. In addition, if a party alleges fraud,
18 that "party must state with particularity the circumstances constituting fraud or mistake."
19 Fed. R. Civ. P. 9(b).

20 In evaluating a motion to dismiss, the Court will accept a complaint's factual
21 allegations as true, and it will interpret them in a plaintiff's favor. *Lee v. City of L.A.*, 250
22 F.3d 668, 679 (9th Cir. 2001) (citing *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th
23 Cir. 1996)). However, the Court need not accept a Complaint's legal conclusions.
24 *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

25 **III. Analysis**

26 Defendants identify four flaws in the Complaint. (Doc. 15 at 1). They argue that
27 this Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine, that their
28 status as judges makes them immune from this suit, that the federal claims against Judge

1 Sukenic are barred by the statute of limitations, and that Plaintiff fails to state a claim. (*Id.*)

2 a. *Rooker-Feldman*

3 “If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a
4 state court, and seeks relief from a state court judgment based on that decision, *Rooker–*
5 *Feldman* bars subject matter jurisdiction in federal district court.” *Noel v. Hall*, 341 F.3d
6 1148, 1164 (9th Cir. 2003). The doctrine stems from the principle that federal district
7 courts only have limited original jurisdiction, and that they lack appellate jurisdiction over
8 state proceedings. *Id.* at 1155.

9 In *District of Columbia Court of Appeals v. Feldman*, the Supreme Court held that
10 federal district courts lack jurisdiction “over challenges to state court decisions in particular
11 cases arising out of judicial proceedings even if those challenges allege that the state court’s
12 action was unconstitutional.” 460 U.S. 462, 486 (1983). In that case, Feldman brought a
13 suit against a local court and its officers in a federal district court after the local appeals
14 court denied Feldman’s petitions to be admitted to the bar. *Id.* at 468. The Court held that
15 federal district courts lacked authority to review final state court judgments; only the
16 Supreme Court has that power. *Id.* at 482. As the Ninth Circuit latter summarized, the
17 doctrine applies when a federal plaintiff complains “of harm caused by a state court
18 judgment that directly withholds a benefit from (or imposes a detriment on) the federal
19 plaintiff, based on an allegedly erroneous ruling by that court.” *Noel*, 341 F.3d at 1163.

20 Here, Plaintiff is complaining of a harm cause by a state court judgment that
21 withheld benefits from him. Plaintiff argues that *Rooker-Feldman* does not apply because
22 this case is “not an appeal.” (Doc. 19 at 5). However, the relief Plaintiff seeks is a judgment
23 from this Court declaring that a state court’s action in violation of federal law. (Doc. 1 at
24 7). Granting his requested relief would be the “*de facto* equivalent” of an appeal. *See Noel*,
25 341 F.3d at 1155. To the extent that Plaintiff’s Complaint alleges harm caused by the state
26 court’s allegedly erroneous ruling, under *Rooker-Feldman*, this Court has no power to
27 address Plaintiff’s claim.

28 ///

1 *b. Judicial Immunity*

2 Judge Rassas and Judge Sukenic argue they are immune from this action because
3 Plaintiff's claims relate to their judicial activities. (Doc. 15 at 4). It is well established that
4 judges are immune "from liability for damages for acts committed within their judicial
5 jurisdiction" *Pierson v. Ray*, 386 U.S. 547, 554 (1967). There are some limits to this
6 immunity. For example, a judge is not immune from suits for prospective injunctive relief.
7 *Pulliam v. Allen*, 466 U.S. 522, 541 (1984). Nor does immunity protect a judge whose
8 actions were "taken in the complete absence of all jurisdiction." *Mireles v. Waco*, 502 U.S.
9 9, 12 (1991). Plaintiff argues that his suit is for prospective relief, and that the complained
10 of actions were taken without proper jurisdiction. (Doc. 19 at 2–3).

11 Plaintiff's request for "Prospective Injunctive Relief" asks for a "ruling that the
12 State has no authority to assign VA or SSA benefits . . . [and that] the State must perform
13 an audit of ALL cases involving the Plaintiff to identify and resolve every act of
14 misconduct, abuse of discretion and violation of Rights covered by Preemption." (Doc. 1
15 at 7). But this is not a request for prospective injunctive relief. In *Papasan v. Allain*, the
16 Supreme Court differentiated between prospective and retrospective relief. 478 U.S. at
17 278. Retrospective relief, "in essence serves to compensate a party injured in the past by
18 an action of a state official in his official capacity that was illegal" *Id.* Plaintiff's
19 requested relief likewise attempts to compensate himself for past state actions. His
20 requested injunctive relief is not prospective. *Twombly*, 550 U.S. at 555 (holding that
21 courts need not accept a complaint's legal conclusions).

22 Plaintiff also argues that Arizona family courts lack jurisdiction to consider federal
23 benefits as income for purposes of support orders. (Doc. 19 at 3). Plaintiff makes the legal
24 assertion that where "[Combat Related Special Compensation, Veterans Affairs, or Social
25 Security Administration] benefits are concerned, the state has NO authority to use them in
26 any legal or equitable process, whatever." (*Id.*) The Court need not address authority that
27 contradicts this proposition. *See* 10 U.S.C. § 1408(d) (allowing military retirement pay to
28 be allocated by state court orders to pay child support or alimony); 42 U.S.C. § 659 (stating

1 that payments under Title 38 and 42 may be withheld “in accordance with State law” for
2 child support or alimony). It is sufficient to note that Plaintiff concedes Arizona’s superior
3 courts have jurisdiction over “a wide variety of things, including child support” (Doc.
4 19 at 3). Arizona’s superior courts do have original jurisdiction over a wide variety of
5 matters, including divorce. Ariz. Const. art. VI § 14. As this is an action seemingly rooted
6 in a divorce proceeding, Plaintiff fails to show that Judge Rassas and Judge Sukenic acted
7 “in the *complete absence* of all jurisdiction.” *Mireles*, 502 U.S. 9, 12 (1991) (emphasis
8 added). Both Judge Rassas and Judge Sukenic remain immune from the claims in this suit.

9 *c. Statute of Limitations for Judge Sukenic*

10 Defendants note that the Complaint only alleges claims against Judge Sukenic
11 arising from 2015 and 2016, which fall well outside the two-year statute of limitations for
12 §§ 1983 and 1985 claims. (Doc. 15 at 6) (citing *McDougal v. Cnty. of Imperial*, 942 F.2d
13 668, 680 (9th Cir. 1991) (holding that a state’s personal-injury action statute of limitation
14 applies to §§ 1983 and 1985 claims); A.R.S. § 12-542(1) (establishing a two-year limit on
15 personal injury claims)). Plaintiff’s fails to address this argument except to say “[t]here is
16 no statute of limitations on the predatory embezzlement of federal funds” (Doc. 19 at
17 4). But there is no doubt that § 1983 and § 1985 claims have a statute of limitations, and
18 such claims against Judge Sukenic based on events from 2015 and 2016 are time barred.

19 *d. Failure to State a Claim*

20 Defendants also argue the Complaint fails to state a claim by only making “blanket
21 assertions without any factual allegations” (Doc. 15 at 7). The Court agrees.
22 Plaintiff’s Complaint alleges so few facts that the Court cannot infer what Plaintiff’s
23 precise tort claim or claims are. And while the Complaint alleges fraud, it does not meet
24 the heightened pleading requirements established by Federal Rule of Civil Procedure 9(b).
25 *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (“Averments of
26 fraud must be accompanied by ‘the who, what, when, where, and how’ of the misconduct
27 charged.”) (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)). Invoking the
28 word fraud, without further factual allegations, does not suffice to state a claim.

1 Because of the deficiencies detailed above, the Court will dismiss Plaintiff's
2 Complaint.

3 **IV. Leave to Amend**

4 Courts freely give leave to amend complaints "when justice so requires." Fed. R.
5 Civ. P. 15(a)(2). This Rule helps courts reach the merits of a claim, rather than just
6 dismissing them on the pleadings or technicalities. *Lopez v. Smith*, 203 F.3d 1122, 1127
7 (9th Cir. 2000). But courts are not required to grant leave to amend, and "[f]utility of
8 amendment can, by itself, justify the denial of a motion for leave to amend." *Bonin v.*
9 *Calderon*, 59 F.3d 815, 845 (9th Cir. 1995).

10 There are many reasons why the Court is inclined to believe that the problems
11 identified by this Order cannot be cured by amendment. With regards to Judge Rassas and
12 Judge Sukenic, the Court finds it would be futile to permit Plaintiff to carry on his claims
13 against them because of the *Rooker-Feldman* doctrine and judicial immunity. Therefore,
14 the Court will dismiss both Judge Rassas and Judge Sukenic from this action with
15 prejudice. At this juncture, however, because there are so few facts alleged in the
16 Complaint, it would be premature to dismiss this entire case with prejudice.

17 Plaintiff may now proceed in several ways. Because Federal Rule of Civil
18 Procedure 15(a)(1)(B) allows Plaintiff to file an amended complaint within 21 days after
19 service of a Rule 12(b) motion, Plaintiff may file an amended complaint by March 30,
20 2021. If Plaintiff fails to file an amended complaint by that deadline, then Plaintiff must
21 file a motion for leave to amend in accordance with Local Rule 15.1(a).¹ The Court will
22 remind Plaintiff that any amended complaint must address the deficiencies noted above.
23 Plaintiff may also voluntarily file a notice of dismissal and dismiss this action. Fed. R.
24 Civ. P. 41(a)(1)(A).

25 ///

26 ///

27 ¹ "A party who moves for leave to amend a pleading must attach a copy of the proposed
28 amended pleading as an exhibit to the motion, which must indicate in what respect it differs
from the pleading which it amends, by bracketing or striking through the text to be deleted
and underlining the text to be added." LRCiv 15.1(a).

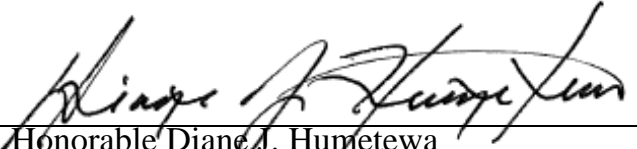
1 Accordingly,

2 **IT IS HEREBY ORDERED** that Defendants Judge Rassas and Judge Sukenic's
3 Motion to Dismiss (Doc. 15) is **granted** in part. Plaintiff's Complaint (Doc. 1) is
4 **dismissed**. Defendants Judge Rassas and Judge Sukenic shall be **dismissed** from this
5 action with prejudice.

6 **IT IS FURTHER ORDERED** that Plaintiff may file an amended complaint by
7 March 30, 2021, or file a motion for leave to amend within thirty (30) days of the date this
8 Order is entered.

9 **IT IS FINALLY ORDERED** that if Plaintiff fails to file an amended complaint by
10 March 30, 2021, and fails to file a motion for leave to amend within (30) days of the date
11 this Order is entered, the Clerk of Court shall kindly dismiss this action without further
12 order of this Court.

13 Dated this 1st day of April, 2021.

14
15
16 
17 Honorable Diane J. Humetewa
18 United States District Judge
19
20
21
22
23
24
25
26
27
28