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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA

8 JEANLOUISE HALLAL,

9 Plaintiff,

10 v.

11 HEATHER MARDEL, et al.,

12 Defendants.

Case No. 1:16-cv-01432-DAD-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING ACTION
WITHOUT LEAVE TO AMEND FOR
FAILURE TO STATE A CLAIM

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

(ECF Nos. 13, 14)

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15 **I.**

16 **BACKGROUND**

17 Plaintiff Jeanlouise Hallal, proceeding pro se and in forma pauperis, filed a complaint in
18 this civil rights action pursuant to 42 U.S.C. § 1983 on September 26, 2016. The complaint was
19 screened, and on November 2, 2016, an order issued dismissing the complaint for failure to state
20 a claim. Plaintiff was provided with the relevant legal standards and was ordered to file an
21 amended complaint within thirty days. On December 6, 2016, Plaintiff filed a first amended
22 complaint and a document appealing the thirty day deadline.

23 **II.**

24 **SCREENING REQUIREMENT**

25 The district court must perform a preliminary screening and must dismiss a case if at any
26 time the Court determines that the complaint fails to state a claim upon which relief may be
27 granted. 28 U.S.C. § 1915(e)(2); see Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000)
28 (section 1915(e) applies to all in forma pauperis complaints, not just those filed by prisoners). In

1 determining whether a complaint fails to state a claim, the Court uses the same pleading standard
2 used under Federal Rule of Civil Procedure 8(a). A complaint must contain “a short and plain
3 statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2).
4 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause
5 of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.
6 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

7 In reviewing the pro se complaint, the Court is to liberally construe the pleadings and
8 accept as true all factual allegations contained in the complaint. Erickson v. Pardus, 551 U.S. 89,
9 94 (2007). Although a court must accept as true all factual allegations contained in a complaint,
10 a court need not accept a plaintiff’s legal conclusions as true. Iqbal, 556 U.S. at 678. “[A]
11 complaint [that] pleads facts that are ‘merely consistent with’ a defendant’s liability . . . ‘stops
12 short of the line between possibility and plausibility of entitlement to relief.’” Iqbal, 556 U.S. at
13 678 (quoting Twombly, 550 U.S. at 557). Therefore, the complaint must contain sufficient
14 factual content for the court to draw the reasonable conclusion that the defendant is liable for the
15 misconduct alleged. Iqbal, 556 U.S. at 678.

16 III.

17 COMPLAINT ALLEGATIONS

18 Plaintiff has filed a document entitled “Order Granted Plaintiff to Proceed in Forma
19 Pauperis Amended Complaint Order Granted to Amend Compliant to Restate the Claim for
20 Clarity Federal Trade Commission Rule Mandates Fulfillment Within Thirty (30) Days” which
21 the Court construes as the amended complaint in this action. (ECF No. 13 at pp. 1-9.)

22 Plaintiff’s amended complaint is far from a model of clarity and the Court has attempted
23 to extract the factual allegations from the complaint and the exhibits attached to the complaint.
24 On July 22, 2103, Plaintiff was arrested and released on a probation violation. (ECF No. 13-1 at
25 25.) On January 8, 2015, Plaintiff was cited by California Highway Patrol (“CHP”) Officer
26 Arcelus and taken into custody for having an illegal camp in violation of California Penal Code
27 section 647(c) and being a pedestrian on the freeway right of way in violation of California
28 Vehicle Code section 21960(a). (ECF No. 13-1 at 37, 39.) The citation ordered Plaintiff to

1 appear on April 8, 2015. (Id.) On February 20, 2015, a criminal case was filed against Plaintiff
2 based on the January 8, 2015 citation. (Id. at 43-45.) Plaintiff did not appear on the date of
3 arraignment and a warrant issued for her arrest. (Id. at 45.)

4 Plaintiff was arrested and taken into custody on January 7, 2016. (Id. at 46.) On January
5 8, 2016, Plaintiff was arraigned and remanded into custody. (Id. at 46-48.) On January 20,
6 2016, the criminal proceedings were suspended for Plaintiff to be examined by Dr. Howard B.
7 Terrell. (Id. at 47-48.) Plaintiff remained in custody while her competency was evaluated. (Id.
8 at 50.)

9 Plaintiff alleges that on January 16, 2016, she was under doctor's orders for bed rest and
10 was in a prepaid unit. (ECF No. 13 at 1.) A 911 call was made due to a burglar that had broken
11 into 3272 East Olive Avenue, Unit 101. (Id.)

12 Plaintiff appeared before Commissioner Heather Mardel Jones and Jon Nick Kapetan
13 who refused to correct her name and dismiss the charges based upon no probable cause. (Id. at
14 2.) The prosecution has failed to prove that Plaintiff is a corporation. (Id.) District Attorney
15 Vanessa Wong and Heather Michelle Spurling should have deduced that Plaintiff is a member of
16 the people and dismissed the charges immediately. (Id.) On February 29, 2016, at 9:00 a.m.,
17 "she" admitted that her client was the Fresno County Sheriff's Department proving that they
18 were working with Commissioner Jones to commit fraud by forging false tickets in the database
19 to make it appear that a crime had been committed. (Id.)

20 Plaintiff was arrested, without any charges and incarcerated at the Fresno County Jail
21 after CHP Officer Arcelus cut, pasted, and copied her signature onto a ticket dated April 8, 2015.
22 (Id.) Lisa Gamoian, Vanessa Wong, Kimberly Gaab, Sheri Edmonds, and the Fresno County
23 Sheriff's Office refused to do their jobs correctly and Plaintiff was in jail for six months. (Id. at
24 3.)

25 Sheriff's officers retaliated against Plaintiff as a prison of war. (Id.) Plaintiff had major
26 medical conditions upon her incarceration on January 8, 2016. (Id.) Two female officers were
27 out to get retaliation for Linda Penner. (Id.) The officers were impersonating officers, one was
28 her daughter, Officer Butler and the other Officer Burnett works for Brian Angus, the Director or

1 the Fresno Economic Opportunities Commission and his employees of the Project Phoenix
2 Program. (Id.) Officer Burnett and Officer Butler slammed Plaintiff's head into a metal bed
3 frame, grabbing her injured arm behind her back while she had a neck brace on. (Id.) Plaintiff
4 lost a front tooth due to the incident. (Id.)

5 Commissioner Jones refused to change and correct a minute order and was protecting the
6 imposter who had stolen Plaintiff's name. (Id.) On February 29, 2016, Commissioner Jones and
7 her accomplices, Jon Nick Kapetan, and Lisa Gamoian, denied five restraining orders. (Id.)

8 Plaintiff brings this action against Commissioner Heather Mardel Jones, Judge Jon Nick
9 Kapetan, District Attorney Lisa Gamoian, and District Attorney Vanessa Wong alleging
10 numerous violations of statutes and crimes.

11 **IV.**
12 **DISCUSSION**

13 **A. Judicial and Prosecutorial Immunity**

14 Initially, the Court finds that the named defendants are entitled to immunity in this action
15 based upon the acts alleged in the first amended complaint.

16 1. Judicial Immunity

17 Plaintiff alleges that Commissioner Jones and Judge Kapetan violated her due process
18 rights by refusing to correct her name and dismiss the charges against her. Absolute judicial
19 immunity is afforded to judges for acts performed by the judge that relate to the judicial process.
20 In re Castillo, 297 F.3d 940, 947 (9th Cir. 2002), as amended (Sept. 6, 2002). "This immunity
21 reflects the long-standing 'general principle of the highest importance to the proper
22 administration of justice that a judicial officer, in exercising the authority vested in him, shall be
23 free to act upon his own convictions, without apprehension of personal consequences to himself.'
24 " Olsen v. Idaho State Bd. of Med., 363 F.3d 916, 922 (9th Cir. 2004) (quoting Bradley v.
25 Fisher, 13 Wall. 335, 347 (1871)). This judicial immunity insulates judges from suits brought
26 under section 1983. Olsen, 363 F.3d at 932.

27 Absolute judicial immunity insulates the judge from actions for damages due to judicial
28 acts taken within the jurisdiction of the judge's court. Ashelman v. Pope, 793 F.2d 1072, 1075

1 (9th Cir. 1986). “Judicial immunity applies ‘however erroneous the act may have been, and
2 however injurious in its consequences it may have proved to the plaintiff.’ ” Id. (quoting
3 Cleavinger v. Saxner, 474 U.S. 193 (1985)). However, a judge is not immune where he acts in
4 the clear absence of jurisdiction or for acts that are not judicial in nature. Ashelman, 793 F.2d at
5 1075. Judicial conduct falls within “clear absence of all jurisdiction,” where the judge “acted
6 with clear lack of all subject matter jurisdiction.” Stone v. Baum, 409 F. Supp. 2d 1164, 1174
7 (D. Ariz. 2005).

8 To determine if an act is judicial in nature, the court considers whether (1) the precise act
9 is a normal judicial function; (2) the events occurred in the judge’s chambers; (3) the controversy
10 centered around a case then pending before the judge; and (4) the events at issue arose directly
11 and immediately out of a confrontation with the judge in his or her official capacity. Duvall v.
12 Cty. of Kitsap, 260 F.3d 1124, 1133 (9th Cir. 2001), as amended on denial of reh’g (Oct. 11,
13 2001) (quoting Meek v. County of Riverside, 183 F.3d 962, 967 (9th Cir.1999)).

14 Here, the actions alleged in the complaint would entitle the judges to judicial immunity.
15 Plaintiff contends that the judges refused to change her name on the case and dismiss the charges
16 and refused to issue a restraining order. Plaintiff states that the judicial officials failed to
17 perform their jobs correctly. Based on the exhibits attached to the complaint there was an active
18 felony warrant that existed for Plaintiff and there were a felony and two misdemeanor actions
19 filed naming her as a defendant. (ECF No. 13-1 at pp. 21, 24, 25, 35, 43-53.) Plaintiff’s
20 allegations in the complaint against the Fresno Superior Court judges are for actions taken by the
21 judges in their judicial capacity for a cases or cases that were before the judge. Therefore, the
22 named individuals are entitled to judicial immunity. Plaintiff fails to state a cognizable
23 complaint against any judicial officer named in the first amended complaint.

24 2. Prosecutorial Immunity

25 Similarly, prosecutors are immune from liability under 42 U.S.C. § 1983. See Imbler v.
26 Pactman, 424 U.S. 409, 427 (1976); see also Olsen, 363 F.3d at 922 (“Absolute immunity is
27 generally accorded to judges and prosecutors functioning in their official capacities”); Ashelman,
28 793 F.2d at 1075 (holding that judges and prosecutors are immune from liability for damages

1 under section 1983). Where a prosecutor acts within his authority “ ‘in initiating a prosecution
2 and in presenting the state’s case,’ absolute immunity applies.” Ashelman, 793 F.2d at 1076
3 (quoting Imbler, 424 U.S. at 431).

4 While Plaintiff claims that the district attorney refused to dismiss the charges against her
5 or refused to have a restraining order granted, such decisions by the district attorney fall within
6 those actions that are entitled to absolute immunity. Plaintiff fails to state a cognizable claim
7 against District Attorneys Gamoian or Wong.

8 **B. Conspiracy**

9 Plaintiff alleges that Commissioner Jones conspired with other individuals to commit
10 fraud against her. “A plaintiff alleging fraud must overcome a heightened pleading standard
11 under Rule 9(b).” ESG Capital Partners, LP v. Stratos, 828 F.3d 1023, 1031 (9th Cir. 2016). To
12 state a claim for fraud, a plaintiff “must state with particularity the circumstances constituting
13 fraud or mistake.” Fed. R. Civ. P. 9(b). Conclusory allegations of fraud are not enough and the
14 allegations must be specific enough to provide the defendants with notice of the particular
15 conduct which is alleged to constitute the fraud charged. Semegen v. Weidner, 780 F.2d 727,
16 731 (9th Cir. 1985). This requires the pleadings to set forth the time, place, and nature of the
17 specific acts of fraud. S. Union Co. v. Sw. Gas Corp., 165 F. Supp. 2d 1010, 1018 (D. Ariz.
18 2001).

19 Here, while Plaintiff makes general references to the Uniform Commercial Code,
20 Sherman Anti-Trust Act, Security Act of 1933, Federal Trade Commission, and allegations of a
21 racketeering scheme and municipal bond fraud, the first amended complaint is devoid of any
22 factual allegations to support such violations.

23 Plaintiff generally alleges that the defendants conspired to falsify a citation against her to
24 have her arrested. However, Plaintiff has not pled factual allegations to meet the requirements of
25 Rule 9(b). The conclusory allegations contained in the first amended complaint fail to state a
26 cognizable claim that any conspiracy or scheme existed.

27 **C. Leave to Amend**

28 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party’s

1 pleading once as a matter of course at any time before a responsive pleading is served. Fed. R. Civ.
2 P. 15(a)(1). Otherwise, a party may amend only by leave of the court or by written consent of the
3 adverse party, and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(a)(2). In
4 determining whether to grant leave to amend, the court considers five factors: “(1) bad faith; (2)
5 undue delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) whether the
6 plaintiff has previously amended his complaint.” Nunes v. Ashcroft, 375 F.3d 805, 808 (9th Cir.
7 2004). The factors are not given equal weight and futility alone is sufficient to justify the denial
8 of a motion to amend. Washington v. Lowe’s HIW Inc., 75 F. Supp. 3d 1240, 1245 (N.D. Cal.
9 2014), appeal dismissed (Feb. 25, 2015).

10 In the order dismissing the complaint with leave to amend, Plaintiff was advised that her
11 amended complaint must comply with the Federal Rules of Civil Procedure regarding the formatting
12 of the complaint. (ECF No. 11 at 8.) Plaintiff was advised that her amended complaint could not
13 contain any citation to case law or legal argument. (Id.) Further, Plaintiff was advised that the
14 amended complaint could not exceed twenty five pages in length. (Id. at 9.) Finally, Plaintiff was
15 ordered to file her amended complaint within thirty days from the date of service of the order and
16 was informed that if she failed to comply with the order the action would be dismissed for failure to
17 comply with a court order.

18 Plaintiff did not file her amended complaint in compliance with the November 2, 2016 order.
19 First, Plaintiff included legal argument and citations in the document which was specifically
20 prohibited by the order. Additionally, Plaintiff filed two other documents including legal argument.
21 Finally, Plaintiff was ordered to file her amended complaint within thirty days of November 2, 2016.
22 (ECF No. 11 at 9.) When service is made by mail, three days are added after the period would
23 otherwise expire. Fed. R. Civ. P. 6(d). Therefore, Plaintiff’s amended complaint was required to be
24 filed by December 5, 2016. Plaintiff filed the complaint on December 6, 2016. (ECF No. 13.)
25 Plaintiff included in her filing multiple documents stating that the thirty day deadline did not apply
26 because fraud and terrorism is revealed. (Order Disregarding Notice Amended by Plaintiff, ECF No.
27 13 at 9; ECF 13-1 at 1; ECF No. 14 at 1.)

28 Based upon review of the complaint and the documents attached to the complaint, the Court

1 finds that it would be futile to provide Plaintiff with the opportunity to file a second amended
2 complaint as it is clear that she is either unable or unwilling to comply with this Court's orders.
3 Plaintiff was provided with an opportunity to file an amended complaint with direction from the
4 Court on the legal standards that applied to her claims. Plaintiff filed an amended complaint that
5 failed to cure the identified deficiencies and did not comply with the requirements set forth in the
6 November 2, 2016 order. Therefore, the Court recommends that the first amended complaint be
7 dismissed without further leave to amend.

8 V.

9 **CONCLUSION AND RECOMMENDATION**

10 Based upon the foregoing, IT IS HEREBY RECOMMENDED that Plaintiff's first
11 amended complaint, filed December 6, 2016, be DISMISSED without leave to amend for failure
12 to state a claim.

13 These findings and recommendations are submitted to the district judge assigned to this
14 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within fourteen
15 (14) days of service of this recommendation, Plaintiff may file written objections to these
16 findings and recommendations with the Court. Such a document should be captioned
17 "Objections to Magistrate Judge's Findings and Recommendations." The district judge will
18 review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. §
19 636(b)(1)(C). Plaintiff is advised that failure to file objections within the specified time may
20 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
21 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22 IT IS SO ORDERED.

23 Dated: December 16, 2016

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25 _____
26 UNITED STATES MAGISTRATE JUDGE
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