

1 **I. Screening Requirement**

2 Pursuant to 28 U.S.C. § 1915(e)(2), the Court may conduct an initial review of the
3 complaint to determine if it states a cognizable claim. The Court must dismiss a
4 complaint or portion thereof if it determines that the action has raised claims that are
5 legally "frivolous or malicious," "fails to state a claim upon which relief may be granted,"
6 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.
7 § 1915(e)(2)(B). "Notwithstanding any filing fee, or any portion thereof, that may have
8 been paid, the court shall dismiss the case at any time if the court determines that . . .
9 the action or appeal . . . fails to state a claim on which relief may be granted." 28 U.S.C.
10 § 1915(e)(2)(B)(ii).

11 **II. Pleading Standard**

12 A complaint must contain "a short and plain statement of the claim showing that
13 the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
14 are not required, but "[t]hreadbare recitals of the elements of a cause of action,
15 supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S.
16 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
17 Plaintiff must set forth "sufficient factual matter, accepted as true, to state a claim to relief
18 that is plausible on its face." Id. Facial plausibility demands more than the mere
19 possibility that a defendant committed misconduct and, while factual allegations are
20 accepted as true, legal conclusions are not. Id. at 677-78.

21 **III. Plaintiff's Allegations**

22 Plaintiff's factual allegations are vague and difficult to follow. It appears Plaintiff
23 brought suit in state court alleging breach of fiduciary duty and legal malpractice against
24 his former attorney. That attorney was represented by Defendant Hunt and Marshall
25 Whitney. Plaintiff claims that he received a favorable tentative ruling in 2013 and
26 prevailed on summary judgment on the fiduciary duty claim. However, Defendant Hunt
27 made false statements during proceedings in 2017. Based on these false statements,
28

1 Defendant Judge Hamilton wrongly stated there was never a ruling in Plaintiff's favor and
2 then entered judgment in favor of the defendant attorney. Plaintiff suspects that Hamilton
3 did so because he is friends with Whitney.

4 Plaintiff seeks \$7.5 million dollars in damages.

5 **IV. Analysis**

6 **A. Defendant Hamilton**

7 Plaintiff brings suit against Defendant Hamilton under 42 U.S.C. § 1983 for due
8 process violations arising out of Hamilton's ruling in Plaintiff's state court case.

9 Absent limited exceptions not presented here, state court judges are immune from
10 liability under 42 U.S.C. § 1983. See Olsen v. Idaho State Bd. of Medicine, 363 F.3d
11 916, 922 (9th Cir. 2004) ("Absolute immunity is generally accorded to judges and
12 prosecutors functioning in their official capacities"); Ashelman v. Pope, 793 F.2d 1072,
13 1075 (9th Cir.1986) (holding that judges and prosecutors are immune from liability for
14 damages under section 1983). Accordingly, this allegation fails to state a claim. This
15 defect is not capable of being cured through amendment. The claim should be dismissed
16 with prejudice.

17 The only remaining claims against Judge Hamilton are for fraud and breach of
18 fiduciary duty. These are state law claims, and this Court lacks jurisdiction over such
19 claims absent a cognizable federal claim arising out of the same case or controversy. 28
20 U.S.C. § 1367(a). Because Plaintiff cannot state a cognizable section 1983 claim on the
21 facts stated, the Court cannot exercise supplemental jurisdiction over his state law
22 claims. Id.; Herman Family Revocable Trust v. Teddy Bear, 254 F.3d 802, 805 (9th Cir.
23 2001).

24 In general, a pro se plaintiff is entitled to leave to amend unless "it appears
25 beyond doubt that the plaintiff can prove no set of facts in support of his claim which
26 would entitle him to relief." Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984)
27 (citation omitted). Here, no set of facts relating to Judge Hamilton's judicial acts would
28

1 entitle Plaintiff to relief. Accordingly, the claims should be dismissed without leave to
2 amend.

3 **B. Defendant Hunt**

4 It is unclear whether Plaintiff intends to bring a section 1983 claim against
5 Defendant Hunt. In any event, however, a section 1983 claim has two essential
6 elements: (1) that a right secured by the Constitution or laws of the United States was
7 violated and (2) that the alleged violation was committed by a person acting under the
8 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda
9 Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987). Defendant Hunt is a private attorney, and
10 there are no facts to suggest that he was acting under the color of state law. The Court
11 can envision no set of facts that would permit Plaintiff to proceed on his section 1983
12 claim against Defendant Hunt. The claim should be dismissed with prejudice.

13 Absent such a claim, the Court lacks jurisdiction over Plaintiff's state law claims
14 for the same reason stated above: absent a cognizable federal claim arising out of the
15 same case or controversy, the Court cannot exercise supplemental jurisdiction over
16 Plaintiff's state law claims. 28 U.S.C. § 1367(a).

17 Again, the Court can envision no set of facts that would confer jurisdiction over
18 Plaintiff's claims against Defendant Hunt. Accordingly, these claims should be dismissed
19 without leave to amend. Franklin, 745 F.2d at 1228.

20 **V. In Forma Pauperis Application**

21 Plaintiff has submitted an application to proceed in forma pauperis. The
22 application does not state the source or amount of money Plaintiff has received in the
23 past twelve months and it is therefore incomplete. This leaves the Court without
24 sufficient information to determine whether Plaintiff is entitled to proceed in forma
25 pauperis.

26 In any event, “[a] district court may deny leave to proceed in forma pauperis at
27 the outset if it appears from the face of the proposed complaint that the action is frivolous
28

1 or without merit.” Minetti v. Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting
2 Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also McGee
3 v. Department of Child Support Services, 584 Fed. Appx. 638 (9th Cir. 2014) (“the district
4 court did not abuse its discretion by denying McGee's request to proceed IFP because it
5 appears from the face of the amended complaint that McGee's action is frivolous or
6 without merit”); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the
7 District Court to examine any application for leave to proceed in forma pauperis to
8 determine whether the proposed proceeding has merit and if it appears that the
9 proceeding is without merit, the court is bound to deny a motion seeking leave to
10 proceed in forma pauperis.”).

11 Based on the foregoing conclusion that the action is without merit, the
12 undersigned will recommend the application to proceed in forma pauperis be denied.

13 **VI. Conclusion and Recommendation**

14 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 15 1. Plaintiff's application to proceed in forma pauperis be denied;
- 16 2. Plaintiff's section 1983 claims be dismissed with prejudice;
- 17 3. The Court decline to exercise supplemental jurisdiction over the state law
18 claims; and
- 19 4. The complaint be dismissed without leave to amend.

20 The findings and recommendations will be submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
22 Within fourteen (14) days after being served with the findings and recommendations, the
23 parties may file written objections with the Court. The document should be captioned
24 “Objections to Magistrate Judge’s Findings and Recommendations.” A party may
25 respond to another party’s objections by filing a response within fourteen (14) days after
26 being served with a copy of that party’s objections. The parties are advised that failure to
27 file objections within the specified time may result in the waiver of rights on appeal.
28

1 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
2 F.2d 1391, 1394 (9th Cir. 1991)).

3
4 IT IS SO ORDERED.

5 Dated: December 29, 2017

/s/ Michael J. Seng
6 UNITED STATES MAGISTRATE JUDGE

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28