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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL POWELL, TOMERY
DARLING, LIVVY POWELL, LANA
POWELL, and BRITTNEY TEMPLE,

Plaintiffs,

v.

DEPARTMENT OF CHILD SUPPORT
SERVICES, SUPERIOR COURT
CALIFORNIA PLACER COUNTY DIRK
AMARA, MICHAEL JACQUES,
SUSANNE GAZZANIGA, GENE GINI,
ALAN PINESCHI, and SANDRA
McLEAN,

Defendants.

No. 2:16-cv-01197 TLN GGH

ORDER

Plaintiff Michael Powell, proceeding in this action pro se, has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF No. 2.)¹

Plaintiff’s declaration in support of his application to proceed in forma pauperis states that he has three dependents and that he is receiving wages or salary from the United States Postal Service of \$1,185.00 per pay period, but it does not indicate whether that means this is his monthly income, bi-monthly income, or paid in some other interval. Thus, at this point plaintiff

¹ This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 has made an inadequate showing of indigency. See Olivares v. Marshall, 59 F.3d 109, 112 (9th
2 Cir. 1995); Alexander v. Carson Adult High Sch., 9 F.3d 1448, 1449 (9th Cir. 1993).

3 Plaintiff will be provided the opportunity to submit either the appropriate affidavit in
4 support of a request to proceed in forma pauperis clarifying his income statement or the
5 appropriate filing fee.

6 Even had plaintiff been eligible to proceed in forma pauperis, this court would not permit
7 the action to proceed upon the filed complaint.

8 The determination that plaintiff may proceed in forma pauperis does not complete the
9 required inquiry. Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss the case at
10 any time if it determines the allegation of poverty is untrue, or if the action is frivolous or
11 malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against
12 an immune defendant.

13 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
14 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
15 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
16 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
17 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
18 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
19 Cir. 1989); Franklin, 745 F.2d at 1227.

20 A complaint must contain more than a “formulaic recitation of the elements of a cause of
21 action;” it must contain factual allegations sufficient to “raise a right to relief above the
22 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).
23 “The pleading must contain something more...than...a statement of facts that merely creates a
24 suspicion [of] a legally cognizable right of action.” Id., *quoting* 5 C. Wright & A. Miller, Federal
25 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must contain sufficient
26 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft
27 v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009) (*quoting Twombly*, 550 U.S. at 570, 127
28 S.Ct. 1955). “A claim has facial plausibility when the plaintiff pleads factual content that allows

1 the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

2 Id.

3 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21, 92
4 S. Ct. 594, 595-96 (1972); Balistreri v. Pacifica Police Dep’t., 901 F.2d 696, 699 (9th Cir. 1988).

5 Unless it is clear that no amendment can cure the defects of a complaint, a pro se plaintiff
6 proceeding in forma pauperis is entitled to notice and an opportunity to amend before dismissal.

7 See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin, 745 F.2d at 1230.

8 The complaint in this case purports to allege a procedural due process claim emanating
9 from proceedings in a state court. Plaintiff names a number of judges and two Commissioners
10 who made rulings in a family law matter pending in Placer County Superior Court and attorneys
11 who participated in the proceedings. Judges and Commissioners, as judicial officers, cannot be
12 sued in federal courts as they hold absolute immunity as are prosecutors (absolutely immune for
13 prosecutorial actions). Stump v. Sparkman, 435 U.S. 349, 360 (1978); Butz v. Economou, 438
14 U.S. 478, 511, 512 (1978); Romano v. Bible, 169 F.3d 1182, 1185-1186 (9th Cir. 1999). If
15 plaintiff chooses to amend the complaint, he must also recognize that federal courts lack
16 jurisdiction to review the determinations of state courts which is exactly what he appears to seek.

17 McCarty v. Grguric, 2006 WL 1328264 at *3-4 (E.D.Cal. 2006). Further, this court would be
18 required to abstain from interfering with any ongoing state court proceeding in a matter
19 traditionally within the domain of state courts as are issues of family law. Todd v. Ellis, 2012
20 WL 2116950 at *3 (E.D.Cal. 2012), citing Coats v. Woods, 819 F.2d 236, 237 (9th Cir. 1987).
21 Plaintiffs procedural due process claim can be settled through use of petitions for writ of mandate
22 or appeal of challenged state court decisions prosecuted through the state appellate system. Id.

23 Further, plaintiff’s complaint is fatally deficient for failing to meet the requirements of
24 Federal Rule of Civil Procedure 8. That Rule requires that a complaint contain a “short and plain
25 statement” of the basis for federal jurisdiction (that is, the reason the case is filed in this court,
26 rather than in a state court), as well as a short and plain statement showing that plaintiff is entitled
27 to relief (that is, who harmed the plaintiff, and in what way). Plaintiff’s claims must be set forth
28 simply, concisely and directly. The complaint must also provide an understandable listing of

1 defendants and how they relate to the claims plaintiff is making. The Federal Rules of Civil
2 Procedure are available online at [www.uscourts.gov/rules-policies/current-rules-practice-](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federalrules-civil-procedure)
3 [procedure/federalrules-civil-procedure](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federalrules-civil-procedure). Forms are also available to help pro se plaintiffs organize
4 their complaint in the proper way. They are available online at [www.uscourts.gov/forms/pro-se-](http://www.uscourts.gov/forms/pro-se-forms)
5 [forms](http://www.uscourts.gov/forms/pro-se-forms). Plaintiff is advised *not* to attach any exhibits to his amended motion as evidentiary
6 materials are neither necessary nor helpful at this stage of the proceedings.

7 Finally, plaintiff is acting in pro se. He may not, therefore, purport to represent any
8 plaintiff other than himself. Johns v. County of San Diego, 114 F.3d 874, 876-877 (9th Cir.
9 1997); C.E. Pope Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987). The other
10 listed plaintiffs must be represented by licensed counsel if they are to proceed at all.

11 Good cause appearing, IT IS ORDERED that:

12 1. Plaintiff shall submit, within thirty (30) days from the date of this order, either a
13 completed and signed application and affidavit in support of his request to proceed in forma
14 pauperis on the form provided by the Clerk of Court that addresses the deficiency addressed
15 above, or the appropriate filing fee; plaintiff's failure to comply with this order will result in a
16 recommendation that this action be dismissed; and

17 2. The complaint is dismissed for the reasons discussed above, with leave to file an
18 amended complaint within thirty days (30) from the date of service of this Order. The amended
19 complaint must comply with the requirements of the Federal Rules of Civil Procedure, and the
20 Local Rules of Practice; the amended complaint must bear the docket number assigned this case
21 and must be labeled "Amended Complaint;" failure to file an amended complaint will result in a
22 recommendation that this action be dismissed.

23 3. The Clerk of the Court is directed to send plaintiff a new Application to Proceed In
24 Forma Pauperis.

25 Dated: June 30, 2016

26 /s/ Gregory G. Hollows

27 UNITED STATES MAGISTRATE JUDGE