

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ORION S. EHRINGER,

 Plaintiff,

 v.

MAGISTRATE JUDGE KENDALL J.
NEWMAN, MAGISTRATE JUDGE
ALLISON CLAIRE, AND U.S.
DISTRICT COURT EASTERN
DISTRICT OF CALIFORNIA,

 Defendants.

No. 2:16-cv-2074-TLN-EFB PS

ORDER GRANTING IFP AND
RECOMMENDATION OF DISMISSAL

Plaintiff seeks leave to proceed *in forma pauperis* pursuant to 28 U.S.C. 1915.¹ His declaration makes the showing required by 28 U.S.C. §1915(a)(1) and (2). *See* ECF Nos. 2, 3 at 9. Accordingly, the request to proceed *in forma pauperis* is granted. 28 U.S.C. § 1915(a).

Determining that plaintiff may proceed *in forma pauperis* does not complete the required inquiry. Pursuant to § 1915(e)(2), the court must dismiss the case at any time if it determines the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. As discussed below, plaintiff’s complaint fails to state a claim and must be dismissed.

¹ This case, in which plaintiff is proceeding *in propria persona*, was referred to the undersigned under Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1).

1 Although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519,
2 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it
3 fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
4 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41
5 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of
6 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of
7 a cause of action’s elements will not do. Factual allegations must be enough to raise a right to
8 relief above the speculative level on the assumption that all of the complaint’s allegations are
9 true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable
10 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.
11 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

12 In reviewing a complaint under this standard, the court must accept as true the allegations
13 of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976),
14 construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the
15 plaintiff’s favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy
16 the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2)
17 requires a complaint to include “a short and plain statement of the claim showing that the pleader
18 is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds
19 upon which it rests.” *Twombly*, 550 U.S. at 555 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

20 Additionally, a federal court is a court of limited jurisdiction, and may adjudicate only
21 those cases authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins. Co.*,
22 511 U.S. 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332,
23 confer “federal question” and “diversity” jurisdiction, respectively. Federal question jurisdiction
24 requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a
25 “case or controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be
26 authorized by a federal statute that both regulates a specific subject matter and confers federal
27 jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court’s diversity
28 jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the

1 matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World*
2 *Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction
3 of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of
4 subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys*
5 *Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

6 The complaint purports to assert claims against Magistrate Judges Newman and Claire for
7 their handing of two cases plaintiff previously filed in this court.² ECF No. 1. In essence,
8 plaintiff contends that Judge Newman wrongfully recommended dismissal of his habeas petition
9 in *Ehringer v. California*, 2:15-cv-1329-MCE-KJN, and that Judge Claire wrongfully
10 recommended dismissal of plaintiff’s civil complaint in *Ehringer v. California*, 2:15-cv-985-
11 KJM-AC. *See generally* ECF No. 1. Both judges are entitled to absolute judicial immunity and
12 plaintiff’s claims must be dismissed.

13 “Judges are absolutely immune from damage actions for judicial acts taken within the
14 jurisdiction of their courts A judge loses absolute immunity only when [the judge] acts in the
15 clear absence of all jurisdiction or performs an act that is not judicial in nature.” *Schucker v.*
16 *Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam). The complaint plainly shows that
17 the acts for which plaintiff sues were performed by Judges Newman and Claire within their
18 jurisdiction as judges assigned to plaintiff’s cases. Plaintiff’s allegations indicate that the actions
19 of Judges Newman and Claire were judicial in nature, and they are therefore entitled to judicial
20 immunity. Accordingly, plaintiff’s complaint fails to state a claim upon which relief can be
21 granted. Moreover, because it is clear from the allegations of the current complaint these claims
22

23 ² The complaint’s caption also lists the United States District Court for Eastern District of
24 California as a Defendant, but the complaint does not contain any specific allegations against the
25 court. Thus, to the extent plaintiff intended to assert separate claims against the court, he has
26 failed to do so. Further, if it was plaintiff’s intention to assert claims against the court, including
27 all of its judges, the undersigned would not be required to recuse himself from this case under the
28 “rule of necessity.” *See Ignacio v. Judges of U.S. Court of Appeals for Ninth Circuit*, 453 F.3d
1160, 1163-1165 (9th Cir. 2006) (finding that under the rule of necessity—which allows a
normally disqualified judge to hear a case that could not otherwise be heard—a three-member
panel was not required to recuse where plaintiff indiscriminately sued all judges of the Ninth
Circuit).

1 are barred by absolute immunity, leave to amend would be futile. *See Noll v. Carlson*, 809 F.2d
2 1446, 1448 (9th Cir. 1987) (while the court ordinarily would permit a pro se plaintiff to amend,
3 leave to amend should not be granted where it appears amendment would be futile). Therefore,
4 the dismissal should be without leave to amend.

5 Accordingly, it is hereby ORDERED that Plaintiff's request for leave to proceed *in form*
6 *pauperis* (ECF Nos. 2) is granted.

7 Further, it is RECOMMENDED that plaintiff's complaint be dismissed without leave to
8 amend and the Clerk be directed to close this case.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
14 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
15 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

16 DATED: April 27, 2017.

17 
18 EDMUND F. BRENNAN
19 UNITED STATES MAGISTRATE JUDGE
20
21
22
23
24
25
26
27
28