

1 Neitzke, 490 U.S. at 327. Thus, the term “frivolous,” when applied to a complaint, “embraces not
2 only the inarguable legal conclusion, but also the fanciful factual allegation.” Id. at 325.

3 A less stringent examination is afforded pro se pleadings, Haines v. Kerner, 404 U.S. 519,
4 520 (1972), but simple reference to federal law does not create subject-matter jurisdiction. Avitts
5 v. Amoco Prod. Co., 53 F.3d 690, 694 (5th Cir.1995). Subject-matter jurisdiction is created only
6 by pleading a cause of action within the court’s original jurisdiction. Id.

7 Plaintiff here sues a judge of the Sacramento Superior Court for actions taken in the
8 course of presiding over a probate proceeding in which plaintiff appeared, *inter alia*, as trustee of
9 the Sprague Family trust. ECF No. 1 at 1-2. The issue here is immunity. “Few doctrines were
10 more solidly established at common law than the immunity of judges from liability for damages
11 for acts committed within their judicial jurisdiction.” Harvey v. Waldron, 210 F.3d 1008, 1012
12 (9th Cir.2000) *quoting* Pierson v. Ray, 386 U.S. 547, 553-554 (1967). Judicial officers, such as
13 defendant Brown, cannot be sued in federal courts. See Stump v. Sparkman, 435 U.S. 349, 360
14 (1978); Butz v. Economou, 439 U.S.478, 511, 512 (1978); Romano v. Bible, 169 F.3d 1182,
15 1185, 1186 (9th Cir. 1999).

16 Like other forms of official immunity, judicial immunity is an immunity from suit, not
17 just from ultimate assessment of damages.” Mireles v. Waco, 502 U.S. 9, 11 (1991). Judicial
18 immunity is overcome only when a judge’s actions are either (1) nonjudicial in nature, i.e., not
19 taken in the judge’s judicial capacity, Forrester v. White, 484 U.S. 219, 227–29 (1988); or (2)
20 taken in the complete absence of all jurisdiction. Stump v. Sparkman, 435 U.S. 349, 356–57
21 (1991). “Allegations of malice or bad faith in the execution of the officer’s duties, such as are
22 alleged here, see, e.g., ECF No. 1 at 36, are insufficient to sustain the complaint when the officer
23 possesses absolute judicial immunity.” Demoran v. Witt, 781 F.2d 155, 158 (9th Cir. 1985).

24 Neither does this court have jurisdiction to interfere with, or overturn, the result of state
25 court proceedings. Rather the court must abstain from interference with pending state
26 proceedings that are judicial in nature or state proceedings that involved important state interests,
27 so long as the state proceedings can afford an opportunity to raise any constitutional issue
28 plaintiff may claim. Plaintiff cannot ask this court to simply overturn state court proceedings.

1 Noel v. Hall, 341 F.2d 1148 (9th Cir. 2003) (discussing the Rooker Feldman doctrine which
2 generally precludes federal court review of state court decisions). See also Middlesex County
3 Ethics Comm. v. Garden Stae Bar Ass'n, 457 U.S. 423, 532 (1982) (generally precluding
4 interference with ongoing state proceedings). Yet that is exactly the effect any action by this
5 court on plaintiff's behalf would have. In this situation it would appear that plaintiff can return to
6 the Sacramento Superior Court and ask to set aside the prior ruling on the ground laid out in his
7 federal complaint and, if he is unsuccessful, he can appeal the ultimate ruling of the court.

8 *CONCLUSION*

9 Plaintiff, in his 293 pages of pleading and attached documents, including transcripts from
10 hearings held before defendant Brown, many of which he has annotated to show where he
11 believes the Judge was wrong in his rulings or misapprehended the issues plaintiff was attempting
12 to raise, makes clear that he is purely challenging the quality and correctness of Judge Brown's
13 rulings, which were all undertaken while the Judge was fully, jurisdictionally vested and acting in
14 his judicial capacity.¹ This court can discern of no means by which plaintiff could replead to
15 move this case from under the umbrella of judicial immunity.

16 In accordance with the foregoing, IT IS HEREBY ORDERED that:
17 Plaintiff's Motion to Proceed In Forma Pauperis is GRANTED;

18 FURTHER, IT IS RECOMMENDED that Plaintiff's Complaint be dismissed, with
19 prejudice, as barred by the judicial immunity doctrine and for lack of federal jurisdiction.

20 The Recommendation is submitted to the United States District Judge assigned to the
21 case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being
22 served with these findings and recommendations Plaintiff may file written objections with the
23 court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
24 Recommendations." The plaintiff is advised that failure to file objections within the specified

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27 ¹ Plaintiff must recognize the difference between whether a judge has authority (jurisdiction) in a
28 matter, as opposed to whether the judge made a correct jurisdictional ruling in the case. Even if
wrong in the latter, even willfully wrong, the judge remains immune from suit.

1 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
2 (9th Cir.1991).

3 Dated: May 10, 2017

4 /s/ Gregory G. Hollows
5 UNITED STATES MAGISTRATE JUDGE
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