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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONALD M. BIRD,
Plaintiff,
v.
CRAIG M. KELLISON,
Defendant.

No. 2:17-cv-2016 JAM AC

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is proceeding in this action pro se, and this case was accordingly referred to the undersigned by Local Rule 302(c)(21). Plaintiff has filed a request for leave to proceed in forma pauperis (“IFP”), and has submitted the affidavit required by that statute. See 28 U.S.C. § 1915(a)(1). The motion to proceed IFP will therefore be GRANTED. The complaint, however, must be DISMISSED because it names only immune defendants.

I. Screening

The federal IFP statute requires federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Plaintiff must assist the court in determining whether or not the complaint is frivolous, by drafting the complaint so that it complies with the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”). The Federal Rules of Civil Procedure are available online at www.uscourts.gov/rules-

1 [policies/current-rules-practice-procedure/federal-rules-civil-procedure.](#)

2 Under the Federal Rules of Civil Procedure, the complaint must contain (1) a “short and
3 plain statement” of the basis for federal jurisdiction (that is, the reason the case is filed in this
4 court, rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled
5 to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief
6 sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and directly.
7 Fed. R. Civ. P. 8(d)(1). Forms are available to help pro se plaintiffs organize their complaint in
8 the proper way. They are available at the Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200),
9 Sacramento, CA 95814, or online at [www.uscourts.gov/forms/pro-se-forms](#).

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the
12 court will (1) accept as true all of the factual allegations contained in the complaint, unless they
13 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the
14 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von
15 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert.
16 denied, 564 U.S. 1037 (2011).

17 The court applies the same rules of construction in determining whether the complaint
18 states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court
19 must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must
20 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a
21 less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520
22 (1972). However, the court need not accept as true conclusory allegations, unreasonable
23 inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,
24 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice
25 to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Ashcroft v. Iqbal,
26 556 U.S. 662, 678 (2009).

27 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to
28 state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “A claim has

1 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
2 reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at
3 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity
4 to amend, unless the complaint’s deficiencies could not be cured by amendment. See Noll v.
5 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

6 A. The Complaint

7 Plaintiff’s complaint is essentially a letter making derogatory remarks about U.S.
8 Magistrate Judge Craig M. Kellison. ECF No. 1. The complaint names no other defendants,
9 makes no factual allegations, and asserts no cause of action. Id. Plaintiff’s complaint seems to be
10 based on Judge Kellison’s actions while presiding over lawsuits to which plaintiff was a party.

11 Id.

12 B. Analysis

13 Judicial immunity bars plaintiff’s complaint. Federal judges are absolutely immune from
14 suit where, as here, they are sued for their judicial actions. Mireles v. Waco, 502 U.S. 9, 11–12
15 (1991) (per curiam) (citing Forrester v. White, 484 U.S. 219, 227–229 (1988) and Stump v.
16 Sparkman, 435 U.S. 349, 356–57 (1978)); Lonneker Farms, Inc. v. Klobucher, 804 F.2d 1096,
17 1097 (9th Cir.1986) (federal judge enjoys absolute judicial immunity when sued for actions that
18 “were judicial in nature and were not done in clear absence of all jurisdiction”).

19 Because the only defendant named in this lawsuit is absolutely immune from suit, the
20 complaint is frivolous as a matter of law, fails to state a claim upon which relief can be granted,
21 and should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), (ii). Based on the statements
22 made in the complaint, the undersigned determines that amendment would be futile.

23 **III. Conclusion**

24 Accordingly, IT IS HEREBY ORDERED that: Plaintiff’s request to proceed in forma
25 pauperis (ECF No. 2) is GRANTED.

26 Plaintiff’s complaint names only an immune defendant, and upon finding that amendment
27 would be futile, the undersigned recommends this case be DISMISSED.

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