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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC GIANNINI,  
Plaintiff,  
v.  
ROB BONTA, et al.,  
Defendants.

No. 2:23-cv-0428 TLN DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Eric Giannini is proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Pending before the court are plaintiff’s complaint, motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, and motions to appoint counsel. (ECF Nos. 1, 2, 4 & 6.) The complaint’s allegations concern state court proceedings.

The court is required to screen complaints brought by parties proceeding in forma pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Here, plaintiff’s complaint is deficient. Accordingly, for the reasons stated below, the undersigned will recommend that plaintiff’s complaint be dismissed without leave to amend.

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1 **I. Plaintiff's Application to Proceed In Forma Pauperis**

2 Plaintiff's in forma pauperis application makes the financial showing required by 28  
3 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma  
4 pauperis status does not complete the inquiry required by the statute. "A district court may deny  
5 leave to proceed in forma pauperis at the outset if it appears from the face of the proposed  
6 complaint that the action is frivolous or without merit." Minetti v. Port of Seattle, 152 F.3d  
7 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th  
8 Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th  
9 Cir. 2014) ("the district court did not abuse its discretion by denying McGee's request to proceed  
10 IFP because it appears from the face of the amended complaint that McGee's action is frivolous  
11 or without merit"); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) ("It is the duty of the  
12 District Court to examine any application for leave to proceed in forma pauperis to determine  
13 whether the proposed proceeding has merit and if it appears that the proceeding is without merit,  
14 the court is bound to deny a motion seeking leave to proceed in forma pauperis.").

15 Moreover, the court must dismiss an in forma pauperis case at any time if the allegation of  
16 poverty is found to be untrue or if it is determined that the action is frivolous or malicious, fails to  
17 state a claim on which relief may be granted, or seeks monetary relief against an immune  
18 defendant. See 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an  
19 arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v.  
20 Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a  
21 complaint as frivolous where it is based on an indisputably meritless legal theory or where the  
22 factual contentions are clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

23 To state a claim on which relief may be granted, the plaintiff must allege "enough facts to  
24 state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
25 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as  
26 true the material allegations in the complaint and construes the allegations in the light most  
27 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.  
28 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245

1 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by  
2 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true  
3 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western  
4 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

5 The minimum requirements for a civil complaint in federal court, as explained by Rule 8  
6 of the Federal Rules of Civil Procedure (“Rules”), are as follows:

7 A pleading which sets forth a claim for relief . . . shall contain (1) a  
8 short and plain statement of the grounds upon which the court’s  
9 jurisdiction depends . . . , (2) a short and plain statement of the claim  
showing that the pleader is entitled to relief, and (3) a demand for  
judgment for the relief the pleader seeks.

10 Fed. R. Civ. P. 8(a).

## 11 **II. Plaintiff’s Complaint**

12 The complaint alleges that on “September 8, 2022 Honorary Judge Benjamin Galloway  
13 adopted a modified stipulation in the matter of Benis v. Giannini . . . in the Superior Court of  
14 California, County of Sacramento.” (Compl. (ECF No. 1) at 4.) The complaint alleges that Judge  
15 Galloway “refused to enter a judgment of dissolution, bifurcating the marriage.” (Id.) That Judge  
16 Galloway “received instructions from [California Attorney General] Rob Bonta to subvert the  
17 marriage of Benis v. Giannini to inflict severe emotional distress.” (Id. at 7.) And that Judge  
18 Galloway “received instructions from Rob Bonta, who communicates with Gavin Newsom’s  
19 wife, Siebel, to subvert the Employment Development Department[.]” (Id. at 10.)

20 “[T]he in forma pauperis statute . . . ‘accords judges not only the authority to dismiss a  
21 claim based on an indisputably meritless legal theory, but also the unusual power to pierce the  
22 veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are  
23 clearly baseless.’” Denton v. Hernandez, 504 U.S. 25, 32 (1992) (quoting Neitzke, 490 U.S. at  
24 327). “Examples of the latter class are claims describing fantastic or delusional scenarios, claims  
25 with which federal district judges are all too familiar.” Neitzke, 490 U.S. at 328.

26 Here, the complaint’s allegations are clearly baseless and delusional. Moreover, even  
27 assuming *arguendo* that the complaint’s allegations were not baseless, judges are generally  
28 absolutely immune from civil liability for actions taken in their judicial capacity. Mireles v.

1 Waco, 502 U.S. 9, 11-12 (1991). A judge is “subject to liability only when he has acted in the  
2 ‘clear absence of all jurisdiction.’” Stump v. Sparkman, 435 U.S. 349, 356-57 (1978) (quoting  
3 Bradley v. Fisher, 13 Wall. 335, 351 (1872)). A judge will not be deprived of immunity because  
4 the action she took “was in error, was done maliciously, or was in excess of [her] authority.”  
5 Stump v. Sparkman, 435 U.S. at 356. Moreover, a judge’s jurisdiction is quite broad. “[T]he  
6 factors determining whether an act by a judge is a ‘judicial’ one relates to the nature of the act  
7 itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the  
8 parties, i.e., whether they dealt with the judge in his judicial capacity.” Partington v. Gedan, 961  
9 F.2d 852, 866 (9th Cir. 1992) (quoting Stump v. Sparkman, 435 U.S. at 362); see also Mireles v.  
10 Waco, 502 U.S. 9, 13 (1991) (in determining whether judicial immunity applies, court looks to  
11 the “particular act’s relation to a general function normally performed by a judge”); Meek v.  
12 County of Riverside, 183 F.3d 962, 967 (9th Cir. 1999).

13 Here, the complaint is seeking civil liability against a judge for actions taken in their  
14 judicial capacity. As such, the complaint should be dismissed. See Patel v. DeCarolis, 701 Fed.  
15 Appx. 590, 591 (9th Cir. 2017) (“The district court properly dismissed Patel’s damages claims  
16 against Judge Pacheco on the basis of judicial immunity because the claims arose out of Judge  
17 Pacheco’s judicial acts.”).

### 18 **III. Leave to Amend**

19 For the reasons stated above, plaintiff’s complaint should be dismissed. The undersigned  
20 has carefully considered whether plaintiff may further amend the complaint to state a claim upon  
21 which relief can be granted. “Valid reasons for denying leave to amend include undue delay, bad  
22 faith, prejudice, and futility.” California Architectural Bldg. Prod. v. Franciscan Ceramics, 818  
23 F.2d 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv.  
24 Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely  
25 given, the court does not have to allow futile amendments).

26 Here, given the defects noted above, the undersigned finds that granting plaintiff leave to  
27 amend would be futile.

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1 **CONCLUSION**

2 Accordingly, for the reasons stated above, IT IS HEREBY RECOMMENDED that:

- 3 1. Plaintiff’s March 8, 2023 application to proceed in forma pauperis (ECF No. 2) be  
4 denied;
- 5 2. The complaint filed on March 8, 2023, be dismissed without leave to amend; and
- 6 3. This action be closed.

7 These findings and recommendations will be submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
9 after being served with these findings and recommendations, plaintiff may file written objections  
10 with the court. A document containing objections should be titled “Objections to Magistrate  
11 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within  
12 the specified time may, under certain circumstances, waive the right to appeal the District Court’s  
13 order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: May 8, 2023

/s/ DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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