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5 UNITED STATES DISTRICT COURT  
6 SOUTHERN DISTRICT OF CALIFORNIA  
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8 CHRISTOPHER WAMALWA  
9 KIBUNGUCHY,  
10 Booking #18104725,

Plaintiff,

11 vs.

12 POLLY H. SHAMOON, Judge,

13 Defendant.  
14

Case No.: 3:18-cv-00493-WQH-WVG

**ORDER**

15 HAYES, Judge:

16 Christopher Kibunguchy (“Plaintiff”), currently detained at San Diego Central Jail  
17 (“SDCJ”), and proceeding pro se, has filed a form “Complaint of Judicial Conduct or  
18 Disability” (ECF No. 1) (the “Complaint”). The Complaint appears to challenge San Diego  
19 Superior Court Judge Polly H. Shamoons decision to “describe [Plaintiff] as being a  
20 danger to the community” upon the “request [of] the DA.” *See id.* at 1–2.

21 **I. Failure to Pay Filing Fee or Request *IFP* Status**

22 All parties instituting any civil action, suit, or proceeding in any district court of the  
23 United States, except an application for writ of habeas corpus, must pay a filing fee of  
24 \$400. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a party’s failure to pay

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27 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an administrative fee of \$50. *See* 28  
28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff. June 1, 2016)). The \$50 administrative fee does not apply to persons granted leave to proceed *in forma pauperis*. *Id.*

1 the full filing fee only if the party is granted leave to proceed *in forma pauperis* pursuant  
2 to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007);  
3 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Plaintiff has not prepaid the \$400  
4 in fees required to commence a civil action, and he has not filed a Motion to Proceed *IFP*.  
5 *See* 28 U.S.C. § 1915(a) & (b). Therefore, no civil action can yet proceed. *See* 28 U.S.C.  
6 § 1914(a); *Andrews*, 493 F.3d at 1051.

## 7 **II. Initial Review of Plaintiff's Complaint**

8 Federal courts have limited jurisdiction, and limitations on the court's jurisdiction  
9 "must neither be disregarded nor evaded." *Moore v. Maricopa County Sheriff's Office*,  
10 657 F.3d 890, 894 (9th Cir. 2011) (citing *Owen Equip. & Erection Co. v. Kroger*, 437 U.S.  
11 365, 374 (1978)). The Court must determine sua sponte whether it has subject matter  
12 jurisdiction. *See Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004); Fed. R.  
13 Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter  
14 jurisdiction, the court must dismiss the action.").

15 Plaintiff has filed a form Complaint of Judicial Misconduct or Disability against  
16 Judge Shamoon based on what appears to be a decision or ruling she made related to either  
17 his criminal case or the conditions of his detention pending trial. (ECF No. 1). However,  
18 a complaint of judicial misconduct is not the proper vehicle for challenging a judge's  
19 rulings. *See In re Complaint of Judicial Misconduct*, 550 F.3d 769 (9th Cir. 2008).  
20 Plaintiff's Complaint also fails to allege subject matter jurisdiction pursuant to 42 U.S.C.  
21 § 1983, 28 U.S.C. § 1343(a)(3), or 42 U.S.C. § 12132. Therefore, Plaintiff's Complaint  
22 must be dismissed because it fails to allege federal jurisdiction.

23 Because the allegations attached to the Complaint suggest Plaintiff may wish to  
24 proceed with a civil rights action pursuant to 42 U.S.C. § 1983, the Court will grant him an  
25 opportunity to amend. Plaintiff's Amended Complaint must comply with Federal Rule of  
26 Civil Procedure 8. Plaintiff is cautioned that any Amended Complaint will be subject to  
27 an initial sua sponte screening and that it will be dismissed unless it contains factual matter  
28 sufficient to plausibly show that: (1) a right secured by the Constitution or laws of the

1 United States was violated; and (2) the alleged violation was committed by a person acting  
2 under color of state law. *Campbell v. Washington Dep't of Soc. Servs.*, 671 F.3d 837, 842  
3 n.5 (9th Cir. 2011). “Because vicarious liability is inapplicable to . . . § 1983 suits,”  
4 Plaintiff must plead that each government-official defendant “through the official’s own  
5 *individual* actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676 (emphasis added).  
6 Finally, because Plaintiff’s initial pleading suggests he may wish to name Judge Shamoon  
7 as a Defendant, he is hereby cautioned that a judge is absolutely immune for any acts  
8 alleged to have been taken in her judicial capacity. *See Meek v. Cty. of Riverside*, 183 F.3d  
9 962, 965 (9th Cir. 1999) (“It is well settled that judges are generally immune from civil  
10 liability under section 1983.”) (citing *Mireles v. Waco*, 502 U.S. 9, 9–10 (1991)).


### 11 **III. Conclusion and Order**

12 The Court DISMISSES this action without prejudice. Plaintiff may re-open this case  
13 if, within forty-five days of this Order, he files an Amended Complaint that conforms with  
14 Rule 8 and either (1) prepays the civil filing fee or (2) files a Motion to Proceed IFP which  
15 includes a certified copy of his trust account statement for the 6-month period preceding  
16 the filing of his Complaint, *see* 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2(b).

17 The Court DIRECTS the Clerk of Court to provide Plaintiff with this Court’s form  
18 “Motion and Declaration in Support of Motion to Proceed *In Forma Pauperis*” and its form  
19 “Complaint under the Civil Rights Act pursuant to 42 U.S.C. § 1983.” If Plaintiff chooses  
20 to proceed with a civil rights action, he must title his new pleading as his “Amended  
21 Complaint,” include Civil Case No. 18-cv-00493-WQH-WVG in its caption, and otherwise  
22 comply with Fed. R. Civ. P. 10(a) by naming each individual party he wishes to sue.

23 **IT IS SO ORDERED.**

24 Dated: April 10, 2018

25   
26 Hon. William Q. Hayes  
27 United States District Court  
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