

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

Jolee Kimble v. Frank Birchank

Kimble v. Birchank, No. 25-cv-3507-AGS-SBC (S.D. Cal. Dec. 15, 2025) · No. 25-cv-3507-AGS-SBC ·

Decided December 15, 2025

OPINION

1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF CALIFORNIA 3 Jolee
KIMBLE, Case No.: 25-cv-3507-AGS-SBC 4 Plaintiff, ORDER GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS 5 v. (ECF 2) AND DISMISSING 6 Frank BIRCHANK,
COMPLAINT 7 Defendant. 8 9 Plaintiff Jolee Kimble, proceeding without an attorney, seeks to
waive the filing fee 10 for her lawsuit against Superior Court Judge Frank Birchank.

(ECF 1, at 2.) Her request to 11 proceed without prepayment is granted, but her case does not
survive mandatory screening 12 and is dismissed with leave to amend. 13 DISCUSSION 14 A.
Motion to Proceed In Forma Pauperis 15 Parties instituting a civil action in a federal district court
must typically pay filing 16 fees of \$405. 28 U.S.C. § 1914(a) (\$350 filing fee); District Court
Misc.

Fee Schedule, 17 § 14 (effective Dec. 1, 2023) (\$55 administrative fee). But if granted the right to
proceed 18 in forma pauperis (“IFP”), a plaintiff can proceed without prepaying those fees.
Rodriguez 19 v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999). Plaintiff claims to be “homeless,” and
20 although she is very recently employed at “Applebees,” she has virtually no assets to her 21
name and “\$1,900” a month in expenses.

(See ECF 2, at 2, 4, 5.) Her request is granted, 22 after all a plaintiff “need not be completely
destitute to proceed IFP.” Blount v. Saul, No. 23 21-cv-0679-BLM, 2021 WL 1561453, at *1 (S.D.
Cal. Apr. 21, 2021). 24 B. Screening 25 In addition, when reviewing an IFP motion, the court
must screen the complaint and 26 dismiss it if—among other things—it “fails to state a claim” or
“seeks monetary relief 27 against a defendant who is immune from such relief.” 28 U.S.C. §
1915(e)(2)(B).

This 28 1 requirement is an obstacle here, as the only named defendant—a Superior Court judge
— 2 appears to be immune from suit. 3 “[A] judicial officer, in exercising the authority vested in
him, shall be free to act 4 upon his own convictions, without apprehension of personal
consequences to himself.” 5 Bradley v. Fisher, 80 U.S. 335, 347 (1871).

Accordingly, judges may not be sued in civil 6 actions for their judicial acts, “however erroneous
the act may have been, and however 7 injurious in its consequences it may have proved to the

plaintiff.” Id. Litigants who believe 8 judicial proceedings have wrongfully harmed them may pursue relief through the appellate 9 process; they are not entitled to sue judges for alleged mistakes in their decision making.

10 Judicial immunity seems to apply to all plaintiff’s claims against Judge Birchank, which 11 center on Judge Birchank allegedly “putting 2 filings in the U.S. Mail” after plaintiff 12 appeared before him “on December 10, 2025.” (ECF 1, at 2.) 13 There are only two instances in which a judge will be deprived of this immunity. 14 “First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken 15 in the judge’s judicial capacity.

Second, a judge is not immune for actions, though judicial 16 in nature, taken in the complete absence of all jurisdiction.” *Mireles v. Waco*, 502 U.S. 9, 17 11–12 (1991) (internal citations omitted). Nothing in the complaint suggests either 18 exception applies: the actions were taken by Judge Birchank while allegedly functioning 19 in his judicial role, and there is no reason to suspect he lacked jurisdiction over plaintiff’s 20 underlying case.

21 So, the complaint must be dismissed. But the Court will give plaintiff an opportunity 22 to amend. See *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (holding amendment 23 is typically appropriate “unless it is absolutely clear that the deficiencies of the complaint 24 could not be cured by amendment”). 25 CONCLUSION 26 Thus, the Court orders as follows: 27 1.

Plaintiff’s motion to proceed in forma pauperis is GRANTED. 28 2. By January 16, 2026, plaintiff may file a new amended complaint addressing 1 || the deficiencies discussed in this order. The amended complaint must be complete by itself 2 || without reference to any previous version of his pleading; defendants not named and any 3 || claims not re-alleged in the amended complaint will be considered waived.

If plaintiff fails 4 ||to timely amend, the Court will enter a final Order dismissing this case. 5 Dated: December 15, 2025 7 Hon. rew G. Schopler United States District Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28