

Appendix

Court orders

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IRINA COLLIER,

Plaintiff,

v.

CHARLES WADE COLLIER, et al.,

Defendants.

Case No.: 23-CV-00170-DMS-DDL

ORDER RE REFERRAL NOTICE

On February 3, 2023, the Court granted Plaintiff's Motion to Proceed IFP, and subsequently dismissed the complaint with prejudice, and without leave to amend. *See* ECF No. 6.) Plaintiff filed a Notice of Appeal. (*See* ECF No. 8.) On February 9, 2023, the United States Court of Appeals for the Ninth Circuit issued a Referral Notice to this Court "for the limited purpose of determining whether in forma pauperis status should continue for [Plaintiff's] appeal or whether the appeal is frivolous or taken in bad faith." (ECF No. 11 at 1.)

Rule 24(a)(3) of the Federal Rules of Appellate Procedure provides that a party which is granted leave to proceed in forma pauperis ("IFP") in a district court may continue in that status on appeal, unless the district court certifies that the appeal is not taken in good faith. However, an appellant may not proceed IFP in an appeal if the trial court certifies it

1 is not taken in good faith. 28 U.S.C. § 1915(a)(3). If an appeal is frivolous, it is not taken
2 in good faith. *Ellis v. U.S.*, 356 U.S. 674, 674 (1958). An appeal is “frivolous” if it lacks
3 any arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

4 As stated by this Court in its order dismissing the complaint, Plaintiffs claims lack
5 any arguable basis in law or fact. (See ECF No. 6 at 5-7.) Presumably, Plaintiff is going
6 to repeat the same claims to the Ninth Circuit that she already has to this Court, the
7 Northern District of California, the Ninth Circuit previously, the United States Supreme
8 Court, and the Federal Circuit. (See ECF No. 6 at 2-3). As such, the Court concludes
9 Plaintiff’s appeal lacks any arguable basis in law or fact, and thus is considered as not being
10 taken “in good faith” pursuant to 28 U.S.C. § 1915(a)(3). Thus, the Court hereby
11 **REVOKES** Plaintiff’s IFP status. See *Gardener v. Pogue*, 558 F.2d 548, 550 (9th Cir.
12 1977) (indigent appellant is only permitted to proceed IFP in an appeal if the appeal would
13 not be frivolous). The Clerk of the Court is directed to notify the Ninth Circuit Court of
14 Appeals of this Order. See Fed. R. App. P. 24(a)(4).

15 **IT IS SO ORDERED.**

16 Dated: February 9, 2023

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19 Hon. Dana M. Sabraw, Chief Judge
20 United States District Court
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 14 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

IRINA COLLIER,

Plaintiff-Appellant,

v.

CHARLES WADE COLLIER, Collier-
Garbers Trust Fund; IDEAS, INC.,

Defendants-Appellees.

No. 23-55126

D.C. No.

3:23-cv-00170-DMS-DDL

Southern District of California,
San Diego

ORDER

A review of the district court's docket reflects that the district court has certified that this appeal is not taken in good faith and has revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

- (1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), or
- (2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant files a statement that the appeal should go forward, appellant also must:

- (1) file in this court a motion to proceed in forma pauperis, OR

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(2) pay to the district court \$505.00 for the filing and docketing fees for this appeal AND file in this court proof that the \$505.00 was paid.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice.

The briefing schedule for this appeal is stayed.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, (2) a form statement that the appeal should go forward, and (3) a Form 4 financial affidavit. Appellant may use the enclosed forms for any motion to dismiss the appeal, statement that the appeal should go forward, and/or motion to proceed in forma pauperis.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Joseph Williams
Deputy Clerk
Ninth Circuit Rule 27-7



United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

Irina Collier

Civil Action No. 23CV0170-DMS-DDL

Plaintiff,

V.

Charles Wade Collier, Collier-Garbers
Trust Fund; Ideas Inc

JUDGMENT IN A CIVIL CASE

Defendant.

IT IS HEREBY ORDERED AND ADJUDGED:

The Complaint is dismissed with prejudice, and without leave to amend.

A handwritten signature, possibly of a judge or clerk, is located to the right of the judgment text.

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Criminality in
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Date: 2/3/23

CLERK OF COURT
JOHN MORRILL, Clerk of Court
By: s/ J. Petersen

J. Petersen, Deputy

I.

BACKGROUND

Plaintiff and her claims are not new to the court system. The crux of Plaintiff's claims in the federal court system appear to stem from two family law matters in California state court—a marital dissolution case filed in 2018 in Santa Clara County Superior Court, Case No. 18FL000889, and a domestic violence restraining order case, also filed in 2018 in Santa Clara County Superior Court, Case No. 18DV000161.

In 2021, Plaintiff filed a complaint in the United States District Court for the Northern District of California seeking relief under the False Claims Act. *Irina Collier v. University of California, Berkeley*, 21-cv-00502. The district court dismissed her complaint. *Id.* Plaintiff appealed, and the Ninth Circuit denied her appeal as frivolous. *Irina Collier v. University of California, Berkeley*, No. 21-15369, cert. denied, 142 S.Ct. 2719 (U.S. May 16, 2022) (No. 21-7285). Plaintiff appealed the district court order to the Federal Circuit, and the Federal Circuit denied the appeal for lack of jurisdiction. *Collier v. University of California, Berkeley*, No. 2022-1442, 2022 WL 1676223, at *1 (Fed. Cir. My 26, 2022). In connection with the same district court case, Plaintiff also filed a petition for issuance of an emergency writ. The Federal Circuit denied this petition. *See Collier v. Univ. of Cal., Berkeley*, No. 2022-1442 (Fed. Cir. June 29, 2022). Plaintiff additionally filed a petition for a writ of mandamus in the Federal Circuit Court. The Federal Circuit denied the petition based on lack of jurisdiction. *In re Collier*, No. 2022-165, 2022 WL 17075046, at *1 (Fed. Cir. Nov. 18, 2022).

Plaintiff then sought relief again in the United States District Court for the Northern District of California, this time for alleged civil rights violations and related family law matters. *Collier v. President of Stanford et al.*, 22-cv-5375, ECF No. 1 (N.D. Cal.). The magistrate judge granted IFP status, but recommended the case be dismissed pursuant to a sua sponte screening under 28 U.S.C. § 1915. *Id.* at ECF No. 12 (recommending dismissal due to lack of subject matter jurisdiction because the underlying issues involve California family law matters and the *Rooker-Feldman* doctrine divests the court of jurisdiction).

1 Plaintiff appealed, and the Ninth Circuit dismissed her appeal as premature. *Collier v.*
 2 *President of Stanford, et al.*, No. 22-16529 (9th Cir. Oct. 21, 2022). Plaintiff thereafter
 3 appealed the Ninth Circuit decision to the Federal Circuit. The Federal Circuit dismissed
 4 Plaintiff's appeal because it lacked jurisdiction. *See Collier v. President of Stanford*, No.
 5 23-1185 (Fed. Cir. Dec. 30, 2022) (stating "this is now our fourth decision this year
 6 explaining to Ms. Collier the statutory limits of this court's jurisdiction over her civil
 7 matters arising from the Northern District of California").

8 In the same district court case, *Collier v. President of Stanford et al.*, 22-cv-5375,
 9 Plaintiff filed an ex parte motion for a temporary restraining order (TRO). ECF No. 44.
 10 Plaintiff sought to "enjoin defendants from allegedly retaliating against her and violating a
 11 Domestic Violence Restraining Order." *Id.* at 1. The court denied the TRO because
 12 Plaintiff failed to provide notice to the adverse party, and had not otherwise met her burden
 13 for a TRO. *Collier v. President of Stanford et al.*, 22-cv-5375, ECF No. 46 (N.D. Cal.). A
 14 few weeks later, the district court judge adopted the recommendation of the magistrate
 15 judge and dismissed the case with prejudice. *Id.* at ECF No. 49. Plaintiff now brings
 16 essentially the same claims before this Court. *no hearing litigation of crimes*

17 Here, Plaintiff alleges a litany of causes of action against the defendants, including:
 18 violation of the Thirteenth Amendment, violation of a Domestic Violence Restraining
 19 Orders (DVRO), violation of the Victims Against Women Act (VAWA), violation of her
 20 son's First Amendment rights, human trafficking, sexual assault, labor exploitation, bank
 21 fraud, insurance fraud, educational discrimination, stalking, cyberstalking, surreptitious
 22 smart house surveillance, health damage to a minor, drugging, threats to victims' lives,
 23 home invasions, United States Postal Service (USPS) violations, and obstruction of justice
 24 by the Florida and California Sheriff's offices. *See generally* Pl. Compl. (ECF No. 1).
 25 Plaintiff contends the defendants conspired to commit these causes of actions under RICO.
 26 Throughout the complaint, Plaintiff asks this Court to consolidate all of her cases, and to
 27 change the status of this case and the others from civil to criminal.

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I. MOTION TO PROCEED IN FORMA PAUPERIS

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$402. *See* 28 U.S.C. § 1914(a); Civil Local Rule 4.5. An action may proceed despite a plaintiff's failure to prepay the entire fee only if the plaintiff is granted leave to proceed *In Forma Pauperis* (IFP) pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). This Court finds Plaintiff's affidavit is sufficient to show she is unable to pay the fees or post securities required to maintain this action. *See* Civil Local Rule 3.2(d). Accordingly, the Court **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a).¹

II. SUA SPONTE SCREENING PER 28 U.S.C. § 1915(e)(2)

Notwithstanding payment of any filing fee or portion thereof, a complaint filed by any person proceeding IFP pursuant to 28 U.S.C. § 1915(a) is subject to a mandatory and *sua sponte* review and dismissal by the court to the extent it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (*en banc*). Prior to its amendment by the Prison Litigation Reform Act, the former 28 U.S.C. § 1915(d) permitted *sua sponte* dismissal of only frivolous and malicious claims. *Id.* at 1130. The newly enacted 28 U.S.C. § 1915(e)(2), however, mandates that the court reviewing a complaint filed pursuant to the IFP provisions of section 1915 make and rule on its own motion to dismiss before directing that the complaint be served by the U.S. Marshal pursuant to Fed. R. Civ. P. 4(c)(2). *Lopez*, 203 F.3d 1127 (“[S]ection 1915(e) not only

¹ Two weeks ago, the United States District Court for the Northern District of California revoked Plaintiff's IFP status because Plaintiff “failed to state a valid claim and has filed multiple convoluted and frivolous” actions. *Collier v. President of Stanford et al.*, 22-cv-5375 (N.D. Cal. Jan. 19, 2023). Nevertheless, this Court grants Plaintiffs motion to proceed IFP.

1 permits, but requires a district court to dismiss an in forma pauperis complaint that fails to
 2 state a claim.”); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting
 3 the “the language of § 1915(e)(2)(B)(ii) parallels the language of Federal Rule of Civil
 4 Procedure 12(b)(6).”).

5 IFP complaints which are “[d]uplicative or repetitious litigation of virtually identical
 6 causes of action [are] subject to dismissal.” *Anderson Adams v. Hernandez*, 1993 WL
 7 548812, at *2. (N.D. Cal. Dec. 21, 1993). Where a plaintiff repeats pending or previously
 8 litigated claims, it is proper to dismiss it as frivolous under 28 U.S.C. § 1915. *Cato v.*
 9 *United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *see also Denton v. Hernandez*, 504
 10 U.S. 25, 30 (1992) (recognizing Congress's concern that “a litigant whose filing fees and
 11 court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive
 12 to refrain from filing frivolous, malicious, or repetitive lawsuits”) (quotation omitted).
 13 “[I]n assessing whether the second action is duplicative of the first, [courts] examine
 14 whether the causes of action and relief sought, as well as the parties or privies to the action,
 15 are the same.” *Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 689 (9th Cir. 2007),
 16 *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880, 904 (2008).

17 As summarized above, Plaintiff's claims are not new to the federal courts. The Court
 18 takes judicial notice of the records of each of Plaintiff's previous cases noted above. *See*
 19 *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (citations omitted) (a court may
 20 take judicial notice of “proceedings in other courts, both within and without the federal
 21 judicial system, if those proceedings have a direct relation to matters at issue.”). Here,
 22 Plaintiff has already brought nearly identical claims before the Northern District of
 23 California, the Ninth Circuit, the Federal Circuit, and the United States Supreme Court.
 24 The Plaintiff is the same in each case, Irina Collier, as are the defendants. In the complaint
 25 here, Plaintiff lists Charles Wade Collier, Collier-Garbers IDEAS Inc., and Colliers Trust
 26 Fund. However, throughout the complaint, Plaintiff also alleges harms by the University
 27 of California, Berkeley, Marty Collier, and the President of Stanford. Collectively, these
 28

are the same defendants in Plaintiffs previous lawsuits noted above. Therefore, the Court finds Plaintiff's complaint here is duplicative and subject to dismissal.

Additionally, in order to prevent abusive litigation, 28 U.S.C. § 1915(d) permits courts to dismiss a claim filed IFP if it is frivolous. A complaint is legally "frivolous where it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The term "'frivolous,' when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." *Id.* As set forth in the prior federal district court case, *Collier v. President of Stanford et al.*, 22-cv-5375 (N.D. Cal.), Plaintiffs claims stem from claims regarding an application for a Domestic Violence Restraining Order (DVRO) in a California state court case.² Plaintiff does make numerous allegations, e.g. claims under RICO, VAWA, and the First and Thirteenth Amendments, over which a federal court may have jurisdiction. However, the facts in the Complaint do not support such claims, and the legal conclusions Plaintiff asks the Court to reach are not viable.

Plaintiff's allegations here stem from a California family law matter, which began in 2018 according to the Complaint. Under the *Rooker-Feldman* doctrine, federal courts are deprived of jurisdiction to hear appeals to final, and non-final, orders and judgments issued by a state court. See *Doe & Assoc. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001); *Noel v. Hall*, 341 F.3d 1148, 1155 (9th Cir. 2003). An action constitutes a de facto appeal when the plaintiff is asserting legal errors by a state court and is seeking a relief from the state court judgment. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004) (citing *Noel*, 341 F.3d at 1163). Here, Plaintiff is doing just that. Plaintiff has already appeared before the Santa Clara County Superior Court regarding the custody of her child. Although in addition to her allegations regarding alleged DVRO violations, Plaintiff asserts numerous federal violations, the underlying conduct stems from an alleged

² Based upon review of the court records in case no. 18DV000161, it is not clear whether a restraining order was issued by the court. It simply appears Plaintiff applied for a DVRO.

1 disagreement regarding child custody. As such, the Court finds Plaintiff's complaint here
2 is frivolous and subject to dismissal without leave to amend. *See Lopez v. Smith*, 203 F.3d
3 1122, 1127 n.8 (9th Cir. 2000) (en banc) ("[w]hen a case may be classified as frivolous or
4 malicious, there is, by definition, no merit to the underlying action and so no reason to
5 grant leave to amend.").

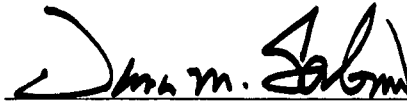
6 **III.**

7 **CONCLUSION**

8 In light of the above, Plaintiff's Motion to Proceed IFP is **GRANTED** and the
9 Complaint is **DISMISSED** with prejudice, and without leave to amend. In light of this
10 ruling, Plaintiff's remaining motions for appointment of counsel, writ of mandamus, and
11 emergency application for temporary restraining order are denied as moot.

12 **IT IS SO ORDERED.**

13 Dated: February 3, 2023

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16 Hon. Dana M. Sabraw, Chief Judge
17 United States District Court
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