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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

STEPHAN BROOKS, et al.,	)	NO. CV 15-7724-JFW(E)
	)	
Plaintiffs,	)	
	)	
v.	)	REPORT AND RECOMMENDATION OF
	)	
PACO-MICHELLE ATWOOD, et al.,	)	UNITED STATES MAGISTRATE JUDGE
	)	
Defendants.	)	
	)	

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This Report and Recommendation is submitted to the Honorable John F. Walter, United States District Judge, pursuant to 28 U.S.C. section 636 and General Order 05-07 of the United States District Court for the Central District of California.

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**BACKGROUND**

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Plaintiff Stephan Brooks filed this action individually and as: (1) alleged successor trustee to the Sireaner Townsend Revocable Living Trust dated June 22, 2004 ("Trust"); (2) alleged sole beneficiary of the Trust; (3) alleged sole heir of the Sireaner

1 Townsend Pour Over Will dated June 22, 2004; and (4) alleged heir to  
2 the estate of Sherrell Atwood. Plaintiff's claims arise out of a  
3 family dispute concerning residential real property which resulted in  
4 state court litigation, including a probate case concerning the  
5 Sherrell Atwood estate ("Estate Case"), a "Trust Case," a "Will  
6 Contest Case" and a "Partition Case."

7  
8 The original Complaint purported to state civil rights claims and  
9 state law claims against: (1) Plaintiff's sister Paco-Michelle Atwood,  
10 individually and as alleged administrator of the estate of Sherrell  
11 Atwood; (2) Chrisangela Walston, allegedly an attorney for Atwood in  
12 the "Estate Case" and the "Partition Case"; (3) L'Tanya M. Butler,  
13 allegedly an attorney for Atwood in the state court cases; (4) Maurice  
14 Smith, Clifford Townsend, Jr. and Steven Townsend, the three  
15 petitioners in the "Trust Case" and "Will Contest" cases; (5) Guy  
16 Leemhuis, allegedly the attorney for Smith and the two Townsends;  
17 (6) Jonnie Johnson Parker, allegedly the attorney for Plaintiff  
18 individually and as alleged successor trustee in the "Trust Case"; and  
19 (7) ten fictitious "Doe" Defendants. In the original Complaint,  
20 Plaintiff alleged that the Defendants named in that pleading conspired  
21 with lawyers and judges to deprive Plaintiff of the right to the  
22 property, which allegedly previously was owned jointly by Plaintiff's  
23 mother, Sherrell Atwood, and grandmother, Sireaner Townsend, both now  
24 deceased.

25  
26 On December 8, 2015, Defendants Atwood, Butler and Walston filed  
27 a motion to dismiss the Complaint. On January 8, 2016, Plaintiff  
28 filed an opposition to that motion. On January 19, 2016, the Court

1 issued an "Order Dismissing Complaint With Leave to Amend," dismissing  
2 the Complaint with leave to amend and permitting Plaintiff to file a  
3 First Amended Complaint.

4  
5 Plaintiff did not file a First Amended Complaint by the deadline  
6 set in the January 19, 2016 Order. Accordingly, on March 3, 2016, the  
7 Magistrate Judge issued a Report and Recommendation recommending  
8 dismissal of the action without prejudice for failure to prosecute.

9  
10 On March 21, 2016, Plaintiff filed objections to the Report and  
11 Recommendation. On March 22, 2016, the Magistrate Judge issued a  
12 Minute Order withdrawing the Report and Recommendation and extending  
13 the time within which Plaintiff could file a First Amended Complaint.  
14 Plaintiff filed a First Amended Complaint on April 5, 2016, naming the  
15 original Defendants and adding two new Defendants: (1) Los Angeles  
16 County Superior Court Executive Officer/Clerk Sherri Carter; and  
17 (2) Joseph A. Lane, Clerk of the California Court of Appeal, Second  
18 District.

19  
20 On April 7, 2016, Defendants Atwood, Butler and Walston filed a  
21 motion to dismiss the First Amended Complaint. On May 4, 2016,  
22 Plaintiff filed an opposition to this motion. On May 13, 2016, the  
23 Magistrate Judge issued a Report and Recommendation recommending that  
24 the Court: (1) dismiss the First Amended Complaint and the action as  
25 against private party Defendants Atwood, Walston, Butler, Maurice  
26 Smith, Clifford Townsend, Jr., Steven Townsend, Guy A. Leemhuis, and

27 ///

28 ///

1 Jonnie Johnson Parker,<sup>1</sup> with prejudice with respect to the federal  
2 claims; and (2) decline to exercise supplemental jurisdiction over the  
3 state law claims against the private party Defendants and dismiss  
4 those state law claims against the private party Defendants without  
5 prejudice.

6  
7 On May 17, 2016, Defendants Carter and Lane filed a Motion to  
8 Dismiss the First Amended Complaint. On June 16, 2016, Plaintiff  
9 filed an Opposition.

10  
11 On June 20, 2016, the District Judge issued an "Order Accepting  
12 Findings, Conclusions and Recommendations of United States Magistrate  
13 Judge." This Order adopted the Magistrate Judge's May 13, 2016 Report  
14 and Recommendation, dismissing from the action all Defendants other  
15 than Defendants Carter and Lane.

16  
17 On June 28, 2016, the Magistrate Judge issued a Report and  
18 Recommendation addressing the Motion to Dismiss filed by Defendants  
19 Carter and Lane and inter alia recommending dismissal of the First  
20 Amended Complaint as against the Defendants with leave to amend.  
21 Among other things, the Report and Recommendation advised Plaintiff  
22 that the doctrine of quasi-judicial immunity shielded Defendants  
23 Carter and Lane from liability for actions taken in their capacities

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24  
25 <sup>1</sup> Although Defendants Maurice Smith, Clifford Townsend,  
26 Jr., Steven Townsend, Guy A. Leemhuis and Jonnie Johnson Parker  
27 had not appeared in the action, the same reasons supporting  
28 dismissal of the First Amended Complaint as against the appearing  
private party Defendants supported dismissal of the First Amended  
Complaint and the action as against Defendants Smith, Clifford  
Townsend, Jr., Steven Townsend, Leemhuis and Parker.

1 as court clerks when they perform tasks that are an integral part of  
2 the judicial process. On August 5, 2016, the District Judge issued an  
3 "Order Accepting Findings, Conclusions and Recommendations of United  
4 State Magistrate Judge," dismissing the First Amended Complaint as  
5 against Defendants Carter and Lane with leave to amend.

6  
7 On September 6, 2016, Plaintiff filed a Second Amended Complaint  
8 against Defendants Carter and Lane, and adding as Defendants: (1) Los  
9 Angeles County Superior Court Judges Beckloff, Cowan, Levanas and  
10 Stratton; (2) California Court of Appeal Justices Epstein, Willhite  
11 and Collins; and (3) the County of Los Angeles ("County").

12  
13 On September 21, 2016, Defendants Carter and Lane filed a Motion  
14 to Dismiss the Second Amended Complaint. On October 21, 2016,  
15 Plaintiff filed an Opposition to the Motion to Dismiss.

16  
17 **SUMMARY OF PLAINTIFF'S ALLEGATIONS**

18  
19 **I. Original Complaint**

20  
21 In the original Complaint, Plaintiff alleged that various private  
22 party Defendants, supposedly in conspiracy with "Co-Conspirator"  
23 judicial officers not then named as Defendants, filed and pursued sham  
24 litigation by allegedly, among other things:

25  
26 1. filing the "Estate Case" assertedly with knowledge that  
27 Sherrell Atwood purportedly had no interest in the property and that  
28 Plaintiff allegedly was "the 2/3 heir of Sherrell Atwood";

1           2.   doing nothing to advance the Estate Case;

2  
3           3.   perpetrating a fraud upon the court and obtaining a  
4 settlement by threat and coercion;

5  
6           4.   causing the property taxes to become delinquent;

7  
8           5.   filing the allegedly sham "Partition" case over a year after  
9 the "Estate Case" should have been dismissed, assertedly knowing that  
10 Maurice Smith allegedly was not an heir of Sireaner Townsend and that  
11 the court allegedly lacked jurisdiction;

12  
13          6.   seeking and obtaining eighty continuances over four years in  
14 the four cases and refusing to dismiss three of the cases after five  
15 years;

16  
17          7.   threatening Plaintiff in order to settle one or more of the  
18 state cases;

19  
20          8.   executing an incorrect and invalid settlement agreement; and

21  
22          9.   filing the "still open" "Will Contest Case" allegedly knowing  
23 the case purportedly was baseless and "would fail from the outset,"  
24 and without intent to pursue the case

25  
26 (see Complaint, pp. 22-31).

27 ///

28 ///

1           The original Complaint identified various state court judges not  
2 named as Defendants as purported "co-conspirators": (1) Los Angeles  
3 Superior Court Judges Mitchell L. Beckloff, David J. Cowan, Michael I.  
4 Levanas and Maria E. Stratton; and (2) California Court of Appeal  
5 Justices Norman L. Epstein, Audrey B. Collins and Thomas L. Willhite,  
6 Jr. According to Plaintiff's allegations, the Superior Court judges  
7 wrongfully granted continuances in the four cases over a four-year  
8 period "at the behest of Defendants," refused to decide jurisdictional  
9 motions to dismiss, refused to dismiss cases "when mandatorily bound  
10 by five year statutes," and refused to close and distribute the estate  
11 of Sherrell Atwood "when bound to do so by statute" (*id.*, p. 21).  
12 Plaintiff also alleged the Superior Court judges: (1) received  
13 "retroactive immunity pursuant to SBX 2 11 from California criminal  
14 prosecution, civil liability and disciplinary action for taking  
15 payments from LA County while sitting as [judges] prior to July 1,  
16 2008"; (2) received allegedly illegal payments which they assertedly  
17 failed to disclose; and (3) were biased because Los Angeles County  
18 assertedly would benefit from increased tax revenue purportedly to be  
19 gained from a court-ordered sale of the property (*see* Complaint, pp.  
20 10-14).

21  
22           In the original Complaint, Plaintiff alleged that Justices  
23 Epstein and Willhite: (1) received "retroactive immunity pursuant to  
24 SBX 2 11 from California criminal prosecution, civil liability and  
25 disciplinary action for taking payments from LA County while sitting  
26 as [Superior Court judges] prior to July 1, 2008"; (2) received  
27 allegedly illegal payments which they assertedly failed to disclose;  
28 and (3) failed to disclose that Superior Court judges had engaged in

1 fraud by taking payments from Los Angeles County during the "Partition  
2 Case" (id., pp. 15-17). The appellate justices allegedly: (1) signed  
3 appellate opinions assertedly knowing that Paco-Michelle Atwood  
4 supposedly did not contest that the Superior Court judges allegedly  
5 had engaged in fraud by taking purportedly illegal payments from the  
6 County; and (2) failed to address Plaintiff's challenges to the  
7 Superior Court's jurisdiction (id., pp. 14-17). Justice Collins  
8 allegedly violated the Code of Judicial Ethics by failing to disclose  
9 that she had been a Los Angeles County district attorney and that  
10 during her tenure as Presiding Judge of this Court she allowed United  
11 States District Judges who were former Superior Court Judges to  
12 receive the aforesaid "retroactive immunity" (id., pp. 15-16).

13  
14 The original Complaint alleged five claims for relief, styled  
15 "causes of action." The First Cause of Action asserted a claim for  
16 deprivation of due process pursuant to 42 U.S.C. section 1983.  
17 Defendants allegedly perverted and obstructed justice through delays,  
18 fraud on the court and bias, took the property without due process and  
19 denied Plaintiff equal protection "by threats and intimidation" (id.,  
20 p. 32). The Second Cause of Action alleged a conspiracy to deprive  
21 Plaintiff of equal protection in violation of 42 U.S.C. section  
22 1985(2). The Third Cause of Action purportedly asserted a claim for  
23 declaratory and injunctive relief. The Fourth and Fifth Causes of  
24 Action asserted supplemental claims for intentional and negligent  
25 infliction of emotional distress, respectively.

26  
27 Plaintiff attached to the original Complaint, among other things:  
28 (1) a partial copy of an order of the Los Angeles County Superior

1 Court, dated September 16, 2014, granting summary adjudication for  
2 Paco-Michelle Atwood as administrator of the Estate of Sherrell  
3 Atwood, finding that Plaintiff owned a one-sixth interest in the real  
4 property and ruling that the Estate was entitled to a partition by  
5 sale; and (2) a copy of the decision of the California Court of Appeal  
6 affirming the Superior Court's order<sup>2</sup> (Complaint, Ex. 3).

7  
8 In the original Complaint, Plaintiff sought damages, an order  
9 setting aside the state court's order which determined ownership of  
10 and ordered the sale of the property, and an injunction restraining  
11 Defendants from engaging in any action to sell the property or to  
12 acquire or share any proceeds from the sale of the property.

13  
14 **II. The First Amended Complaint**

15  
16 The First Amended Complaint was very similar to its predecessor.  
17 Most of the substantive allegations were identical or virtually  
18 identical to those in the original Complaint. Plaintiff purported to  
19 add allegations supposedly showing that Defendants engaged in "Joint  
20 Action, Common Scheme, Concert of Action, Conspiracy and Fraud Upon  
21 the Court" (First Amended Complaint, pp. 3-5). Plaintiff also added  
22 allegations that newly named Defendant Carter purportedly destroyed  
23 and/or omitted documents from the "Case Summaries" of some of the

24 \_\_\_\_\_  
25 <sup>2</sup> See Atwood v. Brooks, 2015 WL 5029639 (No. B258407)  
26 (Cal. App. Aug. 25, 2015). Among other things, the Court of  
27 Appeal rejected Plaintiff's argument that Atwood delayed  
28 unreasonably in filing a probate action and Plaintiff's argument  
because they purportedly received unauthorized employment  
benefits.

1 state court cases and allegedly listed documents in the Partition case  
2 which assertedly did not exist (id., p. 27). Defendant Carter also  
3 allegedly refused to provide Plaintiff with a "timely date for a  
4 motion to stop April 13, 2015 trial even though motion was timely  
5 filed. . . ." (id.). Newly named Defendant Lane allegedly filed  
6 Atwood's motion to dismiss the appeal in case number B267893 [sic]  
7 before the record was filed, assertedly in violation of a court rule  
8 (id., p. 28). Plaintiff also added allegations concerning the number  
9 of continuances in the state court cases, a purported May 9, 2016  
10 trial date in the Estate Case, and the California Court of Appeal's  
11 dismissal of Plaintiff's appeal in Atwood v. Brooks, Court of Appeal  
12 case number B267393 (see, e.g., id., pp. 7, 14-16, 18, 20-21).

13  
14 The First Amended Complaint contained five "causes of action."  
15 The First Cause of Action alleged: (1) violations of due process "by  
16 perverting and obstructing justice through destruction of documents,  
17 refusal to file documents, delays, fraud upon the court and bias" and  
18 by taking property without due process; and (2) violations of equal  
19 protection by allegedly subjecting Plaintiff to "threats and  
20 intimidation" (id., p. 39). The Second Cause of Action alleged  
21 conspiracy in asserted violation of 42 U.S.C. section 1985(2). The  
22 Third Cause of Action sought declaratory relief in the Partition Case,  
23 an order setting aside all orders in the Partition Case and temporary  
24 and permanent injunctive relief preventing Defendants from "engaging  
25 in any action in the Partition Case based upon any order obtained  
26 through fraud upon the court" (id., p. 44). The Fourth and Fifth  
27 Causes of Action alleged claims of intentional and negligent  
28 infliction of emotional distress. Plaintiff sought damages and the

1 previously mentioned declaratory and injunctive relief.

2  
3 **III. The Second Amended Complaint**

4  
5 The Second Amended Complaint closely resembles its predecessors.  
6 Plaintiff again alleges that Judges Beckloff, Cowan, Levanas and  
7 Stratton received illegal payments from the County, improperly granted  
8 continuances in the four cases, improperly assumed jurisdiction in  
9 three of the cases, exhibited bias, and refused to dismiss three cases  
10 as allegedly untimely (Second Amended Complaint, pp. 4-12, 26-27).  
11 Defendants Epstein, Willhite and Collins allegedly received illegal  
12 payments from the County and made incorrect and unlawful rulings (id.,  
13 pp. 4, 13-18, 27-28). Defendant Carter allegedly destroyed and/or  
14 failed to place documents assertedly filed by Plaintiff in the court  
15 file, destroyed documents, listed allegedly non-existent documents in  
16 a "case summary," refused to provide Plaintiff with a hearing date for  
17 a motion Plaintiff filed and refused to show Plaintiff's motion to  
18 stay the Partition Case in the "case summary" (id., pp. 4-5, 18-19,  
19 28-29). Defendant Lane allegedly "made an illegal filing in the  
20 appeal" and obstructed justice by filing Atwood's motion to dismiss an  
21 appeal before the record was filed (id., pp. 5, 19-20, 29). The  
22 County allegedly made illegal payments to the judicial Defendants  
23 (id., pp. 5, 20-21).

24  
25 Like the First Amended Complaint, the Second Amended Complaint  
26 contains purported claims for: (1) deprivation of due process and  
27 equal protection pursuant to 42 U.S.C. section 1983; (2) conspiracy to  
28 deprive Plaintiff of equal protection in violation of 42 U.S.C.

1 section 1985(2); (3) declaratory and injunctive relief; (4)  
2 intentional infliction of emotional distress; and (5) negligent  
3 infliction of emotional distress. As in the First Amended Complaint,  
4 Plaintiff seeks damages and declaratory and injunctive relief  
5 restraining the Defendants from "engaging in any action in the  
6 Partition Case" (id., pp. 38, 40).<sup>3</sup>

7  
8 **STANDARDS GOVERNING MOTION TO DISMISS**

9  
10 To survive a motion to dismiss under Rule 12(b)(6), "a complaint  
11 must contain sufficient factual matter, accepted as true, to state a  
12 claim to relief that is plausible on its face." Ashcroft v. Iqbal,  
13 556 U.S. 662, 678 (2009) (citation and internal quotations omitted).  
14 "A claim has facial plausibility when the plaintiff pleads factual  
15 content that allows the court to draw the reasonable inference that  
16 the defendant is liable for the misconduct alleged." Id.

17  
18 The Court must accept as true all non-conclusory factual  
19 allegations in the complaint and must construe the complaint in the  
20 light most favorable to the plaintiff. Zucco Partners, LLC v.  
21 Digimarc Corp., 552 F.3d 981, 989 (9th Cir. 2009). "Generally, a  
22 court may not consider material beyond the complaint in ruling on a  
23 Fed. R. Civ. P. 12(b)(6) motion." Intri-Plex Technologies, Inc. v.  
24 Crest Group, Inc., 499 F.3d 1048, 1052 (9th Cir. 2007) (citation and  
25 footnote omitted).

26 ///

27  
28 <sup>3</sup> The Third Cause of Action does not contain any charging  
allegations against the Moving Defendants.



1 491 U.S. 58, 71 (1989); Krainski v. Nevada ex rel. Bd. of Regents of  
2 Nevada System of Higher Educ., 616 F.3d 963, 968 (9th Cir. 2010),  
3 cert. denied, 562 U.S. 1286 (2011). In his Opposition, however,  
4 Plaintiff states that he intends to sue the Moving Defendants for  
5 damages in their individual capacities (see Opposition, pp. 4-5). The  
6 Eleventh Amendment does not bar such claims. See Hafer v. Melo, 502  
7 U.S. 21, 30-31 (1991); Suever v. Connell, 579 F.3d 1047, 1060-61 (9th  
8 Cir. 2009).

9  
10 However, assuming arguendo that the Second Amended Complaint  
11 pleads claims against the Moving Defendants in their individual  
12 capacities only, the doctrine of quasi-judicial immunity shields those  
13 Defendants from suit in this case.

14  
15 As the Court previously advised Plaintiff, the doctrine of  
16 judicial immunity bars state and federal claims for damages against a  
17 judicial officer for actions taken in his or her judicial capacity.  
18 See Mireles v. Waco, 502 U.S. 9, 9-10 (1991) (per curiam); Moore v.  
19 Brewster, 96 F.3d 1240, 1243-44 (9th Cir. 1996), cert. denied, 519  
20 U.S. 1118 (1997). “[J]udicial immunity is not overcome by allegations  
21 of bad faith or malice.” Mireles v. Waco, 502 U.S. at 11. The  
22 doctrine “applies however erroneous the act may have been, and however  
23 injurious in its consequences it may have proved to the plaintiff.”  
24 Cleavinger v. Saxner, 474 U.S. 193, 199-200 (1985) (citations and  
25 quotations omitted).

26  
27 Absolute immunity “is not reserved solely for judges, but extends  
28 to nonjudicial officers for all claims relating to the exercise of

1 judicial functions." Burton v. Infinity Capital Management, 753 F.3d  
2 954, 959 (9th Cir. 2014) (citations and internal quotations omitted).  
3 "[C]ourt clerks are entitled to absolute immunity even in the absence  
4 of a judicial directive so long as the acts were not done 'in the  
5 clear absence of all jurisdiction.'" Id. at 961 (quoting Mullis v.  
6 United States Bankruptcy Court for Dist. of Nev., 828 F.2d 1385, 1390  
7 (9th Cir. 1987), cert. denied, 486 U.S. 1040 (1988)). "Court clerks  
8 have absolute quasi-judicial immunity from damages for civil rights  
9 violations when they perform tasks that are an integral part of the  
10 judicial process." Mullis v. United States Bankruptcy Court for Dist.  
11 of Nev., 828 F.2d at 1390 (citations omitted).

12  
13 Here, Plaintiff's federal claims against the Moving Defendants  
14 arise out of alleged actions taken in Moving Defendants' capacities as  
15 court clerks, involving tasks which were an "integral part of the  
16 judicial process." On the face of the Second Amended Complaint, the  
17 Moving Defendants are entitled to quasi-judicial immunity. See  
18 Coulter v. Roddy, 463 Fed. App'x 610, 611 (9th Cir. 2011), cert.  
19 denied, 132 S. Ct. 2752 (2012) (court clerk immune for allegedly  
20 directing deputy clerks to refuse to file forms presented by a pro se  
21 litigant seeking dismissal of a civil action); Essell v. Carter, 450  
22 Fed. App'x 691 (9th Cir. 2011) (court clerks immune for failing to  
23 respond to pro se plaintiff's letters and failing to file various  
24 motions and appeals); Sedgwick v. United States, 265 Fed. App'x 567,  
25 568 (9th Cir. 2008) (United States Supreme Court clerk immune for  
26 refusing to file plaintiff's petition for writ of certiorari); In re  
27 Castillo, 297 F.3d 940, 951-52 (9th Cir. 2002) (bankruptcy trustee  
28 absolutely immune for failing to give notice of hearing and improperly

1 scheduling hearing); Moore v. Brewster, 96 F.3d at 1244 (court clerk  
2 immune for allegedly deceiving plaintiff regarding status of  
3 supersedeas bond and improperly conducting hearings to assess costs);  
4 Mullis v. United States Bankruptcy Court for Dist. of Nev., 828 F.2d  
5 at 1390 (bankruptcy court clerks immune for failing to provide  
6 requested information and refusing to accept and file an amended  
7 bankruptcy petition); Morrison v. Jones, 607 F.2d 1269, 1273 (9th Cir.  
8 1979), cert. denied, 445 U.S. 962 (1980) (court clerk immune for  
9 allegedly failing to give notice of a dependency court order);  
10 Marchetti v. Superior Court, 2016 WL 4658959, at \*8 (N.D. Cal.  
11 Sept. 7, 2016) (court clerks immune for denying plaintiff's request  
12 for a hearing); Shatford v. Los Angeles County Sheriff's Dep't, 2016  
13 WL 1579379, at \*10 (C.D. Cal. Mar. 29, 2016), adopted, 2016 WL 1573422  
14 (Apr. 19, 2016) ("Procedures for calendaring appearances before a  
15 judicial officer and deciding whether or not to file documents on the  
16 court's docket are an integral part of the judicial process, even if  
17 those tasks are considered administrative or ministerial."); Maldonado  
18 v. Superior Court, 2013 WL 635951, at \*3 (E.D. Cal. Feb. 20, 2013)  
19 (clerk immune for failing to take action on plaintiff's complaints and  
20 habeas corpus petition); Armstrong v. Scribner, 2008 WL 268974, at \*19  
21 (S.D. Cal. Jan. 30, 2008) (clerk immune for failing to file documents  
22 plaintiff submitted to the court).

## 23 24 CONCLUSION

25  
26 As previously indicated, the Court may dismiss a complaint  
27 without leave to amend if "it is absolutely clear that the  
28 deficiencies of the complaint could not be cured by amendment."

1 Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d at 623; see also  
2 Lopez v. Smith, 203 F.3d at 1130. Although Plaintiff previously was  
3 afforded the opportunity to amend his pleading to attempt to state  
4 cognizable federal claims against the Moving Defendants, he has proven  
5 unable to state such claims. In these circumstances, further  
6 amendment would be futile. See Martinez v. Newport Beach City, 125  
7 F.3d 777, 785 (9th Cir. 1997), overruled on other grounds, Green v.  
8 City of Tucson, 255 F.3d 1086 (9th Cir. 2001) (amendment futile  
9 because defendant was entitled to judicial immunity); see also Simon  
10 v. Value Behavioral Health, Inc., 208 F.3d 1073, 1084 (9th Cir.),  
11 amended, 234 F.3d 428 (9th Cir. 2000), cert. denied, 531 U.S. 1104  
12 (2001), overruled on other grounds, Odom v. Microsoft Corp., 486 F.3d  
13 541 (9th Cir.), cert. denied, 552 U.S. 985 (2007) (affirming dismissal  
14 without leave to amend where plaintiff failed to correct deficiencies  
15 in complaint, where court had afforded plaintiff opportunities to do  
16 so, and where court had given plaintiff notice of the substantive  
17 problems with his claims); Plumeau v. School District #40, County of  
18 Yamhill, 130 F.3d 432, 439 (9th Cir. 1997) (denial of leave to amend  
19 appropriate where further amendment would be futile).

20  
21 **RECOMMENDATION**  
22

23 For all of the foregoing reasons, IT IS RECOMMENDED that the  
24 Court issue an Order: (1) accepting and adopting this Report and  
25 Recommendation; (2) granting the Moving Defendants' Motion to Dismiss;  
26 (3) dismissing the Second Amended Complaint and the action as against  
27 the Moving Defendants without leave to amend and with prejudice as to  
28 the federal claims against those Defendants; and (4) declining to



1 **NOTICE**

2 Reports and Recommendations are not appealable to the Court of  
3 Appeals, but may be subject to the right of any party to file  
4 objections as provided in the Local Rules Governing the Duties of  
5 Magistrate Judges and review by the District Judge whose initials  
6 appear in the docket number. No notice of appeal pursuant to the  
7 Federal Rules of Appellate Procedure should be filed until entry of  
8 the judgment of the District Court.

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