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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

PAUL WELDON,

Plaintiff,

v.

JONATHAN NICHOLAS KAPETAN,  
FRESNO SUPERIOR COURT, DOES 1-100,

Defendants.

Case No. 1:17-cv-01536-LJO-SKO

**FINDINGS AND RECOMMENDATIONS  
THAT PLAINTIFF’S CLAIMS BE  
DENIED WITH PREJUDICE IN PART  
AND WITHOUT PREJUDICE IN PART**

(Doc. 1)

**OBJECTIONS DUE: 21 DAYS**

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**I. INTRODUCTION**

Before the Court is a civil rights complaint, filed on November 17, 2017, by Plaintiff Paul Weldon (“Plaintiff”) against Fresno Superior Court and Fresno Superior Court Judge Jonathan Nicholas Kapetan. (Doc. 1 (the “Complaint”).) The undersigned has screened Plaintiff’s complaint and, for the reasons set forth below, recommends that the complaint be dismissed without prejudice, with leave to amend within thirty days, as to Plaintiff’s claims against Judge Kapetan for injunctive relief, pursuant to 42 U.S.C. §§ 1983, 1985, and 1986. The undersigned further recommends that the complaint be dismissed with prejudice as to Plaintiff’s claims against Judge Kapetan for damages and declaratory relief, pursuant to §§ 1983, 1985, and 1986, and as to all of Plaintiff’s claims against Fresno Superior Court.

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## II. FACTUAL BACKGROUND

1 On November 17, 2017, Plaintiff, proceeding *pro se* and *in forma pauperis*, filed this  
2 action against Judge Kapetan and Fresno Superior Court.<sup>1</sup> (*See generally* Compl. at 1-2.) On  
3 November 21, 2017, the Court granted Plaintiff's application to proceed *in forma pauperis*. (Doc.  
4 3; *see also* Doc. 2.) The events at issue in Plaintiff's complaint stem from Plaintiff's appearance  
5 before Judge Kapetan at a November 2015 arraignment on misdemeanor charges of driving under  
6 the influence. (*See generally* Compl. at 2-5, 10-21.) Plaintiff contends that Judge Kapetan's  
7 actions during the arraignment violated his constitutional rights. (*Id.*)  
8

9 According to the transcript from the arraignment, which Plaintiff annexed to the complaint  
10 as Exhibit A, Plaintiff appeared *in propria persona*. (*Id.* at 9.) While Judge Kapetan was  
11 informing Plaintiff of the charges filed against him and the attendant penalties, Plaintiff stated,  
12 "Well, actually I'm here to challenge jurisdiction . . .," and "I'll need all the elements to the  
13 arraignment . . . ." (*Id.* at 11.) At Judge Kapetan's direction, the courtroom deputy handed  
14 Plaintiff a copy of the criminal complaint. (*Id.* at 13-14.) The following exchange ensued:

15 Plaintiff: Who signed the complaint?

16 Judge Kapetan: One Jenice—appears Saucedo, Deputy Clerk.  
17 How do you plea, sir?

18 Plaintiff: I'm sorry, can you repeat that?

19 Judge Kapetan: How do you plea?

20 Plaintiff: No, before that.

21 Judge Kapetan: Repeat what?

22 Plaintiff: The name.  
23

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24 <sup>1</sup> The undersigned notes that Plaintiff's complaint was timely filed by one day. That is, Plaintiff's complaint would  
25 have been time-barred two years after November 18, 2015—the date when the events at issue here accrued. *See*  
26 *Jackson v. Barnes*, 749 F.3d 755, 761 (9th Cir. 2014), cert. denied, 135 S. Ct. 980 (2015) (stating that the statute of  
27 limitations for claims pursuant to 42 U.S.C. § 1983, is two years, incorporating California's limitations period for  
28 personal injury claims); *Wilson v. Garcia*, 471 U.S. 261, 280 (1985) (stating that federal civil rights claims are best  
characterized as personal injury actions and are governed by the forum state's statute of limitations for personal injury  
actions); *see also Pino v. Ryan*, 49 F.3d 51, 53 (2d Cir. 1995) (stating that although the statute of limitations is an  
affirmative defense which may be waived by the defendant, it is appropriate for the court to dismiss *sua sponte*,  
under 28 U.S.C. § 1915(e)(2), a *pro se* civil rights claim whose untimeliness is apparent from the face of the  
complaint).

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Judge Kapetan: I show Jenice Saucedo.

Plaintiff: Can you spell that for me?

Judge Kapetan: No, sir. It's on the complaint.

Plaintiff: No, sir, it is not.

Judge Kapetan: It's not on yours?

Plaintiff: I don't see it.

....

Judge Kapetan: It's in the lower left hand section, sir. In any event—

....

Plaintiff: I see the Deputy Clerk. Is that scribbling—is supposed to be the name Jenice?

Judge Kapetan: It appears on my complaint, yes, sir.

Plaintiff: Can you spell that for me?

Judge Kapetan: No, sir. I ask you how do you plea?

Plaintiff: I've asked you to spell her name.

Judge Kapetan: Under what authority do you ask me to spell her name?

Plaintiff: Constitution authority.

Judge Kapetan: Show me that Constitutional—either amendment or that section of the Constitution that requires that I give you a deputy clerk's name, when signed your complaint, sir.

Plaintiff: It's not on the complaint.

Judge Kapetan: All right, sir.

Plaintiff: I just told you it says deputy clerk.

(Compl. at 14-15.)

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1           Given Plaintiff’s refusal to enter a plea, Judge Kapetan entered a plea of not guilty on  
2 Plaintiff’s behalf. (Compl. at 16.) Judge Kapetan set Plaintiff’s bond at \$10,000, and he set dates  
3 for the pretrial conference and trial. (*Id.*) At that point, realizing that he would be remanded into  
4 custody pending his next court date or his ability to post bond, Plaintiff stated, “Well, if this is  
5 what it boils down to, I guess I’m gonna take the alternative. I really don’t want to be  
6 incarcerated.” (*Id.* at 17.) With that, Judge Kapetan took the matter off the record, and, as  
7 Plaintiff alleges, Judge Kapetan kept Plaintiff handcuffed while a public defender was summoned  
8 to the courtroom. (*Id.* at ¶¶ 5, 7; *see also id.* at 9.) Sometime later that same day, Judge Kapetan  
9 recalled the case. (Compl. at 9.) Plaintiff withdrew his request to represent himself and agreed to  
10 the appointment of a public defender. (*Id.* at 17-19.) The following exchange ensued regarding  
11 Plaintiff’s plea:

12                   Judge Kapetan: Have you had enough time to discuss this matter  
13                   with your attorney?

14                   Plaintiff: Yes.

15                   Judge Kapetan: Did you understand everything you signed and/or  
16                   initialed on the [change-of-plea] form?

17                   Plaintiff: Yes.

18                   Judge Kapetan: You’re charged in count one with a violation of  
19                   Vehicle Code 23152(b). How do you plead?

20                   Plaintiff: Well, I have to plead no contest.

21                   Judge Kapetan: You don’t have to plead anything.

22                   Plaintiff: Well—

23                   Judge Kapetan: How do you plea?

24                   Plaintiff: No contest.

25                   Judge Kapetan: Do you understand no contest plea is treated the  
26                   same as a guilty plea for sentencing purposes?

27                   Plaintiff: Yes.  
28

1 Judge Kapetan: Based on your representation, I'll accept the no  
2 contest plea as being freely, voluntarily, and intelligently entered.  
I'll sign and incorporate the change of plea form into the record.

3 (*Id.* at 10-11.)

4 Plaintiff's complaint states a cause of action under 42 U.S.C. § 1983 for various  
5 constitutional violations. (Compl. 1 ¶¶ 8-9.) In particular, Plaintiff appears to allege, first, that he  
6 was denied due process of law because Judge Kapetan did not provide him a true copy of the  
7 complaint and the name of the person who signed it. (*Id.* ¶¶ 2-3.) Plaintiff alleges, second, that he  
8 was falsely imprisoned when Judge Kapetan kept him handcuffed for the period of time during the  
9 arraignment while a public defender was summoned to the court room to represent Plaintiff. (*Id.*  
10 ¶¶ 5, 7-8.) Third, Plaintiff alleges that he was coerced to plead guilty because he faced a Hobson's  
11 choice between pleading guilty or remaining in custody until his trial. (*Id.*) Plaintiff's complaint  
12 states a second cause of action under 42 U.S.C § 1986, and, construing the complaint liberally, 42  
13 U.S.C. § 1985, for breach of contract. (*Id.* at 2, 5.) That is, the complaint alleges that Judge  
14 Kapetan violated his "oath to uphold and defend the United States Constitution" by virtue of  
15 violating Plaintiff's constitutional rights and subjecting him to public ridicule, humiliation, and  
16 embarrassment. (*Id.* ¶¶ 6, 10.) The complaint seeks judgment against Judge Kapetan and Fresno  
17 Superior Court, money damages and fines, and an order "remand[ing] and remov[ing] [Judge  
18 Kapetan] from office pursuant to 18 U.S.C. § 1918." (*Id.* ¶ 14.)

19 After screening Plaintiff's complaint, the Court finds that Plaintiff has failed to state any  
20 cognizable federal claims for the reasons set forth below.

### 21 III. SCREENING REQUIREMENT

22 In cases where the plaintiff is proceeding *in forma pauperis*, the Court is required to screen  
23 each case, and shall dismiss the case at any time if the Court determines that the allegation of  
24 poverty is untrue, or the action or appeal is frivolous or malicious, fails to state a claim upon  
25 which relief may be granted, or seeks monetary relief against a defendant who is immune from  
26 such relief. 28 U.S.C. § 1915(e)(2). If the Court determines that the amended complaint fails to  
27 state a claim, leave to amend may be granted to the extent that the deficiencies of the complaint  
28 can be cured by amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc).

1           The Court’s screening of the amended complaint under 28 U.S.C. § 1915(e)(2) is governed  
2 by the following standards. A complaint may be dismissed as a matter of law for failure to state a  
3 claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a  
4 cognizable legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.  
5 1990). Plaintiff must allege a minimum factual and legal basis for each claim that is sufficient to  
6 give each defendant fair notice of what plaintiff’s claims are and the grounds upon which they  
7 rest. *See, e.g., Brazil v. U.S. Dep’t of the Navy*, 66 F.3d 193, 199 (9th Cir. 1995); *McKeever v.*  
8 *Block*, 932 F.2d 795, 798 (9th Cir. 1991).

9           In determining whether a complaint states a claim on which relief may be granted,  
10 allegations of material fact are taken as true and construed in the light most favorable to the  
11 plaintiff. *See Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). Moreover, since  
12 Plaintiff is appearing pro se, the Court must construe the allegations of the amended complaint  
13 liberally and must afford plaintiff the benefit of any doubt. *See Karim–Panahi v. Los Angeles*  
14 *Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). However, “the liberal pleading standard . . .  
15 applies only to a plaintiff’s factual allegations.” *Neitzke v. Williams*, 490 U.S. 319, 330 n.9  
16 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements of  
17 the claim that were not initially pled.” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257  
18 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

19           Further, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’  
20 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of  
21 action will not do . . . . Factual allegations must be enough to raise a right to relief above the  
22 speculative level.” *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal  
23 citations omitted); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (To avoid dismissal for  
24 failure to state a claim, “a complaint must contain sufficient factual matter, accepted as true, to  
25 ‘state a claim to relief that is plausible on its face.’ A claim has facial plausibility when the  
26 plaintiff pleads factual content that allows the court to draw the reasonable inference that the  
27 defendant is liable for the misconduct alleged.”) (internal citations omitted).

28

#### IV. DISCUSSION

1  
2 Plaintiff names Judge Kapetan and Fresno Superior Court as defendants in this action, and  
3 he alleges violations of §§ 1983, 1985, and 1986. (*See generally* Compl. 4-5.) Plaintiff requests  
4 “judgment against the defendants,” that Judge Kapetan be “remand[ed] and remov[ed] from office  
5 pursuant to 18 U.S.C. § 1918,” that Judge Kapetan be “confine[d] or fine[d] . . . for damages to  
6 plaintiff for deprivation of rights under color of authority,” and that the Court “insert penalties  
7 provided for violations of oath [of] office.” (*Id.* ¶ 14.)

##### 8 **A. Plaintiff’s Claims Against Fresno Superior Court Are Barred by the Eleventh 9 Amendment.**

10 Plaintiff seeks relief pursuant to §§ 1983, 1985, and 1986 against Fresno County Superior  
11 Court as an institution. The Eleventh Amendment bars suit for money damages, declaratory relief,  
12 or prospective injunctive relief against the Superior Court—an arm of the state. *See Simmons v.*  
13 *Sacramento Cnty. Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003) (“Plaintiff cannot state a  
14 claim against the Sacramento County Superior Court (or its employees), because such suits are  
15 barred by the Eleventh Amendment.”), citing *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 70  
16 (1989); *see also Hirsch v. Justices of the Supreme Court*, 67 F.3d 708, 715 (9th Cir. 1995) (“The  
17 Eleventh Amendment’s grant of sovereign immunity bars monetary relief from sta[t]e agencies  
18 such as California’s Bar Association and Bar Court.”); *Root v. Schenk*, 953 F.Supp. 1115, 1120  
19 (C.D. Cal. Jan. 21, 1997) (stating that the Eleventh Amendment bars suit for either damages or  
20 injunctive relief against the superior court) (citing *Shaw v. Dep’t of Alcoholic Beverage Control*,  
21 788 F.2d 600, 603-04 (9th Cir. 1986) (holding that suit for prospective injunctive relief against a  
22 state would be barred); *Greater L.A. Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th  
23 Cir. 1987) (“[A] suit against the Superior Court is a suit against the State, barred by the eleventh  
24 amendment.”); *Bradley v. Tuolumne Cnty. Superior Court*, No. 1:15-cv-00531, 2016 WL 121785,  
25 \*3 (E.D. Cal. Jan. 12, 2016) (finding plaintiff’s § 1983 claim against Tuolumne County Superior  
26 Court to be barred by the Eleventh Amendment).

26 Fresno Superior Court is not amenable to suit, and Plaintiff therefore does not and cannot  
27 state cognizable claims under §§ 1983, 1985, and 1986 against Fresno Superior Court.  
28 Accordingly, the undersigned recommends that Fresno Superior Court be dismissed with

1 prejudice. *See, e.g., Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir. 1996) (dismissing  
2 claim with prejudice as futile where plaintiffs would have been unable to state a cognizable claim).

3 **B. Plaintiff Fails to State Any Cognizable Claims Against Judge Kapetan.**

4 **1. Money Damages and Declaratory Relief**

5 **a. Plaintiff's Claims are Barred by *Heck v. Humphrey*.**

6 Plaintiff seeks money damages and declaratory relief for Judge Kapetan's purported  
7 violation of 42 U.S.C. §§ 1983, 1985, and 1986. (Compl. ¶ 14.) To recover money damages or  
8 declaratory relief under §§ 1983, 1985, and 1986, a plaintiff must show that a judgment in  
9 plaintiff's favor would not imply the invalidity of his conviction or sentence, and, if it would, that  
10 the conviction or sentence has been reversed on direct appeal, expunged by executive order,  
11 declared invalid by an authorized state tribunal, or called into question by a federal court's  
12 issuance of a writ of habeas corpus. *Heck v. Humphrey*, 512 U.S. 477 (1994); *see also Harvey v.*  
13 *Waldron*, 210 F.3d 1008, 1013 (9th Cir. 2000) ("Under the Court's holding in *Heck*, a § 1983  
14 action that would call into question the lawfulness of a plaintiff's conviction or confinement is not  
15 cognizable[.]"); *Smithart v. Towery*, 79 F.3d 951, 952 (9th Cir. 1996) (per curiam) ("*Heck*  
16 precludes a section 1983 claim based on actions which would render a conviction or sentence  
17 invalid where that conviction has not been reversed, expunged or called into question by issuance  
18 of a writ of habeas corpus.") (internal quotation marks and citation omitted).

19 Here, a backward looking judgment for damages or declaratory relief in Plaintiff's favor  
20 would necessarily call into question the validity of Plaintiff's DUI conviction. Particularly, a  
21 finding that Plaintiff's no-contest plea to DUI was not voluntary and intelligent, as Plaintiff alleges  
22 in the complaint, would imply not only that his no-contest plea to the DUI charge was invalid but  
23 also that the conviction itself was invalid. *See Torres v. Mueller*, 2001 WL 58971, \*3 (N.D. Cal.  
24 Jan. 12, 2001) ("*Boykin* holds that a conviction is constitutionally invalid if the defendant pleads  
25 guilty without voluntarily and intelligently waiving his rights to jury trial, to confront the  
26 witnesses against him and to remain silent.") (citing *Boykin v. Alabama*, 395 U.S. 238, 244  
27 (1969)); *see also Pena v. Allison*, 1:11-cv-00467, 2013 WL 3212371, \*5 (E.D. Cal. Jun. 24, 2013)  
28 ("The Constitution requires that a plea be knowing, intelligent, and voluntary.") (citation omitted).



1 Additionally, Plaintiff's allegation that he was deprived of due process by Judge Kapetan's  
2 purported failure to provide Plaintiff with the criminal complaint and to identify the person who  
3 signed it, if true, would also imply the invalidity of his conviction. *See, e.g., Vonne Ray v.*  
4 *Warner*, No. SA CV 15-01242-JLS (DFM), 2015 WL 5444491, \*2-3 (C.D. Cal. Sept. 14, 2015)  
5 (finding due process claim of failure to give notice barred by Heck because it would call into  
6 question the lawfulness of plaintiff's conviction). Finally, Plaintiff's claim that he was falsely  
7 imprisoned by Judge Kapetan during his arraignment, if found true, would imply the invalidity of  
8 his conviction. *See Corrigan v. Dale*, 162 F.Appx. 784, 785 (9th Cir. 2006) (finding false  
9 imprisonment claim to be Heck-barred) (citing *Cabrera v. City of Huntington Park*, 159 F.3d 374,  
10 380 (9th Cir. 1998) (holding that Heck barred false arrest and false imprisonment claims until  
11 conviction was invalidated)).

12 Plaintiff fails to satisfy Heck's second prong—the favorable termination rule—as well.  
13 Plaintiff does not allege that his DUI conviction has been overturned in any way, which, given the  
14 analysis above, is required under Heck. *See Smithart*, 79 F.3d at 952 (“Heck precludes a section  
15 1983 claim based on actions which would render a conviction or sentence invalid where that  
16 conviction has not been reversed, expunged or called into question by issuance of a writ of habeas  
17 corpus.”). Although Plaintiff, who is not currently incarcerated, could not pursue habeas corpus  
18 relief because he served no jail time after his conviction, he had ample opportunity to directly  
19 appeal his conviction during the two-year period between his arraignment in November 2015 and  
20 his filing of the instant complaint in November 2017. Plaintiff's failure to allege that he did in fact  
21 directly appeal his conviction, and that it is either currently pending or has been overturned  
22 renders his claims for money damages and declaratory relief barred by Heck. *See Guerrero v.*  
23 *Gates*, 442 F.3d 697, 706 (9th Cir. 2006) (finding that former prisoner's § 1983 claims were Heck-  
24 barred because, “though habeas relief for [plaintiff] may be ‘impossible as a matter of law,’”  
25 plaintiff took no action for three years to challenge his conviction) (quoting *Cunningham v. Gates*,  
26 312 F.3d 1148, 1154 n.3 (9th Cir. 2002)); *cf. Nonnette v. Small*, 316 F.3d 872, (9th Cir. 2002)  
27 (granting relief from Heck's bar “only [to] former prisoners challenging loss of good-time credits,  
28 revocation of parole or similar matters,” not challenges to an underlying conviction).

1                                   **b.        Judge Kapetan is Immune from Damages and Declaratory Relief.**

2            Even if Plaintiff’s claims for money damages and declaratory relief were not *Heck*-barred,  
3 these claims would be barred by the doctrine of judicial immunity. “Judges are absolutely  
4 immune from damage actions for judicial acts taken within the jurisdiction of their courts . . . A  
5 judge loses absolute immunity only when [the judge] acts in the clear absence of all jurisdiction or  
6 performs an act that is not judicial in nature.” *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th  
7 Cir. 1988). Judges are immune from declaratory relief actions, as well. *Craig v. Villicana*, 676  
8 Fed.Appx. 716 (9th Cir. 2017) (citing *Moore v. Brewster*, 96 F.3d 1240, 1243 (9th Cir. 1996)  
9 (finding that judicial immunity extends to declaratory and other equitable relief)). “Judges and  
10 those performing judge-like functions are absolutely immune from damage liability for acts  
11 performed in their official capacities.” *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986);  
12 *see also Miller v. Davis*, 521 F.3d 1142, 1145 (9th Cir. 2008). “A state court judge is  
13 unqualifiedly immune from suits for damages arising from his or her judicial acts.” *Pellum v.*  
14 *Skiles*, No. 1:14-cv-01082, 2014 WL 3671556, \*2 (E.D. Cal. Jul. 22, 2014) (citing *Sparks v. Duval*  
15 *Cnty. Ranch Co., Inc.*, 604 F.2d 976, 978-80 (5th Cir. 1979); *Serrano v. People of State of Cal.*,  
16 361 F.2d 474 (9th Cir. 1966) (holding that the Superior Court of California is immune from suit  
17 under § 1983)); *see also Dinh Nguy v. Cnty. of Yolo*, No. 2:14-cv-229-MCE-EFB PS, 2014 WL  
18 4446829, \*4-5 (E.D. Cal. Sept. 9, 2014) (finding judge immune from damages suit under §§ 1983,  
19 1985, and 1986).

20            Here, Plaintiff fails to assert any allegations against Judge Kapetan that would show that  
21 Judge Kapetan acted outside his judicial capacity. Plaintiff’s allegations pertain to Judge  
22 Kapetan’s conduct in presiding over Plaintiff’s arraignment. Particularly, Plaintiff claims that  
23 Judge Kapetan falsely imprisoned him when Judge Kapetan kept Plaintiff handcuffed for a short  
24 time that day while a public defender was summoned to represent Plaintiff. Ordering that a  
25 criminal defendant be handcuffed or shackled or detained in a holding area during an arraignment  
26 is clearly a judicial act. *See, e.g., Mireles v. Waco*, 502 U.S. 9, 12-13 (1991) (finding judge to be  
27 immune from damages suit even where judge ordered the seizure of an individual by means of  
28 excessive force—an act clearly outside his legal authority—because the order was given in the

1 judge’s capacity as a judge and not with the clear absence of jurisdiction). Further, Judge  
2 Kapetan’s conduct in providing Plaintiff with a copy of the criminal complaint and informing him  
3 of the person who signed the complaint was also clearly a judicial act. Plaintiff’s claim that Judge  
4 Kapetan coerced him to plead guilty by setting his bond at \$10,000 and informing him that he  
5 would be remanded into custody pending his trial (or his ability to post bond) is similarly barred  
6 by the doctrine of absolute judicial immunity.

7           Moreover, even if Judge Kapetan erred or somehow exceeded his authority, Judge Kapetan  
8 did not act in clear absence of jurisdiction by his conduct. *Stump v. Sparkman*, 435 U.S. 349, 356-  
9 57 (1978) (“[A] judge will not be deprived of immunity because the action he took was in error,  
10 was done maliciously, or was in excess of his authority; rather, he will be subject to liability only  
11 when he has acted in the clear absence of all jurisdiction.”); *see also Forrester v. White*, 484 U.S.  
12 219, 227 (1988) (noting that a judicial act “does not become less judicial by virtue of an allegation  
13 of malice or corruption of motive).

14           Consequently, Judge Kapetan is absolutely immune from liability for money damages and  
15 declaratory relief under §§ 1983, 1985, and 1986. The undersigned therefore recommends that  
16 Plaintiff’s claims against Judge Kapetan for money damages and declaratory relief be dismissed  
17 with prejudice. *See, e.g., Cahill*, 80 F.3d at 339.

## 18           **2. Prospective Injunctive Relief**

19           Plaintiff’s request that the Court “remand and remove [Judge Kapetan] from office” for  
20 allegedly violating 42 U.S.C. §§ 1983, 1985, and 1986 appears to be backward looking. To the  
21 extent that it does look backward, it is also barred by both *Heck v. Humphrey* and the doctrine of  
22 judicial immunity. *See supra* Part IV.B.1. Even to the extent that this requested relief is  
23 prospective in nature—aimed at preventing Judge Kapetan from committing future harm—  
24 Plaintiff fails to state how Judge Kapetan’s alleged acts during Plaintiff’s November 2015  
25 arraignment entitle Plaintiff to injunctive relief under §§ 1983, 1985, and 1986.<sup>2</sup>

26  
27 <sup>2</sup> It is worth noting that Judge Kapetan is likely shielded by judicial immunity from prospective relief, as well. *See*  
28 *Wolfe v. Strankman*, 392 F.3d 358, 366 (9th Cir. 2004) (“Section 1983 only contemplates judicial immunity from suit  
for injunctive relief for acts taken in a judicial capacity. The statute provides that ‘injunctive relief shall not be  
granted’ in an action brought against ‘a judicial officer for an act or omission *taken in such officer’s judicial capacity* .



1 1250, 1255-56 (3d Cir. 1994).

2 **i. False Imprisonment**

3 Plaintiff asserts a false imprisonment claim against Judge Kapetan, because Plaintiff was  
4 kept in handcuffs “for a time that Kapetan went ‘off the record’” during the arraignment.”  
5 (Compl. ¶ 7.) “[F]alse imprisonment is based upon the Fourth Amendment’s prohibition against  
6 deprivation of liberty without due process of law.” *Fitzgerald v. Martin*, No. 16-3377, 2017 WL  
7 3310676, \*10 (E.D. Pa. Aug. 3, 2017) (citing *Baker v. McCollan*, 443 U.S. 137, 415 (1979); *see*  
8 *also Mackinney v. Nielsen*, 69 F.3d 1002, 1009 (9th Cir. 1995) (“We examine such claims of  
9 improper confinement or false imprisonment using either a due process or a Fourth Amendment  
10 analysis.”) (internal citations omitted). To bring a § 1983 claim for false imprisonment under the  
11 Fourth Amendment, “the plaintiff must show that the defendant unreasonably caused the  
12 restriction of the plaintiff’s liberty under the circumstances then existing and apparent. *Arpin v.*  
13 *Santa Clara Valley Transp. Agency*, 261 F.3d 912, 924 (9th Cir. 2001) (citing *Wallace by Wallace*  
14 *v. Batavia School Dist.*, 68 F.3d 1010, 1014 (7th Cir. 1995) (reasoning that non-law enforcement  
15 government actor violates the Fourth Amendment only when the restriction of liberty is  
16 unreasonable under the circumstances then existing and apparent).

17 Plaintiff fails to allege precisely how Judge Kapetan’s act of keeping Plaintiff in handcuffs  
18 during his arraignment was unreasonable under the circumstances. *See, e.g., U.S. v. Howard*, 480  
19 F.3d 1005, 1014 (9th Cir. 2007) (upholding a court shackling policy); *see also generally Albright*  
20 *v. Oliver*, 510 U.S. 266, 274 (1994) (explaining that the Fourth Amendment addresses pretrial  
21 deprivations of liberty); *Maryland v. Buie*, 494 U.S. 325, 331 (1990) (the Fourth Amendment does  
22 not prohibit all seizures of persons, only unreasonable ones).

23 For the same reasons, Plaintiff fails to state a claim under California state law—to the  
24 extent he intended to raise the claim under state law—as he does not allege any facts showing that  
25 Judge Kapetan’s restraint of Plaintiff was unreasonable under the circumstances. *See Cal. Pen.*  
26 *Code § 236* (defining false imprisonment as “the unlawful violation of the personal liberty of  
27 another); *see also Blaxland v. Commonwealth Director of Public Prosecutions*, 323 F.3d 1198,  
28 1205 (9th Cir. 2003) (citations omitted) (listing the elements for false imprisonment under

1 California law as (1) the nonconsensual, intentional confinement of a person, (2) without lawful  
2 privilege, and (3) for an appreciable period of time). Accordingly, Plaintiff's complaint fails to  
3 state a claim for false imprisonment under either § 1983 or California state law.

4 **ii. Due Process Notice**

5 Plaintiff further claims that Judge Kapetan failed to provide him with a copy of the  
6 criminal complaint and failed to identify the name of the person who signed the complaint, thereby  
7 depriving Plaintiff of due process. (Compl. ¶ 2.) "The due process clause of the Fourteenth  
8 Amendment mandates that whatever charging method the state employs must give the criminal  
9 defendant fair notice of the charges against him to permit adequate preparation of his defense."  
10 *Koontz v. Glossa*, 731 F.2d 365, 369 (6th Cir. 1984) (citing *In Re Ruffalo*, 390 U.S. 544 (1968))

11 The arraignment transcript, which Plaintiff annexed to his complaint, makes clear that  
12 Judge Kapetan did indeed provide Plaintiff with fair notice of the charges against him and also  
13 provided him with a copy of the criminal complaint. (Compl. at 13-14.) Further, Judge Kapetan  
14 read the charges to Plaintiff along with the attendant penalties. (*See id.* at 5-8.) When Plaintiff  
15 asked Judge Kapetan for the name of the person who signed the complaint, Judge Kapetan read  
16 the name to Plaintiff. (*Id.* at 6-8.) Thus, Plaintiff fails to allege a violation of his due process right  
17 to notice.

18 **iii. Voluntariness of Plaintiff's No-Contest Plea**

19 Finally, Plaintiff alleges that he was coerced to plead guilty because he faced a Hobson's  
20 choice between pleading guilty or remaining in custody until his trial. (Compl. ¶ 5.) The  
21 Fourteenth Amendment Due Process Clause imposes certain requirements to ensure the validity of  
22 a guilty plea. *Brady v. U.S.*, 397 U.S. 742 (1970). A plea "is constitutionally valid only to the  
23 extent it is 'voluntary' and 'intelligent'." *Bousley v. U.S.*, 523 U.S. 614, 618 (1998) (quoting  
24 *Brady*, 397 U.S. at 748). The voluntariness of a plea is determined by "considering all of the  
25 relevant circumstances surrounding it." *Brady*, 397 U.S. at 749. Before the trial court may accept  
26 a guilty plea, the court must ensure that the defendant "has a full understanding of what the plea  
27 connotes and of its consequence." *Boykin v. Alabama*, 395 U.S. 238, 244 (1969). A guilty plea is  
28 invalid if the defendant does not understand the nature of the constitutional protection that he is

1 waiving or if he has such an incomplete understanding of the charges against him that his plea  
2 cannot stand as an admission of guilt. *Henderson v. Morgan*, 426 U.S. 637, 645 n.13 (1976).

3 Plaintiff fails to allege any facts indicating that his no-contest plea was anything but  
4 voluntary and intelligent. Judge Kapetan initially fully informed Plaintiff of the charges against  
5 him and the attendant penalties. (*See* Compl. at 4-5.) Later that day, once Plaintiff retained an  
6 attorney, the following exchange ensued regarding Plaintiff's plea:

7 Judge Kapetan: Have you had enough time to discuss this matter  
8 with your attorney?

9 Plaintiff: Yes.

10 Judge Kapetan: Did you understand everything you signed and/or  
11 initialed on the [change-of-plea] form?

12 Plaintiff: Yes.

13 Judge Kapetan: You're charged in count one with a violation of  
14 Vehicle Code 23152(b). How do you plead?

15 Plaintiff: Well, I have to plead no contest.

16 Judge Kapetan: You don't have to plead anything.

17 Plaintiff: Well—

18 Judge Kapetan: How do you plea?

19 Plaintiff: No contest.

20 Judge Kapetan: Do you understand no contest plea is treated the  
21 same as a guilty plea for sentencing purposes?

22 Plaintiff: Yes.

23 Judge Kapetan: Based on your representation, I'll accept the no  
24 contest plea as being freely, voluntarily, and intelligently entered.  
25 I'll sign and incorporate the change of plea form into the record.

26 (*Id.* at 10-11.)

27 Based on the foregoing, Plaintiff's plea appears to have been freely, voluntarily, and  
28 intelligently entered. Foremost, Plaintiff was represented by counsel when he entered his no-

1 contest plea. *See Marshall v. Lonberger*, 459 U.S. 422, 437 (1983) (plea is presumed valid when  
2 the pleading defendant was represented by counsel). Plaintiff acknowledged to Judge Kapetan  
3 that he discussed the plea with his attorney, and that he understood everything he signed and  
4 initialed on the change-of-plea form. *See Blackledge v. Allison*, 431 U.S. 63, 74 (1977) (stating  
5 that reviewing courts must accord strong presumption of verity to the declarations made by a  
6 defendant in open court). Although Plaintiff equivocated, stating that he “ha[d] to plea no  
7 contest,” Judge Kapetan dispelled that, stating “[y]ou don’t have to plead anything.” (Compl. at  
8 10.) Plaintiff did not ask to speak any further with his attorney, nor did his attorney interject to  
9 raise any issue with Plaintiff’s equivocation. Notably, Plaintiff does not indicate in his complaint  
10 that he raised this issue or any ineffective-assistance-of-counsel claim on appeal. Plaintiff then  
11 acknowledged that he understood the consequences of pleading no-contest. On these facts,  
12 Plaintiff fails to establish that his plea was invalid.

13         Accordingly, Plaintiff fails to state a cognizable claim against Judge Kapetan for injunctive  
14 relief under § 1983, and the undersigned recommends that the claim be dismissed without  
15 prejudice.

16                     **c.         42 U.S.C. §§ 1985 and 1986 Claims**

17         Plaintiff further fails to establish that he suffered irreparable injury in violation of §§ 1985  
18 and 1986. Plaintiff alleges that Judge Kapetan breached his “oath to uphold and defend the United  
19 States Constitution” by violating Plaintiff’s constitutional rights discussed above. (*Id.* ¶¶ 6, 10-  
20 14.) Section 1985 provides a cause of action for conspiracy to violate a person’s constitutional  
21 rights, and § 1986 provides a cause of action for failure to prevent such a conspiracy. *See, e.g.*,  
22 *Griffith v. Breckenridge*, 403 U.S. 88, 102 (1971); *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529,  
23 1536 (9th Cir. 1992).

24         Plaintiff fails to state a claim under §§ 1985 or 1986, because, as set forth above, Plaintiff  
25 fails to allege any constitutional violation. *Id.*; *see also City of Rancho Palos Verdes, Cal. v.*  
26 *Abrams*, 544 U.S. 113, 119-20 (2005) (stating that actions pursuant to 42 U.S.C. § 1985 require an  
27 underlying violation of the U.S. Constitution or federal law). Even if Plaintiff were to state a  
28 constitutional violation, to satisfy §§ 1985 and 1986 he would need to further allege that such



1 actions were taken against him based on some class-based factor such as racial animus. *Sever*, 978  
2 F.2d at 1536. Plaintiff fails to allege any facts indicating some class-based animus.

3 As such, Plaintiff fails to state any cognizable claims against Judge Kapetan for injunctive  
4 relief under §§ 1985 or 1986. Plaintiff also fails to allege any facts whatsoever that if proven  
5 would establish that he is likely to suffer future injury if Judge Kapetan is not so enjoined. *See*  
6 *Hodgers-Durgin*, 199 F.3d at 1042.

7 **IV. CONCLUSION AND RECOMMENDATIONS**

8 Based on the foregoing, the Court RECOMMENDS that Defendant Fresno Superior Court  
9 be DISMISSED WITH PREJUDICE and without leave to amend. The Court RECOMMENDS  
10 that Plaintiff’s claims pursuant to 42 U.S.C. §§ 1983, 1985, and 1986 for money damages and  
11 declaratory relief against Defendant Judge Jonathan Nicholas Kapetan be DISMISSED WITH  
12 PREJUDICE and without leave to amend.

13 The Court further RECOMMENDS that Plaintiff’s claims pursuant to 42 U.S.C. §§ 1983,  
14 1985, and 1986 for prospective injunctive relief against Defendant Judge Jonathan Nicholas  
15 Kapetan be DISMISSED WITHOUT PREJUDICE and with leave to amend within thirty (30)  
16 days. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (citing *Noll v. Carlson*, 809 F.2d  
17 1446, 1448 (9th Cir. 1987) (“A pro se litigant must be given leave to amend his or her complaint,  
18 and some notice of its deficiencies, unless it is absolutely clear that the deficiencies of the  
19 complaint could not be cured by amendment.”)).

20 These findings and recommendations are submitted to the district judge assigned to this  
21 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within **twenty-one**  
22 **(21) days** of service of this recommendation, any party may file written objections to these  
23 findings and recommendations with the Court and serve a copy on all parties. The document  
24 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The  
25 district judge will review the magistrate judge’s findings and recommendations pursuant to 28  
26 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified

27 //  
28 //

1 time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th  
2 Cir. 2014).

3  
4 IT IS SO ORDERED.

5 Dated: February 20, 2018

*/s/ Sheila K. Oberto*  
UNITED STATES MAGISTRATE JUDGE

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