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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ROY HAROLD KELLY,  
Plaintiff,

No. CIV S-09-2749-FCD-CMK

vs.

FINDINGS AND RECOMMENDATIONS

MONICA MARLOW,  
Defendant.

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Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court is defendant’s motion to dismiss (Doc. 6). A hearing was held before the undersigned on January 14, 2010, at 10:00 a.m. in Redding, California. Plaintiff appeared pro se. William Krabbenhoft, Esq., appeared on behalf of defendant.

**I. PLAINTIFF’S ALLEGATIONS**

According to plaintiff, he was issued a traffic ticket on June 14, 2007. As indicated by documents attached to the complaint, plaintiff was charged with violation of California Vehicle Code § 22350 for exceeding the speed limit, an infraction under state law. Plaintiff’s case was heard by defendant Monica Marlow, a judge of the Shasta County Superior

1 Court. Plaintiff was found guilty on March 5, 2008, and he appealed to the appellate division of  
2 the Shasta County Superior Court. The guilty finding was affirmed. It does not appear that  
3 plaintiff appealed his traffic conviction any further or that the conviction has been set aside or  
4 reversed.

5 Plaintiff claims that defendant Marlow violated his Sixth Amendment rights by  
6 denying him a public trial by jury. He also contends that defendant Marlow “used leading  
7 questions to prompt the prosecuting attorney to enter evidence against me that the prosecuting  
8 attorney did not have.” He further alleges that defendant Marlow “would not address speed trap  
9 evidence provided by the defendant, or allow it to be used as a defense for the defendant.”  
10 Plaintiff asserts that defendant Marlow “willfully denied me the right to see the Discovery (case  
11 file), willfully denied me the right to see it upon request, and the District Attorney’s Office failed  
12 to provide me a copy of the Discovery upon request before the hearing began.”

## 13 14 **II. DISCUSSION**

15 Defendant argues that this action should be dismissed because: (1) it is barred by  
16 the Rooker-Feldman abstention doctrine; (2) it is barred by the Heck doctrine; (3) defendant is  
17 immune from suit under the Eleventh Amendment; (4) defendant is entitled to absolute judicial  
18 immunity; and (5) plaintiff cannot state a claim based on violation of the Sixth Amendment  
19 rights to jury trial.

20 Defendant is correct that this action is Heck-barred. Where an action seeking  
21 monetary damages or declaratory relief alleges constitutional violations which would necessarily  
22 imply the invalidity of the underlying conviction or sentence, such a claim is not cognizable  
23 unless the conviction or sentence has first been invalidated on appeal, by habeas petition, or  
24 through some similar proceeding. See Heck v. Humphrey, 512 U.S. 477, 483-84 (1994). The  
25 court cannot construe plaintiff’s civil complaint as a habeas petition, but must dismiss such a  
26 complaint without prejudice. See Blueford v. Prunty, 108 F.3d 251, 255 (9th Cir. 1997); see also

1 Heck, 512 U.S. at 487. In this case, plaintiff’s claims necessarily imply the invalidity of the  
2 underlying traffic conviction because they relate to whether fundamental constitutional rights  
3 were denied in the course of the underlying state court criminal proceeding. Because plaintiff’s  
4 claims are not cognizable in a civil action, the case must be dismissed without prejudice.

5 This civil action is also barred by the Rooker-Feldman abstention doctrine. Under  
6 Rooker-Feldman, federal courts lack jurisdiction to hear matters already decided in state court.  
7 See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v.  
8 Feldman, 460 U.S. 462 (1983). The doctrine applies in cases “brought by state court losers  
9 complaining of injuries caused by state court judgments rendered before the district court  
10 proceedings commenced and inviting district court review and rejection of those judgments.”  
11 Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005). In this case, plaintiff’s  
12 traffic conviction was appealed to the appellate division of the Shasta County Superior Court  
13 where plaintiff lost. He did not appeal further in the state courts. By bringing the instant federal  
14 civil action, plaintiff asks this court to reject a final state court criminal judgment.

15 Defendant is further correct that she is entitled to absolute judicial immunity.  
16 Judges are absolutely immune from damage actions for judicial acts taken within the jurisdiction  
17 of their courts. See Schucker v. Rockwood, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam).  
18 This immunity is lost only when the judge acts in the clear absence of all jurisdiction or performs  
19 an act that is not judicial in nature. See id. Judges retain their immunity even when they are  
20 accused of acting maliciously or corruptly, see Mireles v. Waco, 502 U.S. 9, 11 (1991) (per  
21 curiam); Stump v. Sparkman, 435 U.S. 349, 356-57 (1978), and when they are accused of acting  
22 in error, see Meek v. County of Riverside, 183 F.3d 962, 965 (9th Cir. 1999). In this case, it is  
23 clear that plaintiff’s allegations relate to defendant’s conduct as a judge of the Shasta County  
24 Superior Court.

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1           The court also agrees that plaintiff cannot state a claim for violation of the Sixth  
2 Amendment. There is no right to a jury trial for a petty traffic infraction. See Baldwin v. New  
3 York, 399 U.S. 66 (1974).

4           Finally, as to Eleventh Amendment immunity, the court does not agree with  
5 defendant's argument. The Eleventh Amendment prohibits federal courts from hearing suits  
6 brought against a state both by its own citizens, as well as by citizens of other states. See Brooks  
7 v. Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition  
8 extends to suits against states themselves, and to suits against state agencies. See Lucas v. Dep't  
9 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th  
10 Cir. 1989). A state's agency responsible for incarceration and correction of prisoners is a state  
11 agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438 U.S. 781, 782  
12 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th cir. 1993) (en banc). The  
13 Eleventh Amendment also bars actions seeking damages from state officials acting in their  
14 official capacities. See Eaglesmith v. Ward, 73 F.3d 857, 859 (9th Cir. 1995); Pena v. Gardner,  
15 976 F.2d 469, 472 (9th Cir. 1992) (per curiam). Under the doctrine of Ex Parte Young, 209 U.S.  
16 123 (1908), however, the Eleventh Amendment does not bar suits for prospective declaratory or  
17 injunctive relief against state officials in their official capacities. See Armstrong v. Wilson, 124  
18 F.3d 1019, 1025 (9th Cir. 1997).

19           While it is clear that defendant is sued in her official capacity because all of  
20 plaintiff's factual allegations relate to defendant's conduct as a judge of the Shasta County  
21 Superior Court, Eleventh Amendment immunity is inapplicable to suits seeking prospective  
22 declaratory relief. In this case, under the section of plaintiff's complaint entitled "Relief,"  
23 plaintiff states that he is seeking declaratory judgment. Plaintiff does not appear to be seeking  
24 monetary damages.

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1 **III. CONCLUSION**

2 Based on the foregoing, the undersigned recommends that defendant's motion to  
3 dismiss (Doc. 6) be granted.

4 These findings and recommendations are submitted to the United States District  
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days  
6 after being served with these findings and recommendations, any party may file written  
7 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
8 Findings and Recommendations." Failure to file objections within the specified time may waive  
9 the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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11 DATED: February 11, 2010

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13 **CRAIG M. KELLISON**  
14 UNITED STATES MAGISTRATE JUDGE  
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