

1 On May 28, 2014, defendants Yuba County Superior Court,
2 Third District Court of Appeal, and Alana Adams (hereafter "court
3 defendants") filed a motion to dismiss pursuant to Fed. R. Civ.
4 P. 12(b)(6) (ECF No. 5). On June 9, 2014, defendant County filed
5 a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (ECF No.
6 6). On June 19, 2014, plaintiff filed an opposition to the
7 motion filed by the court defendants (ECF No. 10). Plaintiff has
8 not filed an opposition to the motion filed by the County. On
9 June 26, 2014, the court defendants filed a reply (ECF No. 12).

10 The motions are noticed for hearing on July 7, 2014 before
11 the undersigned. Good cause appearing, the motions are taken
12 under submission on the papers and resolved without oral
13 argument. See Local Rule 230(g) (E.D.Cal.)

14 **I. ALLEGATIONS OF THE COMPLAINT**

15 Plaintiff's complaint, filed April 18, 2014 (ECF No. 1),
16 contains the following allegations. On or about January 30,
17 2009, plaintiff filed a lawsuit in the Yuba County Superior Court
18 seeking money damages arising out of a vehicle collision.
19 Complaint (ECF No. 1) at 3. On January 19, 2011, the Yuba County
20 Superior Court granted a motion for summary judgment against
21 plaintiff and entered judgment. Id. On January 28, 2011,
22 plaintiff timely filed a notice of appeal. Id.

23 On September 15, 2011, following an unsuccessful appellate
24 mediation, plaintiff timely filed a designation of record in the
25 Yuba County Superior Court. Id. Plaintiff stipulated with the
26 respondent in the state court action "to use the original
27 superior court file under California Rules of Court Rule 8.128."
28 Id. at 3-4. On September 16, 2011, plaintiff's counsel spoke

1 with defendant Alana Adams, "who assured Plaintiff's counsel that
2 the original superior court file would be sent to the Third
3 District Court of Appeal." Id. at 4. Plaintiff paid the fees
4 and costs, but defendant Adams did not include the original
5 superior court file when she sent the record to the Third
6 District Court of Appeal. Id.

7 On February 7, 2013, after filing the opening brief
8 plaintiff's counsel discovered that defendant Adams had not sent
9 the superior court file to the court of appeal. Id. On February
10 11, 2013, plaintiff's counsel moved to strike the clerk's
11 transcript and for an order requiring defendant Adams to provide
12 the Third District Court of Appeal with the original superior
13 court file. Id. On February 13, 2013, the respondent in the
14 state court action moved to dismiss the appeal based on an
15 inadequate record and insufficient citations in the opening
16 brief. Id. On February 27, 2013, plaintiff filed an
17 opposition to the motion, noting the February 11, 2013 motion.
18 Id.

19 On March 7, 2013, the Third District Court of Appeal denied
20 plaintiff's February 11, 2013 motion and dismissed the appeal.
21 Id. On March 25, 2013, plaintiff filed a petition for rehearing
22 in the Third District Court of Appeal. Id. Therein, plaintiff
23 argued that the inadequate record was due to defendant Adams'
24 failure to perform her duty to transmit the original file to the
25 court of appeal and that the time to file the opening brief had
26 not commenced under court rules because the record had never
27 actually been filed in the court of appeal. Id. at 5. On March
28 29, 2013, the Third District Court of Appeal denied the petition

1 for rehearing. Id. Neither defendant Adams nor defendant Yuba
2 County Superior Court ever provided notice to plaintiff or
3 plaintiff's counsel that the record had not been properly sent to
4 the court of appeal. Id.

5 Defendant Adams failed to transmit the record as specified
6 by plaintiff and required under California Rules of Court 8.128,
7 and she, the Yuba County Superior Court, and the County of Yuba
8 are liable for this failure. Id. They also are liable for
9 defendant Adams' violation of California Rules of Court Rule
10 8.140(a), which requires the clerk to notify by mail any party
11 who "fails to timely do an act required to procure the record"
12 that it must do the necessary act within fifteen days. Id. at 6.
13 The Third District Court of Appeal violated California Rule of
14 Court 8.140(b) by dismissing the appeal. Id. at 7.

15 Plaintiff claims the foregoing violated his right to due
16 process and his First Amendment right to access the courts.
17 Plaintiff claims that he "has suffered injury, loss, and damage
18 in that his valid appeal was dismissed" resulting "in the loss of
19 his valid claim for money damages" in the underlying state court
20 action. Id. at 8. Plaintiff also raises a claim against
21 defendant Yuba County Superior Court for negligent hiring,
22 training, supervision, and retention. Id. at 9.

23 Plaintiff seeks general damages, special damages,
24 attorneys' fees, prejudgment interest, and costs. Plaintiff has
25 also demanded a jury trial.

26 **II. STANDARDS FOR A RULE 12(B)(6) MOTION TO DISMISS**

27 A dismissal motion under Fed. R. Civ. P. 12(b)(6) challenges
28 a complaint's compliance with the federal pleading requirements.

1 Under Fed. R. Civ. P. 8(a)(2), a pleading must contain a "short
2 and plain statement of the claim showing that the pleader is
3 entitled to relief." The complaint must give the defendant
4 "'fair notice of what the ... claim is and the grounds upon which
5 it rests.'" Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007)
6 (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

7 To meet this requirement, the complaint must be supported by
8 factual allegations. Ashcroft v. Iqbal, 556 U.S. 662, 678
9 (2009). Moreover, this court "must accept as true all of the
10 factual allegations contained in the complaint." Erickson v.
11 Pardus, 551 U.S. 89, 94 (2007).

12 "While legal conclusions can provide the framework of a
13 complaint," neither legal conclusions nor conclusory statements
14 are themselves sufficient, and such statements are not entitled
15 to a presumption of truth. Iqbal, 556 U.S. at 679. Iqbal and
16 Twombly therefore prescribe a two-step process for evaluation of
17 motions to dismiss. The court first identifies the non-
18 conclusory factual allegations, and then determines whether these
19 allegations, taken as true and construed in the light most
20 favorable to the plaintiff, "plausibly give rise to an
21 entitlement to relief." Iqbal, 556 U.S. at 679.

22 "Plausibility," as it is used in Twombly and Iqbal, does not
23 refer to the likelihood that a pleader will succeed in proving
24 the allegations. Instead, it refers to whether the non-
25 conclusory factual allegations, when assumed to be true, "allow[
26] the court to draw the reasonable inference that the defendant
27 is liable for the misconduct alleged." Iqbal, 556 U.S. at 678.
28 "The plausibility standard is not akin to a 'probability

1 requirement,' but it asks for more than a sheer possibility that
2 a defendant has acted unlawfully." Id. (quoting Twombly, 550 U.S.
3 at 557). A complaint may fail to show a right to relief either
4 by lacking a cognizable legal theory or by lacking sufficient
5 facts alleged under a cognizable legal theory. Balistreri v.
6 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

7 **III. ANALYSIS**

8 As noted above, on June 9, 2014, the County of Yuba filed a
9 motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).¹
10 Plaintiff has not opposed the County's motion. Accordingly, the
11 motion will be granted.

12 In addition, in his opposition to the court defendants'
13 motion to dismiss plaintiff concedes that the Eleventh Amendment
14 bars his claims against the Yuba County Superior Court and the
15 Third District Court of Appeal and agrees to dismissal of those
16 claims. Pls.' Opp. to Defs.' Mot. to Dism. (ECF No. 10) at 1.²
17 That will be the order.

18 Remaining for resolution by the court is the motion to
19 dismiss the two constitutional claims against Alana Adams.³
20 Plaintiff sues defendant Adams in her official capacity. See
21 Complaint (ECF No. 1) at 2. Defendants have not asserted

23 ¹ In the motion, the County contends that it has not been served with the
24 complaint. Mem. of County of Yuba in Support of Mot. Dism. (ECF No. 6-1) at
25 Id. at 1-2.

26 ² Plaintiff's concession is entirely appropriate. California's courts are an
27 "arm of the state" protected by Eleventh Amendment immunity. Franceschi v.
Schwartz, 57 F.3d 828, 831 (9th Cir. 1995).

28 ³ Plaintiff's third cause of action is solely against the Yuba County Superior
Court.

1 Eleventh Amendment immunity as a defense to the claims against
2 defendant Adams and plaintiff asserts that the Eleventh Amendment
3 does not bar those claims. However, "[t]he eleventh amendment is
4 a limitation on federal subject-matter jurisdiction. Even when
5 neither party has raised an objection to a federal court's
6 subject-matter jurisdiction, the court has an obligation to
7 consider the issue sua sponte, and to consider it fully." Demery
8 v. Kupperman, 735 F.2d 1139, 1149 n.8 (9th Cir. 1984) (citing
9 Chicago, Burlington and Quincy Railway Co. v. Willard, 220 U.S.
10 413, 418-22, 31 S.Ct. 460, 461-63, 55 L.Ed. 521 (1981)).

11 Plaintiff alleges that "[a]t all times herein relevant,
12 defendant Alana Adams was the Clerk of the Yuba County Superior
13 Court, and was acting in that capacity and under color of state
14 law. In her position as Court Clerk, Alana Adams. [Sic]
15 Defendant Alana Adams is sued herein in her official capacity."
16 The Eleventh Amendment bars claims for money damages against
17 state officers sued in their official capacity. See Jackson v.
18 Hayakawa, 682 F.2d 1344, 1350 (9th Cir. 1982)(citations
19 omitted)("Eleventh Amendment immunity extends to actions against
20 state officers sued in their official capacities because such
21 actions are, in essence, actions against the government entity of
22 which the officer is an agent"); see also Pena v. Gardner, 976
23 F.2d 469, 473 (9th Cir. 1992)(citation omitted)("An official sued
24 in his official capacity has the same immunity as the state, and
25 is entitled to eleventh amendment immunity.") Consequently,
26 plaintiff's claims against defendant Adams in her official
27 capacity are barred by the Eleventh Amendment and will be
28 dismissed for that reason.

1 Plaintiff's decision to sue defendant Alana Adams in her
2 official capacity and the Eleventh Amendment bar to such suit may
3 be dispositive of the motion at bar. Cf. Eaglesmith v. Ward, 73
4 F.3d 857, 859-860 (9th Cir. 1995) (suit against Superintendent of
5 Schools found to be official capacity suit where parties had
6 stipulated that Superintendent, in his official capacity, would
7 be only defendant remaining after dismissal of other defendants
8 and stipulation was expressly conditioned on inclusion of the
9 phrase "in his official capacity"; suit barred by Eleventh
10 Amendment, and amendment to change capacity denied as untimely).
11 In an abundance of caution, the court considers whether plaintiff
12 has also pled a personal capacity claim against defendant Adams.

13 The United States Court of Appeals for the Ninth Circuit has
14 held that allegations that an individual state employee, acting
15 under color of state law, violated a plaintiff's constitutional
16 rights is sufficient to state a claim against the state employee
17 in his or her personal capacity. See Romano v. Bible, 169 F.3d
18 1182, 1185-86 (9th Cir. 1999). The Eleventh Amendment does not
19 provide immunity for such claims. Id. at 1185. Plaintiff's
20 complaint alleges that defendant Adams, acting under color of
21 state law, violated plaintiff's rights to due process and court
22 access. To the extent these allegations are sufficient to give
23 rise to personal capacity claims, they are not barred by the
24 Eleventh Amendment. They are, however, barred by the doctrine of
25 quasi-judicial immunity.

26 "Court clerks have absolute quasi-judicial immunity from
27 damages for civil rights violations when they perform tasks that
28 are an integral part of the judicial process." Mullis v. U.S.

1 Bankruptcy Court for Dist. of Nevada, 828 F.2d 1385, 1390 (9th
2 Cir. 1987). “[A] mistake or an act in excess of jurisdiction
3 does not abrogate judicial immunity, even if it results in ‘grave
4 procedural errors.’” Id. (quoting Stump v. Sparkman, 435 U.S.
5 349, 359 (1978)). Transmitting records to an appellate court is
6 an integral part of the judicial process. Plaintiff’s claims are
7 based on allegations that defendant Adams committed errors in
8 performing this integral task, and he seeks only money damages.
9 Even assuming arguendo that plaintiff’s allegations were
10 sufficient to state one or more claims for violation of his
11 constitutional rights against defendant Adams in her personal
12 capacity, a finding this court does not make, defendant Adams is
13 entitled to absolute quasi-judicial immunity from liability on
14 such claims.⁴

15 For all of the foregoing reasons, IT IS HEREBY ORDERED that:

16 1. The hearing set for July 7, 2014 is vacated;

17 2. The May 28, 2014 request for judicial notice by
18 defendants Yuba County Superior Court, Third District Court of
19 Appeals for the State of California, and Alana Adams (ECF No. 5-
20 2) is denied;

21 3. The May 28, 2014 motion to dismiss by defendants Yuba
22 County Superior Court, Third District Court of Appeals of the
23 State of California, and Alana Adams (ECF No. 5) is granted;

24 4. The June 9, 2014 motion to dismiss by defendant County
25 of Yuba (ECF No. 6) is granted; and

26 ⁴ Defendants have included with their motion a request for judicial notice of
27 records from the state court proceedings. Because it is apparent that all
28 defendants are immune from liability in this action, the court declines to
consider evidence outside the scope of the pleadings. Defendants’ request for
judicial notice is therefore denied.

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5. This action is dismissed.

DATED: July 2, 2014.



LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT