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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY W. ARMSTRONG,  
Plaintiff,  
v.  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT, et al.,  
Defendants.

No. 2:15-cv-0467-MCE-KJN PS

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff Jerry W. Armstrong, who proceeds in this action without counsel, has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.)<sup>1</sup> Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any time if it determines that the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

For the reasons discussed below, the court concludes that plaintiff’s complaint fails to state a claim on which relief may be granted. Furthermore, because plaintiff’s complaint is frivolous and/or malicious, the court recommends that the action be dismissed with prejudice and that the application to proceed *in forma pauperis* be denied.

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<sup>1</sup> This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1           Liberally construed, plaintiff’s complaint (ECF No. 1) alleges that the United States  
2 District Court for the Eastern District of California, and more specifically certain judges (Judges  
3 Craig Kellison, Lawrence Karlton, Garland Burrell, and John Mendez), violated plaintiff’s civil  
4 and constitutional rights by issuing various improper orders and rulings, failing to follow  
5 applicable procedural law, and acting with bias and favoritism in several of plaintiff’s previous  
6 cases in this court. Plaintiff also names “Kristy Pine,” Judge Kellison’s courtroom deputy clerk,  
7 as a defendant, although the complaint contains no specific factual allegations regarding Ms.  
8 Pine. Plaintiff seeks “full restoration of his record (repellment) under a miscarriage of justice”  
9 and \$40,000,000.00 in damages, with punitive damages to be set by the court.

10           The judges named as defendants are absolutely immune from liability for damages.  
11 “Judges are immune from damage actions for judicial acts taken within the jurisdiction of their  
12 courts...Judicial immunity applies however erroneous the act may have been, and however  
13 injurious in its consequences it may have proved to the plaintiff.” Ashelman v. Pope, 793 F.2d  
14 1072, 1075 (9th Cir. 1986). A judge can lose his or her immunity when acting in clear absence of  
15 jurisdiction, but one must distinguish acts taken in error or acts that are performed in excess of a  
16 judge’s authority (which remain absolutely immune) from those acts taken in clear absence of  
17 jurisdiction. Mireles v. Waco, 502 U.S. 9, 12-13 (1991) (“If judicial immunity means anything, it  
18 means that a judge will not be deprived of immunity because the action he took was in error...or  
19 was in excess of his authority.”). Thus, for example, in a case where a judge actually ordered the  
20 seizure of an individual by means of excessive force, an act clearly in excess of his legal  
21 authority, he remained immune because the order was given in his capacity as a judge and not  
22 with the clear absence of jurisdiction. Id.; see also Ashelman, 793 F.2d at 1075 (“A judge lacks  
23 immunity where he acts in the clear absence of all jurisdiction...or performs an act that is not  
24 judicial in nature.”)

25           Here, as noted above, plaintiff alleges that the defendant judges issued various improper  
26 orders and rulings, failed to follow applicable procedural law, and acted with bias and favoritism  
27 in several of plaintiff’s previous cases in this court. Defendants’ alleged actions were plainly  
28 taken in their capacity as judges, and not in the clear absence of all jurisdiction. Even assuming,

1 *arguendo*, that the judges’ actions were erroneous and harmful to plaintiff, plaintiff’s remedy is  
2 an appeal to the Ninth Circuit Court of Appeals – not a civil action for damages against the  
3 judges.

4 Furthermore, Kristy Pine has absolute quasi-judicial immunity from liability for damages.  
5 “Court clerks have absolute quasi-judicial immunity from damages for civil rights violations  
6 when they perform tasks that are an integral part of the judicial process.” Mullis v. U.S.  
7 Bankruptcy Court for the District of Nevada, 828 F.2d 1385, 1390 (9th Cir. 1987). Liberally  
8 construed, plaintiff’s complaint appears to suggest that certain unnamed clerks – presumably  
9 referring to Ms. Pine—took some erroneous procedural steps in plaintiff’s cases, refused to  
10 provide him with court records, and generally conspired with the judge defendants to deny  
11 plaintiff’s constitutional rights. Plaintiff’s allegations of a conspiracy are entirely conclusory and  
12 frivolous, and the remaining alleged actions by Ms. Pine, however allegedly erroneous they may  
13 have been, were all tasks performed as integral parts of the judicial process and not in clear  
14 absence of all jurisdiction.

15 Additionally, to the extent that plaintiff, by virtue of his claim for “full restoration of his  
16 record” seeks some type of injunctive or declaratory relief, defendants are also immune from such  
17 relief. See Mullis, 828 F.2d at 1394 (“We hold that when a person who is alleged to have caused  
18 a deprivation of constitutional rights while acting under color of federal law can successfully  
19 assert judicial or quasi-judicial immunity from damages, that immunity also will bar declaratory  
20 and injunctive relief.”). Moreover, even if such immunity did not apply, plaintiff’s claim for “full  
21 restoration of his record” would nonetheless fail as an improper attempt to appeal his prior cases  
22 by virtue of this new civil action in district court.

23 Because all defendants are immune from liability for the reasons discussed above, the  
24 court concludes that plaintiff is unable to cure his claims by additional factual allegations or  
25 improved pleading. As such, granting leave to amend would be futile.

26 Also, the court notes that in each of the prior cases from this court specifically mentioned  
27 in plaintiff’s complaint, plaintiff did appeal to the Ninth Circuit Court of Appeals, which either  
28 affirmed the district court’s judgment or dismissed plaintiff’s appeal. See Armstrong v. Siskiyou

1 County, 2:07-cv-1046-GEB-GGH, ECF No. 109 (affirming judgment); Armstrong v. Siskiyou  
2 County, 2:09-cv-290-JAM-CMK, ECF No. 15 (finding that “the questions raised in this appeal  
3 are so insubstantial as not to require further argument” and summarily affirming the district  
4 court’s judgment); Armstrong v. Gerald Benito, 2:09-cv-2912-LKK-CMK, ECF No. 25 (finding  
5 that “the questions raised in this appeal are so insubstantial as not to require further argument”  
6 and summarily affirming the district court’s judgment) & 37 (dismissing plaintiff’s second appeal  
7 in case); and Armstrong v. Redding Parole Department, 2:11-cv-1576-GEB-CMK, ECF No. 23  
8 (appeal dismissed for failure to prosecute). A review of the dockets in these cases confirms the  
9 court’s suspicion that the instant action is frivolous and/or malicious. As such, the court also  
10 recommends that plaintiff’s request to proceed *in forma pauperis* be denied.

11 Plaintiff is hereby cautioned that if he continues to file frivolous and meritless lawsuits in  
12 this district, he may be declared a vexatious litigant, and his ability to file actions in this district  
13 may be significantly curtailed.

14 Accordingly, for the foregoing reasons, IT IS HEREBY RECOMMENDED that:

- 15 1. Plaintiff’s request to proceed *in forma pauperis* (ECF No. 2) be denied.
- 16 2. The action be dismissed with prejudice.
- 17 3. The Clerk of Court be directed to close this case.

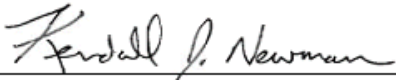
18 In light of the foregoing, IT IS ALSO HEREBY ORDERED that all motion  
19 practice in this action is stayed pending resolution of these findings and recommendations by the  
20 district judge. With the exception of objections to the findings and recommendations and non-  
21 frivolous motions for emergency relief, the court will not entertain or respond to any motions or  
22 filings until the findings and recommendations are resolved.

23 These findings and recommendations are submitted to the United States District Judge  
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
25 days after being served with these findings and recommendations, any party may file written  
26 objections with the court and serve a copy on all parties. Such a document should be captioned  
27 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
28 shall be served on all parties and filed with the court within fourteen (14) days after service of the

1 objections. The parties are advised that failure to file objections within the specified time may  
2 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th  
3 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

4 IT IS SO ORDERED AND RECOMMENDED.

5 Dated: March 9, 2015

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8 KENDALL J. NEWMAN  
9 UNITED STATES MAGISTRATE JUDGE  
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