

1 responsibilities and acting as the child's primary caregiver, the Sacramento County Department of
2 Child Support Services ("DCSS") and its attorney, Jack Mills, maliciously prosecuted plaintiff for
3 child support over a period of 14 years, resulting in suspension of plaintiff's driving privileges,
4 loss of job opportunities and potential income, destruction of plaintiff's credit, and severe
5 emotional distress. According to plaintiff, DCSS refused to consider documentation provided by
6 plaintiff, threatened the child's mother with loss of benefits if she did not cooperate in the DCSS
7 prosecution, and conspired with the Sacramento Family Court commissioner to effectuate the
8 prosecution. Plaintiff alleges that he is African American, and that the prosecution was based on
9 a racial vendetta against him. Plaintiff asserts a claim under 42 U.S.C. § 1983 for violation of his
10 civil rights, as well as state law claims for malicious prosecution and intentional infliction of
11 emotional distress against three defendants: DCSS; attorney Jack Mills; and an unidentified
12 Sacramento Family Court commissioner. Plaintiff seeks \$800,000.00 in compensatory damages
13 and \$2,000,000.00 in punitive damages. (See generally ECF No. 1.)

14 This is not the first time that plaintiff has brought his child support grievances to this
15 court. On May 21, 2008, plaintiff filed a lawsuit alleging "years of abuse by Sacramento
16 County's Dept of Child Support Services and their attorney Jack O Mills" with respect to
17 plaintiff's child support case, purportedly resulting in suspension of his driver's license, loss of
18 several employment offers and potential income, ruination of his credit, and mental anguish. (See
19 2:08-cv-1118-JAM-DAD, ECF No. 1.) Subsequently, on April 16, 2009, this court dismissed the
20 earlier action with prejudice. (Id., ECF Nos. 5, 6.)²

21 After examining this court's records, the court finds that plaintiff's claims against DCSS
22 and Mills are barred by the doctrine of claim preclusion. Claim preclusion "bars litigation in a
23 subsequent action of any claims that were raised or could have been raised in the prior
24 action....The doctrine is applicable whenever there is (1) an identity of claims, (2) a final
25 judgment on the merits, and (3) identity or privity between parties." Owens v. Kaiser Foundation

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27 ² A court may take judicial notice of court filings and other matters of public record, which are
28 not subject to reasonable dispute. Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746
n.6 (9th Cir. 2006); Fed. R. Evid. 201(b).

1 Health Plan, Inc., 244 F.3d 708, 713 (9th Cir. 2001) (internal citations and quotation marks
2 omitted). In this case, there can be no serious dispute that there was a final judgment on the
3 merits in the prior case (the prior case was dismissed with prejudice) and that identity or privity
4 between parties exists (DCSS and Mills were the focus of plaintiff's allegations in both
5 complaints). The only question is whether there is an identity of claims.

6 The Ninth Circuit has identified four factors that should be considered by a court in
7 determining whether successive lawsuits involve an identity of claims:

8 (1) whether rights or interests established in the prior judgment
9 would be destroyed or impaired by prosecution of the second
action;

10 (2) whether substantially the same evidence is presented in the two
11 actions;

12 (3) whether the two suits involve infringement of the same right;
and

13 (4) whether the two suits arise out of the same transactional nucleus
14 of facts.

15 See C.D. Anderson & Co. v. Lemos, 832 F.2d 1097, 1100 (9th Cir.1987); accord Headwaters Inc.
16 v. United States Forest Serv., 399 F.3d 1047, 1052 (9th Cir. 2005); Littlejohn v. United States,
17 321 F.3d 915, 920 (9th Cir. 2003). "The central criterion in determining whether there is an
18 identity of claims between the first and second adjudications is whether the two suits arise out of
19 the same transactional nucleus of facts." Owens, 244 F.3d at 714.

20 Here, plaintiff's claims in both actions are based on the same alleged malicious
21 prosecution for child support benefits (through suspension of plaintiff's driver's license, a
22 purported conspiracy or cooperation between DCSS and the Family Court, a refusal to consider
23 evidence, threats to the child's mother, ruination of plaintiff's credit, and preventing plaintiff
24 from finding more lucrative employment and better income). As such, both actions arise out of
25 the same transactional nucleus of facts, both actions involve alleged infringement of the same
26 type of rights, substantially the same evidence would be involved in both actions, and the rights
27 or interests established in the prior judgment would be destroyed or impaired by allowing plaintiff
28 to prosecute the instant action. To be sure, in the prior action, plaintiff proceeded under a theory

1 of sex discrimination whereas he presently primarily alleges racial discrimination. Nevertheless,
2 plaintiff's claim of racial discrimination is merely a new legal theory arising from the same
3 transactional nucleus of facts and could have been raised in the prior action. See Owens, 244
4 F.3d at 713-14; C.D. Anderson & Co., 832 F.2d at 1100.

5 Consequently, plaintiff's claims against DCSS and Mills are barred by the doctrine of
6 claim preclusion.

7 As noted above, in the prior action, plaintiff also alleged misconduct by the Family Court,
8 whereas his present complaint names an unidentified Sacramento Family Court commissioner.
9 Even assuming, without deciding, that the doctrine of claim preclusion does not apply to the
10 commissioner, he or she is immune from liability for damages derived from decisions made when
11 presiding over plaintiff's child support case. See Ashelman v. Pope, 793 F.2d 1072, 1075 (9th
12 Cir. 1986) ("Judges and those performing judge-like functions are absolutely immune from
13 damage liability for acts performed in their official capacities...Judicial immunity applies
14 however erroneous the act may have been, and however injurious in its consequences it may have
15 proved to the plaintiff."); Franceschi v. Schwartz, 57 F.3d 828, 831 (9th Cir. 1995) ("As a person
16 performing 'judge-like functions' that were not clearly outside the scope of his jurisdiction,
17 Commissioner Schwartz is judicially immune from damage liability in this action."). The fact
18 that plaintiff alleges a conspiracy between the commissioner and DCSS with respect to the
19 prosecution of plaintiff's child support payments also does not impact the commissioner's
20 immunity. Ashelman, 793 F.2d at 1078 (noting that "a conspiracy between judge and prosecutor
21 to predetermine the outcome of a judicial proceeding, while clearly improper, nevertheless does
22 not pierce the immunity extended to judges....").

23 As such, plaintiff's claim against the unidentified court commissioner is likewise not
24 viable.

25 The court has carefully considered, especially given plaintiff's *pro se* status, whether
26 leave to amend should be granted. However, in light of the nature of plaintiff's claims, which are
27 barred by claim preclusion and/or asserted against an immune defendant, the court finds that
28 granting leave to amend here would be futile. See Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,

1 339 (9th Cir. 1996).

2 Accordingly, IT IS HEREBY RECOMMENDED that:


- 3 1. The action be dismissed without leave to amend.
- 4 2. Plaintiff's motion to proceed *in forma pauperis* (ECF No. 2) be denied as moot.
- 5 3. The Clerk of Court be directed to close this case.

6 In light of those recommendations, IT IS ALSO HEREBY ORDERED that all pleading,
7 discovery, and motion practice in this action are stayed pending resolution of those findings and
8 recommendations. Other than objections to the findings and recommendations or non-frivolous
9 motions for emergency relief, the court will not entertain or respond to any pleadings or motions
10 until the findings and recommendations are resolved.

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
13 days after being served with these findings and recommendations, any party may file written
14 objections with the court and serve a copy on all parties. Such a document should be captioned
15 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
16 shall be served on all parties and filed with the court within fourteen (14) days after service of the
17 objections. The parties are advised that failure to file objections within the specified time may
18 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
19 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

20 IT IS SO ORDERED AND RECOMMENDED.

21 Dated: January 12, 2017

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24 KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE
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