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

JAMES O. MOLEN,

No. 2:17-cv-2224-TLN-CMK

Plaintiff,

vs.

FINDINGS AND RECOMMENDATION

UNITED STATES 9th DISTRICT
COURT, et al.,

Defendants.

_____/

Plaintiff, proceeding in propria persona, brings this civil action. Pending before the court is plaintiff's complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to screen complaints brought by litigants who have been granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and 1915A(b)(1), (2). Moreover, pursuant to Federal Rule of Civil Procedure 12(h), this court must

1 Molen, 2:10-cv-2591-KJN-MCE. In the criminal action, plaintiff was convicted of filing a false
2 lien against IRS officers in violation of 18 U.S.C. § 1521, criminal contempt in violation of 18
3 U.S.C. § 401(3), and endeavoring to obstruct the administration of the internal revenue laws in
4 violation of 26 U.S.C. § 7212(a).² The civil action was a suit to enforce a federal tax lien.
5 Plaintiff's allegations indicate that he is unhappy with judges that presided over both his prior
6 criminal and civil action. He indicates that the court and the judges lacked subject matter
7 jurisdiction, he is unhappy with the lack of response to motions he filed by the court, and alleges
8 the judges, the Clerk of the Court and others involved in the other proceedings conspired against
9 him.

11 II. DISCUSSION

12 In this case, the only defendants are judges and employees of the Court. Judges
13 are absolutely immune from damage actions for judicial acts taken within the jurisdiction of their
14 courts. See Schucker v. Rockwood, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam). This
15 immunity is lost only when the judge acts in the clear absence of all jurisdiction or performs an
16 act that is not judicial in nature. See id. Judges retain their immunity even when they are
17 accused of acting maliciously or corruptly, see Mireles v. Waco, 502 U.S. 9, 11 (1991) (per
18 curiam); Stump v. Sparkman, 435 U.S. 349, 356-57 (1978), and when they are accused of acting
19 in error, see Meek v. County of Riverside, 183 F.3d 962, 965 (9th Cir. 1999). This immunity
20 extends to the actions of court personnel when they act as "an integral part of the judicial
21 process." See Mullis v. U.S. Bankruptcy Court, 828 F.2d 1385, 1390 (9th Cir. 1987).

22 While the complaint is difficult to understand in terms of what plaintiff's claims
23 are, it is clear from the allegations that plaintiff is unhappy with the defendants based on their

24 ² A court may take judicial notice of court records. See MGIC Indem. Co. v.
25 Weisman, 803 F.2d 500, 504 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th
26 Cir. 1980).

1 judicial actions. For example, plaintiff alleges the judges acted without subject matter
2 jurisdiction, failed to respond to documents plaintiff filed, failed to dismiss the charges against
3 plaintiff, and that the Clerk failed to file all motions plaintiff submitted. As the judges and the
4 Clerk of the Court are absolutely immune from actions for judicial acts taken within the
5 jurisdiction of their courts, and it is clear that the only acts challenged are judicial acts, the
6 complaint is frivolous as a matter of law and fails to state a claim upon which relief can be
7 granted.

8 In addition, plaintiff complains about his treatment while incarcerated, including
9 what he ate, what he wore, access to his wife, health care received, and other consequences of
10 being incarcerated, as well as loss of rights from being convicted, such as the right to bear arms.
11 However, the defendants he has named are not responsible for, nor have any direct involvement
12 in, his treatment while incarcerated, and plaintiff's complaint fails to allege otherwise.

13 Plaintiff also mentions claims such as false indictment, false arrest, false
14 prosecution, false conviction, and false imprisonment. To the extent plaintiff attempts to state
15 such claims, he would be barred from proceeding on such claims. A civil action by a federal
16 prisoner seeking monetary damages or declaratory relief alleging constitutional violations would
17 amount to an action pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of
18 Narcotics, 403 U.S. 388 (1971). However, where such an action, as with an action under 42
19 U.S.C. § 1983, would necessarily imply the invalidity of the prisoner's underlying conviction or
20 sentence, such a claim is not cognizable unless the conviction or sentence has first been
21 invalidated on appeal, by habeas petition, or through some similar proceeding. See Heck v.
22 Humphrey, 512 U.S. 477, 483-84 (1994) (concluding that § 1983 claim not cognizable because
23 allegations were akin to malicious prosecution action which includes as an element a finding that
24 the criminal proceeding was concluded in plaintiff's favor); see also Van Strum v. Lawn, 940
25 F.2d 406, 409 (9th Cir.1991) ("Actions under § 1983 and those under Bivens are identical save
26 for the replacement of a state actor under § 1983 by a federal actor under Bivens."). Plaintiff

1 fails to allege his conviction has been invalidated on appeal, by habeas petition, or though some
2 similar proceeding.

3 **III. CONCLUSION**

4 Because the only defendants named in this case are absolutely immune from suit,
5 the complaint is frivolous as a matter of law, fails to state a claim upon which relief can be
6 granted, and should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(I), (ii). Based on the
7 statements made in the complaint, the undersigned finds that any amendment would be futile,
8 and leave to amend should not be granted.

9 Based on the foregoing, the undersigned recommends that this case be dismissed.

10
11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days
13 after being served with these findings and recommendations, any party may file written
14 objections with the court. The document should be captioned “Objections to Magistrate Judge's
15 Findings and Recommendations.” Failure to file objections within the specified time may waive
16 the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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19 DATED: November 15, 2017

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21 **CRAIG M. KELLISON**
22 UNITED STATES MAGISTRATE JUDGE
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