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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT-JOHN FOTI,

No. C 09-04167 CRB

Plaintiff,

**ORDER GRANTING MOTION TO  
DISMISS**

v.

COUNTY OF MARIN et al.,

Defendants.

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Pro se Plaintiff Robert-John Foti has brought a section 1983 suit against the County of Marin and various individuals based on a traffic (bicycling) stop and arrest in 2007. Because his claims against Commissioner Beverly Wood are barred by judicial immunity, the Court GRANTS her motion to dismiss.

**BACKGROUND**

According to the Complaint, Plaintiff was riding his bike in Forest Knolls, California, when his flashlight turned off. Cmpl. at ¶ 22. He stopped to turn the light back on when officer Jason Swift approached him and asked him his name. *Id.* Plaintiff refused to disclose his name, and told Swift he would not speak to him without counsel present. *Id.* Thus began a lengthy interaction in which Swift repeatedly told Plaintiff he was not free to leave, repeatedly asked Plaintiff his name, and, with the assistance of Sheriff Deputy Rebecca Leonard, a police officer from Fairfax, and Sergeant William Hernandez, searched Plaintiff for identification. *Id.* at ¶¶ 23-42. Swift eventually found an outstanding warrant for

1 Plaintiff. Id. at ¶¶ 38, 50. Plaintiff was handcuffed and arrested, and spent 14-16 hours in  
2 confinement. Id. at ¶¶ 50, 56, 57

3 Plaintiff asserts that at the time of his arrest, he had been unaware of the warrant. Id.  
4 at ¶ 51. He alleges that the warrant was void and that “the stink starts at the top, in this case  
5 [with Commissioner Beverly] Woods.” Id. at ¶ 54. And he further alleges that “Woods  
6 issued [the] warrant without following statutory and due process requirements for doing so,”  
7 and “without notice to [Plaintiff].” Id. at page 14-15.

8 He has brought suit under 42 U.S.C. § 1983 against the County of Marin, as well as  
9 Commissioner Beverly Wood, District Attorney Ed Berbarian, Sheriff Robert Doyle, Deputy  
10 Sheriff Jason Swift, Deputy Sheriff Rebecca Leonard, Sergeant William Hernandez, and an  
11 unnamed Fairfax police officer, all in their individual capacities.<sup>1</sup> Wood has moved to  
12 dismiss under Federal Rule of Civil Procedure 12(b)(6).

### 13 LEGAL STANDARD

14 Under Federal Rule of Civil Procedure 12(b)(6), a complaint may be dismissed  
15 against a defendant for failure to state a claim upon which relief may be granted. Dismissal  
16 may be based on either “the lack of a cognizable legal theory or the absence of sufficient  
17 facts alleged under a cognizable legal theory.” Balistreri v. Pacifica Police Dep’t, 901 F.2d  
18 696, 699 (9th Cir. 1990). For purposes of evaluating a motion to dismiss, the Court “must  
19 presume all factual allegations of the complaint to be true and draw all reasonable inferences  
20 in favor of the nonmoving party.” Usher v. City of Los Angeles, 828 F.2d 556, 561 (9th Cir.  
21 1987). Mere conclusions in factual allegations are not sufficient to state a cause of action.  
22 Papasan v. Allain, 478 U.S. 265, 286 (1986). The complaint must plead “enough facts to  
23 state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S.  
24 544, 547 (2007).

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<sup>1</sup> Plaintiff also named the spouses of each of the individual defendants, but the Court has already dismissed them from the case.

**DISCUSSION**

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2 Defendant Beverly Wood is a Commissioner for the Superior Court of California,  
3 County of Marin. Mot. at 1. Although she asserts four bases for her motion to dismiss, the  
4 Court will only address her claim of absolute judicial immunity. A state judge is absolutely  
5 immune from civil liability for damages for acts performed in his judicial capacity. See  
6 Pierson v. Ray, 386 U.S. 547, 553-55 (1967) (applying judicial immunity to actions under 42  
7 U.S.C. § 1983). In California, judicial immunity applies to commissioners such as Defendant  
8 Wood. See Regan v. Price, 131 Cal. App. 4th 1491, 1495 (2005); Tagliavia v. County of Los  
9 Angeles, 112 Cal. App. 3d 759, 761 (1980). “A judge will not be deprived of immunity  
10 because the action he took was in error, was done maliciously, or was in excess of his  
11 authority.” Stump v. Sparkman, 435 U.S. 349, 357 (1978). Two rules circumscribe absolute  
12 judicial immunity: first, immunity covers only those acts that are “judicial” by nature;  
13 second, a judge will be subject to liability only when he acts in the “clear absence of all  
14 jurisdiction.” See O’Neil v. City of Lake Oswego, 642 F.2d 367, 369 (9th Cir. 1981) (citing  
15 Stump, 435 U.S. at 356-57 and 360-64).

16 Whether an act by a judge is a judicial one relates to (1) the nature and function of the  
17 act, i.e., “whether it is a function normally performed by a judge,” and (2) “the expectations  
18 of the parties, i.e., whether they dealt with the judge in his judicial capacity.” Stump, 435  
19 U.S. at 362. Issuing a warrant is a function normally performed by a judge, and nothing in  
20 the Complaint suggests that Wood issued the warrant in anything other than her judicial  
21 capacity. It is unquestionably a judicial act. See, e.g., Meek v. County of Riverside, 183  
22 F.3d 962, 967 n.2 (9th Cir. 1999). Moreover, it would be a judicial act even if Wood’s  
23 “exercise of authority was flawed by the commission of grave procedural errors.” Stump,  
24 435 U.S. at 359.

25 Whether the judge acted in the clear absence of all jurisdiction is also clear here. The  
26 Supreme Court has explained that “a probate judge, with jurisdiction over only wills and  
27 estates [who tries] a criminal case . . . would be acting in the clear absence of jurisdiction and  
28 would not be immune from liability,” while “if a judge of a criminal court should convict a

1 defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and  
2 would be immune.” Id., 435 U.S. at 357 n. 7 (citing Bradley v. Fisher, 13 Wall. 335, 351, 20  
3 L.Ed. 646 (1872)).

4 The judicial act that Plaintiff complains of – Wood issuing a procedurally improper  
5 warrant– was within Wood’s jurisdiction as commissioner. Similarly, the Ninth Circuit  
6 found in O’Neil, 642 F.2d at 369, that a pro tem municipal judge’s “action in holding [the  
7 plaintiff] in contempt, an offense within his jurisdiction, although without the requisite  
8 papers to confer jurisdiction over this particular commission of the offense, is more  
9 analogous to a criminal court convicting for a nonexistent offense than to a probate court  
10 hearing a criminal case.” Indeed, in an earlier case brought by this same Plaintiff, the Ninth  
11 Circuit explained that a magistrate judge “was clearly acting within his subject matter  
12 jurisdiction when he conducted a probable cause hearing,” and that “[a]t most, proceeding in  
13 the absence of a written, sworn complaint may be deemed a ‘grave procedural error’ that,  
14 pursuant to Stump, does not pierce the cloak of immunity.” See Foti v. County of San  
15 Mateo, 90 Fed. Appx. 488, 491 (9th Cir. 2003). “[A]s long as the judge has jurisdiction to  
16 perform the ‘general act’ in question, he or she is immune ‘however erroneous the act may  
17 have been, . . . however injurious in its consequences it may have proved to the plaintiff’ and  
18 irrespective of the judge’s motivation.” Harvey v. Waldron, 210 F.3d 1008, 1012 (9th Cir.  
19 2000).

20 Because Wood’s issuance of the warrant was both a judicial act and within Wood’s  
21 jurisdiction as a commissioner, it is protected by judicial immunity.

22 **CONCLUSION**

23 For the foregoing reasons, the Court GRANTS Wood’s motion to dismiss, with  
24 prejudice.

25 **IT IS SO ORDERED.**

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27 Dated: January 15, 2010



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CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE