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NOT FOR PUBLICATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARCHIBALD CUNNINGHAM,

No. C 10-01182 JSW

Plaintiff,

**AMENDED ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

v.

JUDGE PATRICK J. MAHONEY, et al.

Defendants.

INTRODUCTION

Now before the Court is the Motion to Dismiss Plaintiff's First Amended Complaint for Injunctive and Declaratory Relief filed by Defendants Judge Patrick J. Mahoney, Presiding Judge James McBride, Chief Justice Ronald M. George, Presiding Justices Anthony Kline, William R. McGuinness, and Justice Laurie E. Zelon. On June 14, 2010, this Court issued an Order vacating the hearing date, because Plaintiff, Archibald Cunningham ("Cunningham"), did not file an opposition to Defendants' motion and did not file a response to an Order to Show Cause dated June 2, 2010, regarding his failure to file a timely opposition brief.

On June 18, 2010, after the Court issued its Order granting Defendants' motion to dismiss and after the Judgment was entered, Plaintiff filed a response to the Order to show cause. The Court issues this Amended Order to reflect the fact that it has considered the arguments raised in that response and, for the reasons set forth in the remainder of this Order, finds them unpersuasive.

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1 Although he did not file an opposition to Defendants' Motion to Dismiss the First
2 Amended Complaint, on April 21, 2010, Cunningham filed a brief entitled "Plaintiff's
3 Amended Response to Defendant's Motion to Dismiss; Memorandum of Points and
4 Authorities," and on April 24, 2010 filed an Amended Response to Defendant's Motion to
5 Dismiss, each of which was directed to Judge Mahoney's motion to dismiss Cunningham's
6 original complaint. To the extent the extent Cunningham raised arguments in those briefs that
7 are pertinent to the instant
8 motion to dismiss, the Court has considered them.

9 Accordingly, having considered the parties' papers, relevant legal authority, and the
10 record in this case, the Court HEREBY GRANTS Defendants' motion.

11 BACKGROUND

12 Cunningham brings this action for declaratory and injunctive relief pursuant to the Civil
13 Rights Act, 42 U.S.C. § 1983. Each of Cunningham's ten claims for relief arise out of custody
14 proceedings between Cunningham and his ex-wife, Defendant Mary Wang. Based on the
15 allegations in Cunningham's lengthy First Amended Complaint ("FAC"), he alleges that the
16 custody proceedings were conducted by way of a "trial by declaration," which he argues
17 violated his constitutional right to due process. (*See, e.g.*, FAC ¶¶ 1, 10, 14, 121.)
18 Subsequently, Ms. Wang allegedly instituted contempt proceedings against Cunningham, which
19 ultimately were dismissed. (*Id.* ¶¶ 28-30, 49, 73.) In addition, Cunningham alleges that Judge
20 Mahoney issued an order declaring him to be a vexatious litigant and imposed monetary
21 sanctions on him, and he contends that Judge Mahoney's violated a host of his constitutional
22 rights during these proceedings. (*Id.* ¶¶ 31-32, 33, 84.)

23 Cunningham also alleges that he sought review in the Court of Appeal and the
24 California Supreme Court of these various proceedings and that these Courts have refused to
25 address his arguments on the alleged constitutional violations. (*See, e.g., id.* ¶¶ 11.d-e, 25-30,
26 32, 34-35.) In sum, Cunningham asserts that he alleges that his due process rights under the
27 Fourteenth Amendment have been violated since he was never provided with a fully-litigated
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1 and meaningful hearing on the custody issue and that he seeks declaratory relief to that effect,
2 since, in his view, the state courts have avoided the issue. (*See, e.g.*, Docket No. 21 at 4:4-25.)

3 **ANALYSIS**

4 Notwithstanding the invocation of Section 1983, Cunningham fails to state a claim upon
5 which relief can be granted because (1) his claims are barred by the doctrine of absolute judicial
6 immunity; and (2) this Court lacks jurisdiction to review state court judgments.

7 **A. Cunningham Fails to State Legally Cognizable Claims Against the Defendants.**

8 **1. Cunningham’s Claims Against Judge Mahoney, Presiding Judge McBride,
9 Chief Justice George, and Presiding Justices Kline and McGuinness Fail
Because These Defendants Are Entitled to Absolute Judicial Immunity.**

10 Section 1983 provides, in pertinent part, that “in any action brought against a judicial
11 officer for an act or omission taken in such officer’s judicial capacity, injunctive relief *shall not*
12 *be granted unless* a declaratory decree was violated or declaratory relief was unavailable.” 42
13 U.S.C. § 1983 (emphasis added). Cunningham acknowledges this legal principle, but he argues
14 that he has alleged that these exceptions apply on the basis that he “filed his complaint because
15 the state appellate courts have repeatedly refused to address the issue of whether his 14th
16 Amendment due process rights were violated by the application of the local rule that allowed a
17 ‘trials [*sic*] by declaration at the May 2nd custody trial.” (*See* FAC ¶¶ 23-36; Docket No. 21 at
18 3:1-9; Docket No. 24 at 3:1-9.)

19 Judge Mahoney, Presiding Judge McBride, Chief Justice George, and Presiding Justices
20 Kline and McGuinness are entitled to absolute judicial immunity. *See Stump v. Sparkman*, 435
21 U.S. 349, 356-57 (1978) (“A judge will not be deprived of immunity because the act he took
22 was in error, was done maliciously, or was in excess of his authority.”); *see also Mireless v.*
23 *Waco*, 502 U.S. 9, 11 (1991); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). “Judicial
24 immunity applies ‘however erroneous the act may have been, and however injurious in its
25 consequences it may have proved to the plaintiff.’” *Id.* (quoting *Cleavinger v. Saxner*, 474 U.S.
26 193 (1985)). A judge lacks immunity only when he or she acts “in the clear absence of all
27 jurisdiction ... or performs an act that is not ‘judicial’ in nature.” *Id.* (internal citation omitted).

1 An act is considered “judicial” when it is a function normally performed by a judge and
2 the parties dealt with the judge in his judicial capacity.¹ *See Stump*, 435 U.S. at 362. To
3 determine if an individual acted in an official judicial capacity, a court must analyze whether:
4 “(1) the precise act is a normal judicial function; (2) the events occurred in the judge’s
5 chambers; (3) the controversy centered around a case then pending before the judge; and (4) the
6 events at issue arose directly and immediately out of a confrontation with the judge in his or her
7 official capacity.” *Id.* (citation omitted).

8 Having carefully reviewed the allegations in the FAC, the Court concludes that each of
9 the four factors set forth above demonstrates that Cunningham’s allegations against the Judicial
10 Defendants arise from judicial acts that occurred during the course of the custody, contempt,
11 vexatious litigant, and appellate proceedings.² Accordingly, Defendants’ motion to dismiss is
12 granted on this basis. Notwithstanding Cunningham’s conclusory allegations that Judge
13 Mahoney acted in excess of all jurisdiction, in light of the record in this case, the Court
14 concludes that leave to amend the claims against any of the Judicial Defendants would be
15 futile.³

16 **B. Cunningham’s Claims Fails Because The Court Lacks Jurisdiction to Review**
17 **State Court Judgments.**

18 Cunningham’s claims also fail because this Court lacks jurisdiction to review state court
19 judgments. The *Rooker-Feldman* doctrine provides that district courts lack jurisdiction to

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21 ¹ Cunningham filed an opposition to Judge Mahoney’s motion to dismiss the
22 initial complaint and filed an amended opposition to that motion. In those briefs, he states
23 that he does not dispute that *some* of Judge Mahoney’s custody orders and rulings were made
24 in his “judicial capacity.” (*See, e.g.*, Docket No. 21 at 2:4-5; Docket No. 24 at 3:4-5.)

25 ² Cunningham also alleges that Chief Justice George, Presiding Justices Kline
26 and McGuiness, Justice Zelon, and Presiding Judge McBride failed to implement rules and
27 procedures to correct the alleged due process violations that he claims resulted from the “trial
28 by declaration” in the custody dispute. However, Cunningham’s allegations in this regard
are no more than bare conclusions unsupported by facts, which is insufficient to state a
claim. *See Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan*
v. Allain, 478 U.S. 265, 286 (1986)). Accordingly, the claims against these Defendants are
dismissed on this basis as well.

³ Ms. Wang, a private party, has not yet appeared, however there are no
allegations in the FAC that suggest she was functioning as a state actor. Accordingly, all
claims asserted against her are dismissed.

1 review the final determinations of a state court in judicial proceedings. *See, e.g., District of*
2 *Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 487-87 (1983); *Rooker v. Fidelity Trust*
3 *Co.*, 263 U.S. 413, 415 (1923); *Branson v. Nott*, 62 F.3d 287, 291 (9th Cir. 1995). “The
4 purpose of the doctrine is to protect state judgments from collateral federal attack. Because
5 district courts lack power to hear direct appeals from state court decisions, they must decline
6 jurisdiction whenever they are ‘in essence called upon to review the state court decision.’” *Doe*
7 *& Associates Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001) (quoting
8 *Feldman*, 460 U.S. at 482 n.16). Where “the district court must hold that the state court was
9 wrong in order to find in favor of the plaintiff, the issues presented are inextricably
10 intertwined.” *Id.* (citations omitted).

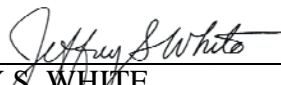
11 Notwithstanding Cunningham’s assertion to the contrary, a review of the allegations set
12 forth in the FAC demonstrate that he seeks, in effect, a review of the decisions of the state trial,
13 appellate, and supreme court decisions. Accordingly, dismissal of the claims against the
14 Judicial Defendants is appropriate on this basis as well.

15 **CONCLUSION**

16 For the foregoing reasons, Defendants’ motion to dismiss is GRANTED. The Court
17 finds that leave to amend would be futile. Accordingly, this case is DISMISSED WITH
18 PREJUDICE, a separate judgment shall issue, and the Clerk shall close the file.

19 **IT IS SO ORDERED.**

20
21 Dated: June 22, 2010



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 ARCHIBALD CUNNINGHAM et al,
6 Plaintiff,

Case Number: CV10-01182 JSW

7 **CERTIFICATE OF SERVICE**

8 v.

9 PATRICK J. MAHONEY et al,
10 Defendant.

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
12 District Court, Northern District of California.

13 That on June 22, 2010, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 Archibald Cunningham
18 1489 McAllister St.
San Francisco, CA 94115

19 Dated: June 22, 2010



20 Richard W. Wieking, Clerk
21 By: Jennifer Ottolini, Deputy Clerk
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