

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ESTEVAN R. LUCERO, et al.;

Plaintiffs,

V.

CITY OF SAN DIEGO, et al.,

Defendants.

Case No.: 22-CV-1045-RSH-NLS

ORDER GRANTING DEFENDANT JUDGE POLLY SHAMOON'S MOTION TO DISMISS

[ECF No. 11]

This Order addresses Defendant Judge Polly Shamoon’s motion to dismiss Plaintiff’s Complaint (the “Motion”). ECF No. 11. Plaintiff, a former attorney proceeding *pro se* in this matter, did not file an opposition. As explained below, the Court grants the Motion.

I. BACKGROUND

Plaintiff alleges in his Amended Complaint that he began practicing law in 2014. ECF No. 5 ¶ 33. On October 22, 2018, Plaintiff was arrested after driving to his ex-spouse's home and damaging her property. *Id.* ¶ 45. In March 2019, Plaintiff was charged with ten felony counts and pled guilty to one count of felony stalking of his ex-wife. *Id.* ¶¶ 46, 69. Judge Shamoon presided over Plaintiff's criminal proceedings and remanded him into

1 custody in July 2019. *Id.* ¶¶ 61, 65. Plaintiff was released in January 2020. *Id.* ¶ 84. Plaintiff
2 was disbarred after a State Bar trial on April 27, 2022. *Id.* ¶¶ 78, 94.

3 The Complaint alleges that the City of San Diego, San Diego County, the State Bar
4 of California, two rehabilitation facilities, and various subdivisions, agencies, officers, and
5 employees, as well as judicial officers including Judge Shamoon, conspired to dismantle
6 Plaintiff's law practice, frame him for various felonies, cause him to lose his law license,
7 and interfere with his personal and professional relationships. Plaintiff alleges that
8 Defendants launched this scheme in retaliation for his work on civil rights and criminal
9 defense matters. *Id.* ¶ 34.

10 With regard to Judge Shamoon, Plaintiff claims that she pressured Plaintiff's defense
11 attorney to resign, *id.* ¶ 50, unlawfully required Plaintiff to execute a preliminary hearing
12 waiver, *id.* ¶ 53, ordered him to cease practicing law without proper jurisdiction, *id.* ¶ 60,
13 improperly struck a probation report, *id.* ¶ 56, took a pending restitution hearing off
14 calendar to conceal testimony, *id.* ¶ 73, forced Plaintiff to agree to a probation violation,
15 *id.* ¶ 83, and kept him in custody to ensure his noncompliance with State Bar rules, *id.* ¶
16 84. Plaintiff also alleges that Judge Shamoon used her judicial office to interfere with his
17 State Bar disciplinary proceedings and ensure his disbarment. *Id.* ¶¶ 62-66, 68, 72, 76, 82.

18 Plaintiff filed his initial complaint on July 18, 2022, ECF No. 1, and his Amended
19 Complaint on July 27, 2022, ECF No. 5. He brings two claims pursuant to 42 U.S.C. §§
20 1983 and 1985. ECF No. 5 ¶¶ 106-114. Plaintiff seeks money damages. *Id.* ¶¶ 108, 114.

21 Judge Shamoon filed the Motion on September 26, 2022, seeking dismissal on the
22 basis of (1) judicial immunity, (2) the Eleventh Amendment, (3) *Heck v. Humphrey*, (4)
23 the *Rooker-Feldman* doctrine, (5) *Younger* abstention, and (6) the Complaint's failure to
24 otherwise state a claim. ECF No. 11. After missing the deadline to file an opposition brief,
25 Plaintiff filed an *ex parte* motion seeking, *inter alia*, an extension of time to respond to the
26 Motion to November 10, 2022. ECF No. 12. The Court granted Plaintiff's request. ECF
27 No. 13 at 3. Plaintiff never filed an opposition.

28 //

1 **II. DISCUSSION**

2 Plaintiff's claims against Judge Shamoon are barred by judicial immunity.
3 "[J]udges of courts of superior or general jurisdiction are not liable to civil actions for their
4 judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have
5 been done maliciously or corruptly." *Stump v. Sparkman*, 435 U.S. 349, 355–56 (1978).
6 This immunity is overcome in only two sets of circumstances. *Mireles v. Waco*, 502 U.S.
7 9, 11 (1991). "First, a judge is not immune from liability for nonjudicial actions, *i.e.*,
8 actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions,
9 though judicial in nature, taken in the complete absence of all jurisdiction." *Id.* at 11-12
10 (internal citations omitted). "[W]hether an act by a judge is a 'judicial' one relate[s] to the
11 nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to
12 the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial
13 capacity." *Stump*, 435 U.S. at 360. A complete absence of all jurisdiction means a clear
14 lack of subject matter jurisdiction. *Miller v. Davis*, 521 F.3d 1142, 1147 (9th Cir. 2008).
15 The conduct attributed specifically to Judge Shamoon in the Complaint stems from her
16 judicial acts, with no indication that she was acting in the complete absence of jurisdiction.

17 Plaintiff's claims against Judge Shamoon are also barred by the Eleventh
18 Amendment. *Simmons v. Sacramento Cnty. Super. Ct.*, 318 F.3d 1156, 1161 (9th Cir. 2003)
19 ("Plaintiff cannot state a claim against the Sacramento County Superior Court (or its
20 employees), because such suits are barred by the Eleventh Amendment."); *Greater L.A.*
21 *Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987) (holding that state
22 courts are arms of the state for Eleventh Amendment purposes).¹

23
24
25 ¹ Plaintiff also fails to allege particular facts supporting his conclusory allegations of
26 a conspiracy. See *Travaglia v. Johnston*, 42 F.3d 1402 (9th Cir. 1994) ("[I]n order to
27 survive a motion to dismiss an action for failure to state a claim pursuant to Rule 12(b)(6),
28 a plaintiff alleging a conspiracy must allege specific facts to support the existence of the
 alleged conspiracy."); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (affirming

1 Finally, Plaintiff's failure to oppose the Motion operates as consent to the relief
2 requested. If a party fails to file opposition papers, "that failure may constitute a consent to
3 the granting of a motion or other request for ruling by the Court." CivLR 7.1.f.3.c. *See*
4 *also Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (affirming grant of an unopposed
5 motion to dismiss under local rule by deeming a *pro se* litigant's failure to oppose as
6 consent to grant the motion). Plaintiff missed both the original deadline and his requested
7 extended deadline to file an opposition.

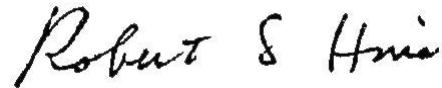
8 Judge Shamoons Motion argues that dismissal should be with prejudice, because
9 Plaintiff cannot cure the defects in his Amended Complaint. Given the grounds for
10 dismissal herein, the Court agrees that amendment would be futile, and leave to amend is
11 denied. *See Gordon v. City of Oakland*, 627 F.3d 1092, 1094 (9th Cir. 2010).

12 **III. CONCLUSION**

13 Accordingly, the Motion is **GRANTED**. Plaintiff's claims as to Defendant Judge
14 Shamoons are **DISMISSED** with prejudice.

15 **IT IS SO ORDERED.**

16 Dated: November 18, 2022



17 Hon. Robert S. Huie
18 United States District Judge

19
20
21
22
23
24
25
26
27
28 dismissal of Section 1983 and 1985 claims because plaintiff's conclusory allegations of
conspiracy were not supported by material facts).