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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

FRED GUTIERREZ, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TIMOTHY ATKINS et al., )  
 )  
 Defendants. )  
\_\_\_\_\_ )

2:13-cv-00245-RCJ-GWF

**ORDER**

This civil rights action arises out of a state court conviction. Pending before the Court is a Motion to Dismiss (ECF No. 5). For the reasons given herein, the Court grants the motion.

**I. FACTS AND PROCEDURAL HISTORY**

On April 15, 2012, a non-party police officer pulled Plaintiff Fred Gutierrez over on Casino Boulevard in Laughlin, Nevada while Plaintiff was driving a van registered in Arizona to a non-party. (Compl. ¶ 1, Feb. 14, 2013, ECF No. 1). The officer issued citations to Plaintiff for driving without a license and for being in possession of a certificate of registration, license plate, certificate of title, or other document knowing it to have been fictitious, cancelled, revoked, suspended, or altered. (*Id.* ¶ 3). On August 9, 2012, Plaintiff appeared for arraignment before Defendant Justice of the Peace Timothy Atkins in the Laughlin Justice Court. (*Id.* ¶ 4). Plaintiff refused to enter a plea, challenging the jurisdiction of the court. (*See id.* ¶¶ 5–6). Plaintiff appeared again on October 11, 2012, and his jurisdictional challenge was again denied. (*See id.* ¶

1 7). Plaintiff continued to challenge jurisdiction throughout the trial, and the judge found him  
2 guilty at the conclusion of the trial. (*See id.* ¶¶ 8–20).

3 Plaintiff sued Atkins and Prosecutor Nicholas Graham in this Court on two counts  
4 pursuant to 28 U.S.C. § 1983: (1) bad faith prosecution; and (2) due process violations.  
5 Defendants have moved to dismiss.

## 6 **II. LEGAL STANDARDS**

7 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the  
8 claim showing that the pleader is entitled to relief” in order to “give the defendant fair notice of  
9 what the . . . claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47  
10 (1957). Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action  
11 that fails to state a claim upon which relief can be granted. A motion to dismiss under Rule  
12 12(b)(6) tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n*, 720  
13 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for  
14 failure to state a claim, dismissal is appropriate only when the complaint does not give the  
15 defendant fair notice of a legally cognizable claim and the grounds on which it rests. *See Bell*  
16 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint is  
17 sufficient to state a claim, the court will take all material allegations as true and construe them in  
18 the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th  
19 Cir. 1986). The court, however, is not required to accept as true allegations that are merely  
20 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*  
21 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action  
22 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a violation  
23 is plausible, not just possible. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Twombly*,  
24 550 U.S. at 555).

25 “Generally, a district court may not consider any material beyond the pleadings in ruling

1 on a Rule 12(b)(6) motion. However, material which is properly submitted as part of the  
2 complaint may be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard Feiner*  
3 *& Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citation omitted). Similarly, “documents  
4 whose contents are alleged in a complaint and whose authenticity no party questions, but which  
5 are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6)  
6 motion to dismiss” without converting the motion to dismiss into a motion for summary  
7 judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). Moreover, under Federal Rule  
8 of Evidence 201, a court may take judicial notice of “matters of public record.” *Mack v. S. Bay*  
9 *Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court  
10 considers materials outside of the pleadings, the motion to dismiss is converted into a motion for  
11 summary judgment. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir.  
12 2001).

### 13 **III. ANALYSIS**

14 The Court grants the motion to dismiss for two reasons. First, no action is permitted  
15 under § 1983 if a verdict in favor of the plaintiff would imply the invalidity of a previous  
16 conviction. *See Heck v. Humphry*, 512 U.S. 477, 486–87 (1984) (“[I]n order to recover damages  
17 for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions  
18 whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove  
19 that the conviction or sentence has been reversed on direct appeal, expunged by executive order,  
20 declared invalid by a state tribunal authorized to make such determination, or called into question  
21 by a federal court’s issuance of a writ of habeas corpus . . .”). Plaintiff has not alleged such  
22 facts. Second, both Defendants are absolutely immune from suit as a general matter for their acts  
23 related to their respective judicial and prosecutorial functions. *See Stump v. Sparkman*, 435 U.S.  
24 349, 356–57 (1978) (judicial immunity); *Imbler v. Pachtman*, 424 U.S. 409, 430–31 (1976)  
25 (prosecutorial immunity). A judge is not immune, however, where he acts in the “clear absence

1 of all jurisdiction.” *Stump*, 435 U.S. at 357. For example,

2 if a probate judge, with jurisdiction over only wills and estates, should try a criminal  
3 case, he would be acting in the clear absence of jurisdiction and would not be  
4 immune from liability for his action; on the other hand, if a judge of a criminal court  
should convict a defendant of a nonexistent crime, he would merely be acting in  
excess of his jurisdiction and would be immune.

5 *Id.* at 357 n.7. Plaintiff complains that he was not presented with a summons and complaint or  
6 any other charging instrument. But these kinds of errors, even assuming there had been this type  
7 of error here, do not demonstrate a clear lack of all jurisdiction. Justice courts have jurisdiction  
8 over misdemeanor crimes in Nevada. Nev. Rev. Stat. § 4.370(3). That ends the analysis. So  
9 long as the justice of the peace was purporting to try Plaintiff for a misdemeanor crime or lesser  
10 civil infraction, which is clearly the case, judicial immunity applies.

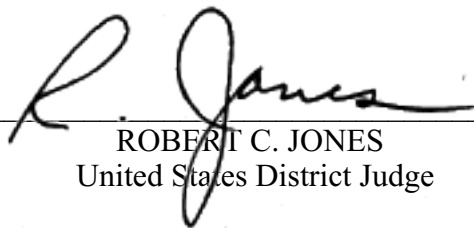
11 **CONCLUSION**

12 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 5) is GRANTED.

13 IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case.

14 IT IS SO ORDERED.

15 Dated this 25th day of April, 2013.

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18 ROBERT C. JONES  
United States District Judge