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 9 the Hon. Marilyn L. Huff

10
 11 UNITED STATES DISTRICT COURT
 12 SOUTHERN DISTRICT OF CALIFORNIA

13
 14 ANTHONY JOHNSON,

15 Plaintiff,

16 v.

17 DAVID KINNEY, an individual;
 18 RICHARD TURNER, an individual;
 MANUEL ALTAMIRANO, an
 19 individual; DAVID HUFFMAN, an
 individual; DAVID SMILJKOVICH,
 20 an individual; PAUL TYRELL, an
 individual; SEAN SULLIVAN, an
 21 individual; STORIX INC., a California
 Corporation; JUDGE MARILYN
 22 HUFF, an individual; JUDGE RANDA
 TRAPP, an individual; JUDGE KEVIN
 23 ENRIGHT, an individual; JUDGE
 24 KATHERINE BACAL, an individual,

25 Defendants.
 26

Case No.: 20-CV-01354-TWR-MSB

REPLY BRIEF BY DEFENDANT
 U.S DISTRICT COURT JUDGE
 MARILYN L. HUFF, IN SUPPORT
 OF MOTION TO DISMISS FIRST
 AMENDED COMPLAINT WITH
 PREJUDICE, AND JOINDER RE
 SAME (ECF DOCS. 29, 29-1, 31, 33)

Hearing Date: December 2, 2020

Time: 1:30 p.m.

Courtroom: 3A (Schwartz)

Judge: Honorable Todd W. Robinson

[NO ORAL ARGUMENT
 REQUESTED]

1 I. Introduction: State of Play Prior to Johnson’s Opposition Brief

2 In response to Plaintiff Anthony Johnson’s First Amended Complaint in this
3 matter, Defendant and U.S. District Court Judge Marilyn L. Huff joined in the motion to
4 dismiss submitted by her co-defendants, state court judges Katherine Bacal, Kevin
5 Enright, and Randa Trapp. *See* ECF Docs. 29, 29-1 (notice of motion, memorandum of
6 points and authorities), 31 (joinder).

7 One principal ground of the state judges’ motion was that Johnson’s complaint
8 against the judges was barred by the doctrine of judicial immunity. *See* ECF Doc. 29
9 (ground no. 2 for motion to dismiss: “Because the State Judicial Defendants enjoy
10 absolute judicial immunity, the FAC fails to state a claim upon which relief can be granted
11 under FRCP 12(b)(6)”). *See also* ECF Doc. 29-1 (Memorandum of Points and
12 Authorities, esp. 10-12.)

13 It was this aspect of the state judges’ motion in which Judge Huff joined. And that
14 motion – and therefore Judge Huff’s joinder – relied on the well-settled law that:

- 15 • “Judges and those performing judge-like functions are absolutely immune
16 from damage liability for acts performed in their official capacities.”
17 *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc). (Cited in
18 Motion to Dismiss, ECF Doc. 29-1, at 11:11-13).¹
19 • The only two instances in which immunity is overcome is where the judge

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21 ¹ This judicial immunity applies “however erroneous the act may have been, and
22 however injurious in its consequences it may have proved to the plaintiff. Grave
23 procedural errors or acts in excess of judicial authority do not deprive a judge of this
24 immunity.” *Moore v. Brewster*, 96 F.3d 1240, 1244 (9th Cir. 1996) (citations and internal
25 quotations omitted). “This absolute immunity insulates judges from charges of erroneous
26 acts or irregular action, even when it is alleged that such action was driven by malicious
27 or corrupt motives, or when the exercise of judicial authority is flawed by the commission
28 of grave procedural errors.” *In re Castillo*, 297 F.3d 940, 952 (9th Cir. 2002) (citations
and internal quotation marks omitted). *See also* Motion to Dismiss, ECF Doc. 29-1, at
10:11-19, 11:1-11 (citing additional cases).

1 “acts in the ‘clear absence of all jurisdiction,’ or performs an act that is not
2 ‘judicial’ in nature.” *Ashelman*, 793 F.2d at 1075 (citations omitted). (Cited
3 in Motion to Dismiss, ECF Doc. 29-1, at 10-11). *See also Moore v.*
4 *Brewster*, 96 F.3d 1240, 1243-44 (9th Cir. 1996).²

- 5 • The proper mechanism to challenge a judge’s errors is appeal, not a later
6 civil case collaterally attacking a judgment rendered in the earlier civil suit.
7 *In re Castillo*, 297 F.3d 940, 947 (9th Cir. 2002); *Pierson v. Ray*, 386
8 U.S. 547, 554 (1967). (Cited in Motion to Dismiss, ECF Doc. 29-1, at 11-
9 12.).

10 II. What Johnson’s Opposition to the Motion to Dismiss Based on Judicial 11 Immunity Does Not Argue, and Even Concedes

12 In response to the state judges’ motion to dismiss, and Judge Huff’s joinder,
13 Johnson has filed a lengthy Opposition. Because the state judges brought their motion to
14 dismiss on multiple grounds, and because Judge Huff joined the motion only on grounds
15 of judicial immunity, only some of Johnson’s Opposition directly pertains to the
16 particular grounds of Judge Huff’s joinder in the state judges’ motion to dismiss.

17 But even here, as to judicial immunity, it is worth noting what Johnson’s
18 Opposition does *not* argue. For one, Johnson does not contend that his complaint makes
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20 ² When determining whether judicial immunity applies, jurisdiction is construed
21 broadly, and will be found where judicial authority is even colorable; by contrast, for
22 immunity not to apply, there must be a clear absence of jurisdiction. *See Crooks v.*
23 *Maynard*, 913 F.2d 699, 701 (9th Cir. 1990); *Schucker v. Rockwood*, 846 F.2d 1202,
24 1204 (9th Cir. 1988). (Cited in Motion to Dismiss, ECF Doc. 29-1, at 11: 1-11.)

25 An act is “judicial” when it is a function normally performed by a judge and the
26 parties dealt with the judge in his judicial capacity. *Ashelman*, 793 F.2d at 1075; *Stump*
27 *v. Sparkman*, 435 U.S. 349, 362 (1978). (Cited in Motion to Dismiss, ECF 29-1, 11:12-
28 20.) *See also Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435–36 (1993) (judicial
acts are those in which a judge is “perform[ing] the function of resolving disputes
between parties, or of authoritatively adjudicating private rights.”).

1 allegations (i) that Judge Huff acted in the clear absence of all jurisdiction, or (ii) that the
2 acts in question – Judge Huff’s judicial rulings, in cases in which Johnson was a litigant
3 – were not taken in a judicial capacity. Nor could he plausibly do so – for his complaint’s
4 allegations against Judge Huff all concern judicial rulings in cases properly before her as
5 a federal district court judge. *See* Joinder, ECF Doc. 31, at 2:3-20 (cataloguing
6 paragraphs of Johnson’s complaint alleging errors in Judge Huff’s rulings in Johnson’s
7 two federal cases).

8 In addition, Johnson does not contend that appeal is somehow out of his reach.
9 Indeed, Johnson availed himself of his right of appeal (twice) in the first of his cases
10 before Judge Huff. In the second of his cases before Judge Huff – which case remains
11 open, although currently stayed – Johnson has also already sought appellate review, by
12 way of petitioning for a writ of mandamus. In addition, direct appeal in that second case
13 remains possible. In short, the proper avenue for challenging Judge Huff’s judicial
14 rulings – appeal – was available to Johnson. He has used it, on multiple occasions. And
15 he may continue to do so.³

16 Finally, Johnson’s Opposition does not even contend that he may seek *civil*
17 *damages* from the judge defendants, either state or federal. Instead, his Opposition
18 explicitly concedes that judges are absolutely immune from civil suits for damages. *See*
19 _____

20 ³ Johnson’s prior appeals and petition for writ of mandamus are specified in Judge
21 Huff’s joinder. *See* Joinder, ECF Doc. 31, at 2-3, n.3. Such records of court
22 proceedings are judicially noticeable. *See* Fed. R. Evid. 201 (facts proper for judicial
23 notice are those not subject to reasonable dispute and either “generally known” in the
24 community or “capable of accurate and ready determination” by reference to sources
25 whose accuracy cannot be reasonably questioned); *see also Reyna Pasta Bella, LLC v.*
Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006) (explaining that it is appropriate
to take judicial notice of court filings and other matters of public record, such as
pleadings in related litigation).

26 If necessary for the resolution of this motion to dismiss, Defendant Judge Huff
27 respectfully requests this Court to take judicial notice of the previously-identified court
28 records.

1 Opposition, ECF Doc. 33, at 8:21 (heading: “Absolute Immunity Only Applies to
2 Damages Claims”). Thus, even Johnson’s Opposition concedes that any damages claims
3 against the judges – either state or federal – are barred by the doctrine of judicial
4 immunity.

5 III. Johnson’s Principal Counter-Argument Is Unavailing – A Federal Judge’s
6 Immunity from Suit Extends Not Just to Damages Claims, but Also to
7 Claims for Equitable Relief

8 Instead, Johnson’s grounds of opposition to Judge Huff’s joinder and the state
9 judges’ motion to dismiss based on judicial immunity are quite narrow. His principal
10 counter-argument has two premises. First, according to Johnson’s characterization of the
11 relevant law, the immunity to suit for judges does not extend to suits for equitable relief
12 – that’s his legal premise. And second, Johnson notes that his suit seeks not just damages
13 but also equitable relief – that’s the factual premise concerning his complaint. *See*
14 *Opposition, ECF Doc. 33, at 1:10-12* (“judges are only entitled to absolute immunity from
15 damage claims, and Johnson demands prospective declaratory and injunctive relief to
16 prevent their ongoing deprivation of his civil rights.”). According to Johnson’s argument,
17 then, since his suit seeks equitable relief and not just damages, and since – according to
18 him – suits against judges for equitable relief are not barred by judicial immunity, his suit
19 against Judge Huff is permissible.

20 But Johnson’s argument vis-à-vis Judge Huff is fallacious, because it rests on an
21 incorrect legal premise, insofar as that premise concerns *federal* judges. It is true that
22 Johnson’s complaint seeks not just civil damages but also equitable relief against all the
23 judge defendants, state and federal. But Johnson’s legal premise – the premise that a
24 *federal* judge’s immunity from suit does not extend to claims for equitable relief, but only
25 extends to claims for civil damages – is simply wrong. Thus, in a case involving a former
26 district court judge in this very district, the Ninth Circuit expressly ruled that a federal
27 judge’s immunity from suit is not limited merely to suits for damages. Instead, a federal
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1 judge’s judicial immunity from suit extends also to claims for declaratory, injunctive, or
2 other equitable relief arising from judicial acts. See *Moore v. Brewster*, 96 F.3d 1240,
3 1243-44 (9th Cir. 1996) (judicial immunity extends to declaratory and other equitable
4 relief), superseded by statute on other grounds as stated in *Dettamanti v. Staffel*, 793 F.
5 App’x. 583 (9th Cir. 2020). And for this point, *Moore v. Brewster* itself quoted and relied
6 on a previous Ninth Circuit opinion, *Mullis v. U.S. Bankr. Court for Dist. of Nevada*, 828
7 F.2d 1385, 1394 (9th Cir. 1987), which expressly held: “The judicial . . . immunity
8 available to federal officers is not limited to immunity from damages, but extends to
9 actions for declaratory, injunctive and other equitable relief.”⁴

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12 ⁴ In his Opposition, ECF Doc. 33, at 10:4-10, Johnson relies mainly on *Pulliam*
13 *v. Allen*, 466 U.S. 522, 540 (1984), which stated: “[T]here is little support in the
14 common law for a rule of judicial immunity that prevents injunctive relief against a
15 judge. There is even less support for a conclusion that Congress intended to limit the
16 injunctive relief available under § 1983 in a way that would prevent federal injunctive
17 relief against a state judge.” And “It is now established that judicial immunity does not
18 bar declaratory or injunctive relief in actions under § 1983.” *Id.* at 541-542.

19 But the language in *Pulliam* – suggesting that judicial immunity would not
20 necessarily bar injunctive relief against *state* judicial officials under § 1983 – applies
21 only to state court judges, in § 1983 actions, assuming it applies in the present case at
22 all. See *Dettamanti v. Staffel*, 793 F. App’x. 583 (9th Cir., February 10, 2020) (relying
23 on *Moore v. Brewster*, in affirming dismissal of § 1983 complaint seeking injunctive
24 relief against state court judge). That language in *Pulliam* simply does not apply to
25 federal court judges, as the Ninth Circuit has expressly held. See *Mullis*, 828 F.2d at
26 1394 (addressing *Pulliam*, and finding “no need to carve out an exception to judicial
27 immunity to permit declaratory and injunctive relief against federal judicial officers”;
28 holding: “when a person who is alleged to have caused a deprivation of constitutional
rights while acting under color of federal law can successfully assert judicial or quasi-
judicial immunity from damages, that immunity also will bar declaratory and injunctive
relief. *The judicial or quasi-judicial immunity available to federal officers is not limited
to immunity from damages, but extends to actions for declaratory, injunctive and other
equitable relief.*”) (italics added).

1 On these points, these cases are the law. As against federal judges, it is quite
2 certain that not only damages claims but also claims for equitable relief are barred under
3 the doctrine of judicial immunity. Indeed, the Ninth Circuit continues to cite *Moore v.*
4 *Brewster* and *Mullis* for these propositions, up to and as recently as this year. See
5 *Dettamanti v. Staffel*, 793 F. App'x. 583 (9th Cir., February 10, 2020) (relying on *Moore*
6 *v. Brewster* in dismissing claim for injunctive relief against state court judge); *Stafne v.*
7 *Zilly*, 820 F. App'x. 594, 595 (9th Cir., September 3, 2020) (relying on *Mullis* in
8 dismissing claims for injunctive relief against federal judges).

9 For this basic reason, Johnson's entire complaint against Judge Huff – whether
10 seeking money damages or equitable relief or both – must be dismissed, on grounds of
11 judicial immunity.

12 IV. Johnson's Conspiracy Claims Do Not Overcome a Federal Judge's 13 Immunity from Civil Suit

14 Finally, as something of a tagalong argument, Johnson seemingly contends that
15 because his current complaint alleges a conspiracy between the judges and other
16 defendants – including lawyers for opposing litigants in prior lawsuits, as well as those
17 opposing litigants themselves – those conspiracy allegations or claims somehow avoid
18 the bar on suits against judges on grounds of judicial immunity. See Opposition, ECF
19 Doc. 33, at 1:13-18 (“Even though judges are immune from damage claims, no such
20 immunity extends to the non-judicial defendants who conspired with them to violate
21 Johnson's civil rights. The FAC alleges facts demonstrating a conspiracy in which
22 Johnson's rights were intentionally violated by judges who clearly supported the other
23 defendants' efforts to prevent Johnson from defending himself, litigating his claims, or
24 affording an attorney.”)

25 The short response to this argument, at least insofar as it is directed at Judge Huff,
26 is that it too is foreclosed by explicit Ninth Circuit precedent. *Moore v. Brewster*, 96 F.3d
27 at 1244 (“Nor is judicial immunity lost by allegations that a judge conspired with one
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1 party to rule against another party: ‘a conspiracy between judge and [a party] to
2 predetermine the outcome of a judicial proceeding, while clearly improper, nevertheless
3 does not pierce the immunity extended to judges’”) (quoting *Ashelman v. Pope*, 793
4 F.2d at 1078).⁵

5 V. Conclusion

6 For the reasons given in (i) the state court judges’ motion to dismiss, (ii) Judge
7 Huff’s joinder, and (iii) this reply brief, this Court should dismiss Johnson’s complaint
8 against Judge Huff, without leave to amend. *See Ashelman v. Pope*, 793 F.2d 1072, 1078
9 (9th Cir. 1986) (en banc) (affirming district court’s dismissal of *pro se* complaint without
10 leave to amend because amendment could not overcome the judicial immunity bar).

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12 DATED: November 18, 2020

Respectfully submitted,

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21 ⁵ It is unclear whether Johnson contends that (i) his conspiracy claim wholly
22 evades the absolute immunity accorded federal judges for their rulings, or (ii) merely
23 that such conspiracy claims would survive against any non-judicial defendants, even if
24 not against a federal judge. *See* Opposition, ECF Doc. 33, at 1:13-15. *See also id.*, at
25 14:3-4 (“Johnson *is suing the non-judicial defendants for their conspiracy* with the State
26 Judges under 42 U.S.C. § 1983 and with Judge Huff under 28 U.S.C. § 1331.”) (italics
27 added).

28 Whatever the precise contours of Johnson’s argument, what is clear is that such
conspiracy allegations will not negate the absolute judicial immunity against later civil
suits accorded federal district court judges for their prior judicial rulings. *Moore v.*
Brewster, 96 F.3d at 1244; *Ashelman v. Pope*, 793 F.2d at 1078.