UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, Pro Se, Plaintiff, v. CYNTHIA BASHANT, et al., Defendants.	Case No.: 18-cv-00325-TWR-DEB **PROOF OF SERVICE BY MAIL**

I, Katherine L. Parker, am over 18 years of age and not a party to this action. I declare that I have caused the following to be served by First Class U.S. Mail:

Reply in Support of Statement of Interest and Motion to Dismiss by the United States Regarding Judicial Immunity

On the following parties:

Darryl Cotton, Plaintiff Pro Se
6176 Federal Blvd.
San Diego, CA 92114

I have also emailed a courtesy copy of this filing to the plaintiff directly. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: May 12, 2021

s/ Katherine L. Parker
Katherine L. Parker

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,

Pro Se, Plaintiff,

v.

CYNTHIA BASHANT, et al.,

Defendants.

Case No.: 18-cv-00325-TWR-DEB

REPLY IN SUPPORT OF STATEMENT OF INTEREST AND MOTION TO DISMISS BY THE UNITED STATES REGARDING JUDICIAL IMMUNITY

Date: May 19, 2021

Time: 1:30 pm

Hon. Todd W. Robinson

NO ORAL ARGUMENT REQUESTED

Plaintiff's claims against U.S. District Judge Cynthia Bashant should be dismissed for failure to state a claim. The United States, appearing pursuant to its statutory authority under 28 U.S.C. § 517, established that absolute judicial immunity precludes these claims, and nothing in Plaintiff's opposition defeats this immunity.

In his complaint, Plaintiff challenges several actions taken by Judge Bashant in her judicial capacity: lifting a stay, denying a request for court-appointed counsel, and denying a temporary restraining order. (*See* ECF No. 18, ¶¶ 110, 113, 116, 122-126.) As set forth in more detail in the United States' Statement of Interest/Motion to Dismiss, judicial immunity precludes any action against Judge Bashant based on her exercise of her judicial duties. *See, e.g., Moore v. Brewster*, 96 F.3d 1240, 1243 (9th Cir. 1996) (federal judges are absolutely immune from claims for declaratory, injunctive, or other equitable relief arising from their judicial acts).

In his opposition, Plaintiff primarily criticizes Judge Bashant's judicial actions on the merits, skirting the issue of judicial immunity. *See* Omnibus Oppo., ECF No. 80 at 3:45, and pages 7-8 (accusing Judge Bashant of "laziness, negligence, or corruption."). These criticisms are insufficient to overcome absolute judicial immunity, which applies "'however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff.'" *Cleavinger v. Saxner,* 474 U.S. 193, 199-200 (1985) (quoting *Bradley v. Fisher,* 80 U.S. (13 Wall.) 335, 347, 20 L. Ed. 646). "Grave procedural errors or acts in excess of judicial authority do not deprive a judge of this immunity." *Schucker v. Rockwood,* 846 F.2d 1202, 1204 (9th Cir.), *cert. denied,* 488 U.S. 995 (1988). *Moore v. Brewster*, 96 F.3d 1240, 1244 (9th Cir. 1996).

To the extent Plaintiff addresses judicial immunity at all, he merely cites a dissent from *Mullis v. U.S. Bankruptcy Court*, 828 F.2d 1385 (9th Cir. 1987). *See* Oppo. at 8-9. The Ninth Circuit's analysis and holding in *Mullis* support dismissal of the claims against Judge Bashant in this case. In *Mullis*, plaintiff sued a bankruptcy judge for various judicial acts. The Ninth Circuit affirmed dismissal and held that the bankruptcy judge had absolute judicial immunity from monetary damages and other relief. 828

F.2d at 1389. Judge O'Scannlain dissented from the distinction the majority drew between state and federal judges for purposes of judicial immunity, but would have affirmed dismissal. *Id.* at 1394-95. Ultimately, that distinction between state and federal judges is now legally irrelevant, in light of Congress' later amendment of 42 U.S.C. § 1988. *See Twin Sisters Gun Club v. Emlen,* No. 2:17-cv-01526-MCE-GGH, 2018 U.S. Dist. LEXIS 43030, at *25-26 (E.D. Cal. Mar. 14, 2018) (explaining that *Mullis* was superseded by statute, and that the law is established that "absolute judicial immunity extends not only to claims for damages but to actions for equitable relief as well.").

In sum, Plaintiff presents no legal basis to permit his claims against Judge Bashant, and those claims should be dismissed with prejudice.

DATED: May 12, 2021

Respectfully submitted,

RANDY S. GROSSMAN
Acting United States Attorney

s/ Katherine L. Parker
Katherine L. Parker
Assistant U.S. Attorney
Chief, Civil Division
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