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14
15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**
17

18 DARRYL COTTON,

19 Pro Se, Plaintiff,

20 v.

21 CYNTHIA BASHANT, et al.,

22 Defendants.

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

23 **STATEMENT OF INTEREST AND**
24 **MOTION TO DISMISS BY THE**
25 **UNITED STATES REGARDING**
26 **JUDICIAL IMMUNITY**

27 Date: May 19, 2021

28 Time: 1:30 pm

Hon. Todd W. Robinson

NO ORAL ARGUMENT
REQUESTED

1 **NOTICE OF MOTION AND MOTION**

2 The United States, pursuant to its statutory authority to appear and protect its
3 interests, moves to dismiss all claims against United States District Judge Cynthia Bashant.
4 This motion is based upon the doctrine of absolute judicial immunity, as set forth in the
5 accompanying Memorandum of Points and Authorities. In the alternative, the United
6 States requests that the Court *sua sponte* dismiss the claims against Judge Bashant.

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8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. INTRODUCTION**

10 Plaintiff Darryl Cotton filed an amended complaint adding United States District
11 Judge Cynthia Bashant as a Defendant. The United States, which is not a party to this action,
12 submits this statement of interest pursuant to 28 U.S.C. § 517, to set forth the principles of
13 judicial immunity which preclude Plaintiff's claims against Judge Bashant.

14 **II. BACKGROUND**

15 Plaintiff pro se Darryl Cotton filed this action against various individuals and
16 attorneys and the City of San Diego, alleging disputes arising out of a real property
17 transaction that had also been the subject of Superior Court litigation. (ECF No. 1.) In
18 January 2020, this action was reassigned to United States District Judge Cynthia Bashant.
19 (ECF No. 10.) Judge Bashant then entered an order: (1) lifting a stay that had been entered
20 pursuant to the *Colorado River* doctrine; (2) directing the U.S. Marshals Service to effect
21 service of the summons and complaint; and (3) denying Plaintiff's ex parte application for
22 injunctive relief. (ECF No. 11.) In April 2020, Judge Bashant denied Plaintiff's ex parte
23 application seeking appointment of counsel. (ECF No. 14.) One month later, Plaintiff filed
24 his First Amended Complaint adding Judge Bashant, Superior Court Judge Joel Wohlfeil,
25 and others as Defendants. (ECF No. 18.) On September 24, 2020, the case was transferred
26 from Judge Bashant to United States District Judge Todd Robinson. (ECF No. 42.)

III. ARGUMENT

Although the United States is not a party to this action, it has an interest in enforcement of judicial immunity principles in the context of actions against federal judges. Accordingly, the United States submits this statement as an interested party under the authority of 28 U.S.C. § 517. *See e.g., Ou-Young v. Roberts*, No. C-13-4442 EMC, 2013 U.S. Dist. LEXIS 179213 (N.D. Cal. Dec. 20, 2013). In *Ou-Young*, the district court granted the United States’ motion to dismiss claims against federal judges in a case where the United States itself was not a party. The court there stated: “Plaintiff’s action threatens the United States’ interest in the orderly administration of justice by hailing into court federal prosecutors, judges, and court personnel for alleged acts or omissions arising out of the execution of their official duties.”). *Id.* at *9. The court found that the United States could appear as amicus curiae or on statutory grounds pursuant to 28 U.S.C. § 517, but that ultimately the United States’ standing was immaterial because the court could raise the grounds of dismissal *sua sponte*. *Id.* at **9-10. Here, the United States requests that the Court recognize the United States’ statutory authority to appear and move to dismiss to protect its own interests, or that the Court *sua sponte* dismiss the claims against Judge Bashant with prejudice.

For over a century, the Supreme Court has recognized the absolute immunity of judges while acting in their official capacities. As early as 1868, the Court acknowledged that judges acting upon matters within their jurisdiction are not personally liable for even the most injurious consequences of their conduct. *Randall v. Brigham*, 74 U.S. (7 Wall.) 523, 537-40 (1868). Judicial immunity has long been recognized as “a general principle of the highest importance to the proper administration of justice.” *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347 (1871). Judicial immunity benefits the public, “whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.” *Bradley*, 80 U.S. at 349 n.16 (emphasis omitted). Therefore, the immunity is recognized regardless of the erroneousess of the action or the severity of its consequences. *Id.* at 347; *Cleavinger v. Saxner*, 474 U.S. 193, 199-200

(1985). And even “[g]rave 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. 1988). Accordingly, judges are generally immune from civil damages actions. *Mireles v. Waco*, 502 U.S. 9, 9, (1991). *See also Moore v. Brewster*, 96 F.3d 1240, 1243 (9th Cir. 1996) (federal judges are also absolutely immune from claims for declaratory, injunctive, or other equitable relief arising from their judicial acts).

This immunity extends to all judicial acts taken within the court’s subject matter jurisdiction. *Moore*, 96 F.3d at 1244. Whether the conduct complained of was a “judicial act” turns on “the nature of the act itself, i.e., whether it is a function normally performed by a judge, and . . . the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity.” *Stump v. Sparkman*, 435 U.S. 349, 362 (1978). Other factors which may be relevant in the “judicial act” analysis include whether (1) the precise act is a normal judicial function; (2) the events occurred in the judge’s chambers; (3) the controversy centered around a case then pending before the judge; and (4) the events at issue arose directly and immediately out of a confrontation with the judge in his or her official capacity. *Ashelman v. Pope*, 793 F.2d 1072, 1075-76 (9th Cir. 1986).

Recognizing that issues of jurisdiction are frequently complex, the Supreme Court has ruled that “the scope of a judge’s jurisdiction must be construed broadly where the issue is the immunity of the judge.” *Stump*, 435 U.S. at 356. The scope of judicial immunity is broadly construed in the Ninth Circuit as well. Rejecting its former, narrow view of judicial immunity, the court in *Ashelman* announced a more liberal formulation of the doctrine: “[a]s long as the judge’s ultimate acts were judicial actions taken within the court’s subject matter jurisdiction, immunity applies.” 793 F.2d at 1078. This immunity extends to actions of court clerks, when such actions are “an integral part of the judicial process.” *Mullis v. United States Bankr. Court*, 828 F.2d 1385, 1390 (9th Cir. 1987) (quasi judicial immunity precluded action against court clerk based on accepting bankruptcy court filings).

Here, Plaintiff challenges an order Judge Bashant issued while this case was assigned

1 to her: “*Cotton III* was transferred to Judge Bashant and on January 15, 2020 Bashant lifted
 2 the *Colorado River* stay, but denied Cotton’s in Forma Pauperis request for court appointed
 3 counsel.” (ECF No. 18, FAC, ¶ 110.) Plaintiff alleges that the denial of court-appointed
 4 counsel was “conclusory,” and accuses Judge Bashant of “covering up for [Judge]
 5 Wohlfeil.” (*Id.* ¶¶ 113, 116.) Plaintiff also challenges an order Judge Bashant issued in
 6 another case pending in this Court, *Flores, et al. v. Austin, et al.*, 20-cv-656-BAS-MDD.
 7 Plaintiff is not a party to that action. Plaintiff alleges that Judge Bashant’s order denying
 8 the TRO in that case was factually inaccurate. (FAC ¶ 122-126.)

9 These two actions – ruling on a request for appointed counsel and ruling on a TRO
 10 application – are unquestionably “function[s] normally performed by a judge,” and thus
 11 judicial immunity precludes Plaintiff’s claims. *Moore*, 96 F.3d at 1244. The unfounded
 12 allegation that Judge Bashant is biased does not alter the analysis. *Id.* (“Nor is judicial
 13 immunity lost by allegations that a judge conspired with one party to rule against another
 14 party.”). Plaintiff in fact acknowledges that judicial immunity protects Judge Bashant.
 15 (FAC ¶ 155.) However, he apparently believes, incorrectly, that this immunity only
 16 precludes monetary damages. (*Id.*, Prayer for Relief.) Absolute judicial immunity is just
 17 that – absolute – and as such “is not limited to immunity from damages, but extends to
 18 actions for declaratory, injunctive and other equitable relief.” *Moore*, 96 F.3d at 243.

19 **IV. CONCLUSION**

20 Accordingly, the United States respectfully requests that Plaintiff’s claims against
 21 Judge Bashant be dismissed with prejudice for lack of jurisdiction.

23 DATED: February 8, 2021

Respectfully submitted,

24 ROBERT S. BREWER JR.
 25 United States Attorney

26 s/ Katherine L. Parker
 27 Katherine L. Parker
 28 Assistant U.S. Attorney
 Chief, Civil Division
 Attorney for the United States

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PROOF OF SERVICE BY MAIL

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

17 Statement of Interest and Motion to Dismiss by the United States Regarding
18 Judicial Immunity
19

20 On the following parties:

21 Darryl Cotton, Plaintiff Pro Se

22 6176 Federal Blvd.

23 San Diego, CA 92114

24 I declare under penalty of perjury that the foregoing is true and correct to the best of
25 my knowledge.

26 Date: February 8, 2021

27 s/ Katherine L. Parker
Katherine L. Parker
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