

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Edward Vincent Ray, Jr.

(Your Name) --PETITIONER

vs.

~~JAMILAH A. JEFFERSON et al.~~

--RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

APPENDIX

A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 20 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EDWARD VINCENT RAY, Jr.,

Plaintiff-Appellant,

v.

JAMILAH A. JEFFERSON; et al.,

Defendants-Appellees.

No. 17-16040

D.C. No. 4:16-cv-02652-YGR

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Yvonne Gonzalez Rogers, District Judge, Presiding

Submitted December 18, 2017**

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

California state prisoner Edward Vincent Ray, Jr. appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that defendants engaged in misconduct during the litigation of a separate civil case.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

under 28 U.S.C. § 1915A. *Hamilton v. Brown*, 630 F.3d 889, 892 (9th Cir. 2011).

We affirm.

The district court properly dismissed Ray's claims against defendant Jefferson on the basis of absolute immunity because Ray failed to allege facts sufficient to show that Jefferson's actions were not "intimately associated with the judicial phase[] of . . . litigation." *Fry v. Melaragno*, 939 F.2d 832, 836-38 (9th Cir. 1991) (citation and internal quotation marks omitted) (explaining the application of absolute immunity to government attorneys in civil trials).

The district court properly dismissed Ray's claims against defendant McGee because Ray failed to allege facts sufficient to show McGee personally participated in the alleged rights deprivation. *See Starr v. Baca*, 652 F.3d 1202, 1207-08 (9th Cir. 2011) (elements for supervisory liability under § 1983).

The district court properly dismissed Ray's claims against the City of Oakland because Ray failed to allege facts sufficient to show that a policy or custom of the City caused his alleged injury. *See Castro v. County of Los Angeles*, 833 F.3d 1060, 1073 (9th Cir. 2016) (en banc) ("[A] municipality may not be held liable for a § 1983 violation under a theory of respondeat superior for the actions of its subordinates. In order to establish municipal liability, a plaintiff must show that

a policy or custom led to the plaintiff's injury." (citation and internal quotation marks omitted)).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

- Ray's request for judicial notice (Docket Entry No. 9) is denied.

AFFIRMED.

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B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD VINCENT RAY,

Plaintiff,

v.

JAMILAH A. JEFFERSON, et al.,

Defendants.

Case No. 16-cv-02652-YGR (PR)

ORDER OF DISMISSAL

I. INTRODUCTION

Plaintiff filed this *pro se* civil rights complaint under 42 U.S.C. § 1983 against the following Defendants: Deputy City Attorney Jamilah A. Jefferson and Special Counsel Otis McGee, Jr. from the Oakland City Attorney's Office, and the City of Oakland. Dkt. 1. The Court has granted Plaintiff leave to proceed *in forma pauperis*. Dkt. 5.

Plaintiff appears to be making allegations against Defendants based on their handling of his prior civil rights action, Case No. C 11-05550 YGR (PR), and their representation of the Defendants in that action.¹ Specifically, Plaintiff claims that Defendant Jefferson "made a fraudulent motion for summary judgment," and that Defendant McGee was "fully aware and participated in the acts of his subordinate, [Defendant] Jefferson." *Id.* at 3-10. Plaintiff also sues the City of Oakland for its "failure to supervise and failure to train" Defendant Jefferson. *Id.* at 11. Plaintiff seeks monetary damages.

Plaintiff had filed a motion for recusal of the undersigned judge, which the Court denied. Dkt. 6. Plaintiff appealed the denial to the Ninth Circuit Court of Appeals. Dkt. 7. Thereafter, the Ninth Circuit dismissed the appeal for lack of jurisdiction "because the order challenged in the appeal [was] not final or appealable." Dkt. 9 at 1 (citing 28 U.S.C. § 1291; *United States v.*

¹ Summary judgment was granted in favor of the defendants in Plaintiff's prior action, and judgment was entered on March 31, 2015. Dkts. 57, 58 in Case No. C 11-5550 YGR (PR). On January 28, 2016, the Ninth Circuit affirmed this Court's aforementioned ruling. Dkt. 66 in Case No. C 11-5550 YGR (PR). On April 26, 2016, the Ninth Circuit denied Petitioner's petition for panel rehearing. Dkt. 69 in Case No. C 11-5550 YGR (PR). The mandate issued on May 6, 2016. Dkt. 70 in Case No. C 11-5550 YGR (PR).

1 *Washington*, 573 F.2d 1121, 1122 (9th Cir. 1978) (order denying motion to disqualify judge is not
2 final or appealable)). On February 9, 2017, the Ninth Circuit issued its mandate. Dkt. 13.

3 **II. DISCUSSION**

4 **A. Standard of Review**

5 Federal courts must engage in a preliminary screening of cases in which prisoners seek
6 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
7 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
8 that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
9 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1), (2).

10 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that a person acting under
11 the color of state law committed a violation of a right secured by the Constitution or laws of the
12 United States. *West v. Atkins*, 487 U.S. 42, 48 (1988).

13 *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d
14 696, 699 (9th Cir. 1990).

15 **B. Plaintiff's Claims**

16 **1. Claim Against Defendant Jefferson**

17 In the complaint, Plaintiff claims that Defendant Jefferson, the Deputy City Attorney who
18 was counsel to the defendants in Plaintiff's previous action Case No. C 11-5550 YGR (PR),
19 violated his constitutional rights by filing a "fraudulent motion for summary judgment." Dkt. 1 at
20 3-6. Plaintiff seeks punitive damages. *Id.* at 18.

21 The Court finds that Defendant Jefferson is absolutely immune from suit for acts or
22 omissions taken in any handling of Case No. C 11-5550 YGR (PR). *See Fry v. Melaragno*, 939
23 F.2d 832, 836-37 (9th Cir. 1991)); *Flood v. Harrington*, 532 F.2d 1248, 1251 (9th Cir. 1976).
24 Whether the government attorney is representing the plaintiff or the defendant, or is conducting a
25 civil trial, criminal prosecution or an agency hearing, absolute immunity is necessary to assure that
26 they can perform their respective functions without harassment or intimidation. *See Fry*, 939 F.2d
27 at 837. The "reasons supporting the doctrine of absolute immunity apply with equal force
28 regardless of the nature of the underlying action." *Id.* (citing *Flood*, 532 F.2d at 1251). The

1 touchstone of this immunity is whether the attorney's actions are "intimately" or "closely"
 2 associated with the judicial process. *Id.* If the government attorney is performing acts "intimately
 3 associated with the judicial phase" of the litigation, that attorney is entitled to absolute immunity
 4 from damage liability. *Id.* There can be no doubt that Defendant Jefferson was performing an act
 5 that was "intimately associated with the judicial process" when filing a motion for summary
 6 judgment. *Id.* In addition, any allegation that such a motion was "fraudulent" is unfounded
 7 because, as mentioned above, the Ninth Circuit affirmed this Court's decision granting the
 8 aforementioned motion in his prior action. *See* Dkt. 66 in Case No. C 11-5550 YGR (PR).
 9 Therefore, Plaintiff's claims against Defendant Jefferson are DISMISSED because this Defendant
 10 is entitled to absolute immunity.

11 **2. Claim Against Defendant McGee and the City of Oakland**

12 Plaintiff also names Defendant McGee and the City of Oakland, whom he apparently sues
 13 in their supervisory capacity. Plaintiff does not allege facts demonstrating that these Defendants
 14 violated his federal rights, but seems to claim they are liable based on the conduct of their
 15 subordinate, Defendant Jefferson. There is, however, no respondeat superior liability under
 16 § 1983 solely because a defendant is responsible for the actions or omissions of another. *See*
 17 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). A supervisor generally "is only liable for
 18 constitutional violations of his subordinates if the supervisor participated in or directed the
 19 violations, or knew of the violations and failed to act to prevent them." *Id.* A supervisor may also
 20 be held liable if he or she implemented "a policy so deficient that the policy itself is a repudiation
 21 of constitutional rights and is the moving force of the constitutional violation." *Redman v. County*
 22 *of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc).

23 Here, Plaintiff fails to allege that Defendant McGee and the City of Oakland participated in
 24 or directed any violations, or implemented any deficient policy. *See id.* Furthermore, as explained
 25 above, the Court has found that their subordinate, Defendant Jefferson, is entitled to absolute
 26 immunity. Plaintiff's claims against Defendant McGee and the City of Oakland are therefore
 27 DISMISSED.
 28

III. CONCLUSION

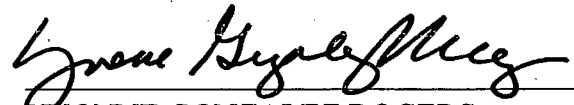
For the reasons set out above, the Court orders as follows:

1. Plaintiff's complaint is DISMISSED because the allegations fail to state: (1) a cognizable claim for relief against Defendant Jefferson, who is absolutely immune from suit; and (2) cognizable supervisory liability claims against Defendant McGee and the City of Oakland.

2. The Clerk of the Court shall terminate as moot all pending motions and close the file.

IT IS SO ORDERED.

Dated: April 27, 2017



YVONNE GONZALEZ ROGERS
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD VINCENT RAY,
Plaintiff,

v.

JAMILAH A. JEFFERSON, et al.,
Defendants.

Case No.16-cv-02652-YGR

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 4/27/2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Edward Vincent Ray ID: F-73521
Correctional Training Facility
P.O. Box 705
Soledad, CA 93960

Dated: 4/27/2017

Susan Y. Soong
Clerk, United States District Court

By: Frances Stone
Frances Stone, Deputy Clerk to the
Honorable YVONNE GONZALEZ ROGERS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD VINCENT RAY,
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Defendants.

Case No. 16-cv-02652-YGR (PR)


JUDGMENT

For the reasons set forth in this Court's Order of Dismissal,

IT IS ORDERED AND ADJUDGED

That Plaintiff take nothing, that the action be dismissed in accordance with the Court's
Order, and that each party bear its own costs of action.

Dated: April 27, 2017


YVONNE GONZALEZ ROGERS
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD VINCENT RAY,
Plaintiff,

v.

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Case No.16-cv-02652-YGR

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Dated: 4/27/2017

Susan Y. Soong
Clerk, United States District Court

By: Frances Stone
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UNITED STATES COURT OF APPEALS

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Defendants-Appellees.

No. 17-16040

D.C. No. 4:16-cv-02652-YGR
Northern District of California,
Oakland

ORDER

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Ray's petition for rehearing en banc (Docket Entry No. 11) is denied.

No further filings will be entertained in this closed case.