

**APPENDIX A – Orders of the Court of Appeals**

1. Case:18-17049, 10/30/2019, ID:11483834

DktEntry: 24, page 1 of 1

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**FILED**

OCT. 30 2019

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TOM JENSEN,  
Plaintiff-Appellant

No. 18-17049

v.

D.C. No. 3:18-cv-04114-  
MMC, Northern District

HANNAH LEE  
BLUMENSTIEL, U.S.  
Bankruptcy Court,  
Northern District of  
California; et al.,  
Defendants-Appellees

of California,  
San Francisco

ORDER

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Before: CLIFTON, N.R. SMITH and FRIEDLAND,  
Circuit Judges.

Appellant has filed a combined motion for reconsideration and motion for reconsideration en banc (Dkt. Entry No. 21).

The motion for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. See 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6-11.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

JUN 24 2019

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TOM JENSEN,  
Plaintiff-Appellant

No. 18-17049

v.

D.C. No. 3:18-cv-04114-  
MMC, Northern District  
of California,  
San Francisco

HANNAH LEE  
BLUMENSTIEL, U.S.  
Bankruptcy Court,  
Northern District of  
California; et al.,  
Defendants-Appellees

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ORDER

Before: CLIFTON, N.R. SMITH and FRIEDLAND,  
Circuit Judges.

Appellant's motion to file a sur-reply (Docket Entry No. 18) is granted. The Clerk shall file the sur-reply contained within the filing at Docket Entry No. 18.

Appellees' motion for summary affirmance (Docket Entry No. 12) is granted. Appellee Blumenstiel is entitled to judicial immunity for her decision to remove appellant from the courtroom during the attorney disciplinary proceeding, because her actions were "judicial" in nature and were not taken in the clear absence of all jurisdiction." *Mullis v. U.S. Bankr. Ct. for Dist. Of Nev.*, 828 F.2d 1385,

1394 (9<sup>th</sup> Cir. 1987). Thus appellant's claims against Judge Blumenstiel fail.

Appellant lacks Article III standing to bring his remaining claim. He has not alleged any concrete and particularized injury that could be remedied by ordering appellees to accept and consider his complaint of attorney misconduct. *See Robins v. Spokeo, Inc.*, 867 F.3d 1108, 1111 (9<sup>th</sup> Cir. 2017).

All other pending motions are denied as moot.

**AFFIRMED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

FEB 8 2019

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TOM JENSEN,  
Plaintiff-Appellant

v.

HANNAH LEE  
BLUMENSTIEL, U.S.  
Bankruptcy Court,  
Northern District of  
California; et al.,  
Defendants-Appellees

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No. 18-17049

D.C. No. 3:18-cv-04114-  
MMC, Northern District  
of California,  
San Francisco

ORDER

Appellees Judge Hannah Lee Blumenstiel and Judge James Donato's unopposed motion (Docket Entry No. 8) for an extension of time is granted.

The answering brief is now due April 5, 2019. The optional reply brief is due within 21 days of service of the answering brief.

All other pending motions will be addressed by separate order.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF THE COURT

By: Caitlin Zittkowski  
Deputy Clerk  
Ninth Circuit Rule 27-7

**APPENDIX B - Judgment and Orders of the  
District Court:**

1. Case 3:18-cv-04114-MMC Document 39  
Filed 09/21/18 Page 1 of 1

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

TOM JENSEN,	Case No. <u>18-cv-04114-</u>
Plaintiff	<u>MMC</u>
v.	
	JUDGMENT IN A
HANNAH L.	CIVIL CASE
BLUMENSTIEL et al.,	Re: Dkt. No. 38
Defendants	
_____	

**( ) Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

**(X) Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

The above-titled action is hereby DISMISSED.

**IT IS SO ORDERED AND ADJUDGED**

Dated: 9/21/2018

Susan Y. Soong, Cler

/s/ Tracy Geiger

Tracy Geiger

Deputy Clerk

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TOM JENSEN,	Case No. <u>18-cv-04114-</u>
Plaintiff	<u>MMC</u>
v.	
JUDGE HANNAH L.	<b>ORDER DISMISSING</b>
BLUMENSTIEL, U.S.	<b>ACTION;</b>
Bankruptcy Court,	<b>DIRECTIONS TO</b>
Northern District of	<b>CLERK</b>
California, et al.,	
Defendants	

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By order filed August 27, 2018, the Court dismissed plaintiff Tom Jensen's First Amended Complaint, and afforded plaintiff leave to file, no later than September 14, 2018, a Second Amended Complaint. Plaintiff has not filed a Second Amended Complaint within the time provided.

Accordingly, the above-titled action is hereby DISMISSED.

The Clerk of Court is directed to close the file.

**IT IS SO ORDERED.**

Dated: September 20, 2018

/s/ Maxime M. Chesney  
MAXINE M. CHESNEY  
United States District Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TOM JENSEN,	Case No. <u>18-cv-04114-</u>
Plaintiff	MMC
v.	
JUDGE HANNAH L.	<b>ORDER DISMISSING</b>
BLUMENSTIEL, U.S.	<b>FIRST AMENDED</b>
Bankruptcy Court,	<b>COMPLAINT;</b>
Northern District of	<b>AFFORDING</b>
California, et al.,	<b>PLAINTIFF LIMITED</b>
Defendants	<b>LEAVE TO AMEND</b>

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By order filed July 31, 2018, the Court directed plaintiff Tom Jensen to show cause why the operative complaint, the First Amended Complaint ("FAC"), should not be dismissed. Before the Court is plaintiff's Response, filed August 3, 2018, as well as two addendums thereto, filed, respectively, August 6, 2018, and August 17, 2018. The Court having read and considered plaintiff's filings, the stay of proceedings issued July 31, 2018, is hereby LIFTED, and the Court hereby rules as follows.

The FAC consists of three Claims, each based on a claim that plaintiff's federal constitutional rights have been violated. In Claims 1 and 2, plaintiff seeks, respectively, declaratory relief and injunctive relief, in each instance against Bankruptcy Judge Hannah L. Blumenstiel, based on plaintiff's allegation that his First Amendment rights were

violated when he sought to attend a hearing in In re Schwartz, a "disciplinary proceeding" pending before Judge Blumenstiel, but was required to leave the courtroom when she ruled the proceeding was closed to the public. (See FAC ¶¶ 8, 15, 27, 29.) In Claim 3, plaintiff seeks injunctive relief against District Judge James Donato and Miles Ehrlich, the Chairman of the Standing Committee on Professional Conduct, based on plaintiff's allegation that his First Amendment rights were violated when they did not respond to a "complaint of attorney misconduct" he sent them. (See FAC ¶¶ 34-35.) In its order to show cause, the Court directed plaintiff to show cause why Claims 1 and 2 were not subject to dismissal on the ground that Judge Blumenstiel is entitled to absolute judicial immunity and why Claim 3 was not subject to dismissal for lack of standing.

Plaintiff does not address Claim 3 in his Response or in either addendum thereto.

Accordingly, for the reasons stated in its July 31 order, the Court finds plaintiff lacks standing to bring Claim 3, and Claim 3 is subject to dismissal.

With respect to Claims 1 and 2, plaintiff argues Judge Blumenstiel is not entitled to judicial immunity for the asserted reason that Mullis v. U.S. Bankruptcy Court, 828 F.2d 1385 (9th Cir. 1997), cited by the Court in its order to show cause, is distinguishable.<sup>1</sup> The Court disagrees. In Mullis, the

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<sup>1</sup> Plaintiff also argues that the Ninth Circuit incorrectly decided Mullis. and, consequently, the Court should not follow it. This Court, however, is bound by Mullis. See Hart v. Massanari, 266 F.3d 1155, 1170-71 (9th Cir. 2001) (holding "[b]inding authority must be followed unless and until overruled by a body component to do so"; further holding "circuit law . . . binds all courts within a particular circuit").



Ninth Circuit held that a bankruptcy judge, who was alleged to have violated the plaintiff's First Amendment rights, was entitled to absolute judicial immunity from claims for injunctive and declaratory relief, for the reason that the claims were based on the judge's performance of "judicial acts." See *id.* at 1388, 1394. As plaintiff's claims against Judge Blumenstiel are solely based on court rulings she is alleged to have made, Mullis bars Claims 1 and 2 and is not distinguishable. Further, contrary to plaintiff's argument, he does not, if unable to pursue a civil rights deprivation case against Judge Blumenstiel, lack a remedy to seek relief from the order closing the subject disciplinary proceeding to the public. Rather, plaintiff may seek review of the court ruling by using the "carefully structured procedures" created by Congress, such as by "petitioning for [an] extraordinary writ[ ]," see *id.* at 1394; see, e.g., Phoenix Newspapers, Inc. v. U.S. District Court, 156 F.3d 940 (9th Cir. 1987) (considering merits of petition for writ of mandamus filed by members of press who sought access to sealed transcripts of hearings conducted in federal case), for example, by filing with the district court, in In re Schwartz, Case No. 18-00302, a petition for a writ of mandamus.

Accordingly, for the reasons stated above and in its July 31 order, the Court finds Judge Blumenstiel is entitled to absolute judicial immunity, and Claims 1 and 2 are subject to dismissal.

### CONCLUSION

Plaintiff's FAC is hereby DISMISSED and plaintiff is hereby afforded leave to amend to allege, if he can do so, a viable claim arising from the events

described in the FAC. Any such Second Amended Complaint shall be filed no later than September 14, 2018.

**IT IS SO ORDERED.**

Dated: August 27, 2018

/s/ Maxime M. Chesney  
MAXINE M. CHESNEY  
United States District Judge

**Additional material  
from this filing is  
available in the  
Clerk's Office.**