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APPENDIX A

Case: 21-15942 07/19/2021 DktEntry: 2

FILED
JUL 19 2021
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHARLES G. KINNEY,
Plaintiff-Appellant,

v. No. 21-15942
D.C. No. 3:21-mc-80103-JST
Northern District of California
San Francisco

UNITED STATES OF AMERICA; E.M. CHEN,
Defendants-Appellees.

ORDER

Before: RAWLINSON, CALLAHAN, and
VANDYKE, Circuit Judges.

This court has reviewed the notice of appeal filed May 24, 2021 and amended notice of appeal filed May 27, 2021 in the above-referenced district court docket pursuant to the pre-filing review order entered in docket No. 17-80256. Because the appeal is so insubstantial as to not warrant further review, it shall not be permitted to proceed. See *In re Thomas*, 508 F.3d 1225 (9th

Cir. 2007). Appeal No. 21-15942 is therefore dismissed.

This order, served on the district court for the Northern District of California, shall constitute the mandate of this court.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained.

DISMISSED.

APPENDIX B

Case 3:21-mc-80103-JST Doc. 6 Filed 04/29/21

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES KINNEY,
Plaintiff,

Case No. 21-mc-80103-JST

v.

UNITED STATES OF AMERICA, et al.,
Defendants.

**ORDER REGARDING PRE-FILING
REVIEW OF COMPLAINT AND
DISMISSING COMPLAINT**

Re: ECF Nos. 1, 3

Plaintiff Charles Kinney filed this action on April 27, 2021 against Defendants the United States of America and Judge Edward M. Chen. Complaint (“Compl.”), ECF No. 1. Plaintiff was declared a vexatious litigant by Judge Chen on July 17, 2018, and is subject to “pre-filing review . . . by the general duty judge who will determine whether Mr. Kinney has stated a potentially cognizable claim in a short, intelligible, and plain statement.” See *Kinney v. Cuellar et al.*, Case No. 18-cv-01041-EMC, ECF No. 56.

The Court has conducted such a review and concludes that Plaintiff has failed to state a claim. In his proposed complaint, Plaintiff seeks to

challenge the October 28, 2020 denial by the Administrative Office of the United States Courts of Plaintiff's administrative tort and Bivens claim brought pursuant to the Federal Tort Claim Act against Defendants. Compl. ¶ 1. Plaintiff's claims are rooted in his contention that "Chen's vexatious litigant ruling against Kinney . . . was a negligent and/or intentional act that violated Kinney's constitutional rights since Chen was acting as a prosecutor (i.e. 'investigative or law enforcement officer . . .'), rather than as a neutral arbitrator of disputes, as to Kinney's 'government corruption whistle-blower' activities. Chen's ruling was a false arrest, abuse of process and/or malicious prosecution by a prosecutor (not a 'judge')." Id. ¶ 2.

Judges are absolutely immune from civil liability for damages for their judicial acts. *Mireles v. Waco*, 502 U.S. 9, 9-10 (1991) (per curiam). Judicial immunity is overcome only if the judge acts outside her judicial capacity, or acts in the "complete absence of all jurisdiction." Id. at 11-12. "[W]hether an act by a judge is a 'judicial' one relate[s] to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." Id. at 12 (quoting *Stump v. Sparkman*, 435 U.S. 349, 362 (1978)). Here, Kinney has not plausibly alleged that Judge Chen was acting outside his judicial capacity. See *Anthes v. Nagle*, No. CV 08-7416-VBF, 2008 WL 11336966, at *4 (C.D. Cal. Dec. 11, 2008). Accordingly, he fails to show that the Administrative Office's determination that the action is precluded under

the doctrine of judicial immunity was in error and fails to state a cognizable claim. Leave to file the proposed complaint is therefore DENIED. No further filings shall be entertained in this case.

IT IS SO ORDERED.

Dated: April 29, 2021

____/s/____ JON S. TIGAR____
United States District Judge

APPENDIX C

Case: 21-80103 05/27/2021 DktEntry: 10

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Charles Kinney
 5826 Presley Way
 Oakland, CA 94618
 (510) 654-5133
 FAX (510) 594-0883
charleskinney@hotmail.com

Plaintiff (FTCA claim)

FILED

MAY 27 2021

SUSAN Y. SOONG
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND/SAN FRANCISCO

Charles Kinney,
 Plaintiff,

USDC Case No. 21-mc-80103-JST

vs.

NOTICE OF APPEAL
 (PARTIALLY AMENDED)

United States of America, E.M. Chen,
 and Does 1 to 10, acting in their
 individual and/or official capacity[ies],
 Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

Plaintiff Charles Kinney ("Kinney") appeals and gives notice of appeal to the US Court of Appeals for the Federal Circuit (in Washington, DC) of the US District Court's *sua sponte* order by Judge Jon S. Tigar that dismissed Kinney's complaint 2 days after it was filed [Dk # ? on 4/29/21, attached] in favor of defendant United States of America and defendant USDC Judge E.M. Chen ("Chen") before service of that complaint filed on 4/27/21 [attached] was required. The \$505 filing fee is also attached.

This appeal is for a complaint filed under the Federal Tort Claims Act ("FTCA") for intentional torts resulting in the taking of property by a federal officer who is an "investigative or law enforcement officer" as defined in the FTCA [i.e. federal officers who can execute searches, seize evidence, or make arrests for violations of federal law]