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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 ROSEBUD SIOUX TRIBE,
13
14 Plaintiff,

15 v.

16 ANTANELLE DUWYENIE, and unmarried
woman, PETER J. DENINNO, JUDGE PRO
17 TEMPORE, GILA COUNTY SUPERIOR
18 COURT, SUPERIOR COURT OF THE STATE
OF ARIZONA,
19 Defendants.

Case No: 2:09 CV-01660-PHX-MHM
STATE JUDICIAL DEFENDANT'S
MOTION TO DISMISS
COMPLAINT

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21 The State Judicial Defendants, Gila County Superior Court Judge Pro Tempore
22 Peter J. Dennino and the Superior Court for Gila County, through undersigned counsel,
23 hereby moves this Court to dismiss Plaintiff's Complaint with prejudice pursuant to
24 Rules 12(b)(1) Fed. R. Civ. P., as this Court lacks subject matter. The grounds for this
25 Motion are more fully stated below.
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MEMORANDUM OF POINTS AND AUTHORITIES

1. Summary of Relevant Facts

The Honorable Peter J. Deninno presided over the Arizona state court matter of Antanelle Duwyenie v. William C. Moran, Case No. DO2007-399 in the Gila County Superior Court. The trial court determined that Arizona was a minor child’s home state and accepted jurisdiction to determine custody of the child. The trial court’s decision was appealed. The Arizona Court of Appeals in *Duwjenie v. Moran*, 220 Ariz. 501, 207 P.3d 754 (Ariz. App. Div. 2, 2009) affirmed that the trial court properly exercised jurisdiction in the case.

2. State Judicial Defendants are immune from suit for judicial acts under judicial immunity.

It is a well-settled legal principle that judges have absolute immunity from liability for their judicial or adjudicatory acts. *Forrester v. White*, 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988); *Mireles v Waco*, 502 U.S. 9, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991); *Cleavinger v. Saxner*, 474 U.S. 193, 106 S.Ct. 496, 88 L.Ed.2d 507 (1985); *Stump v. Sparkman*, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978); *Pierson v. Ray*, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967). In 1872, the U.S. Supreme Court found that judicial immunity was the settled law of the English courts, and held “it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.” *Bradley v. Fisher*, 80 U.S. 335, 13 Wall. 335, 347, 20 L.Ed. 646 (1871).

Judicial immunity is an immunity from suit, not just from ultimate assessment of damages.¹ *Mireles, supra*. In *Forrester v. White*, 484 U.S. at 226, 108 S.Ct. at 544, the

² Plaintiff suggests that Judge Deninno may be immune from monetary liability. Indeed, judges and those performing judge like functions are absolutely immune from damage liability for acts (continued ...)

1 Court stated:

2 If judges were personally liable for erroneous decisions, the
3 resulting avalanche of suits, most of them frivolous but
4 vexatious, would provide powerful incentives for judges to
5 avoid rendering decisions likely to provoke such suits.
6 [Citation omitted]. The resulting timidity would be hard to
7 detect or control, and it would manifestly detract from
8 independent and impartial adjudication. Nor are suits against
9 judges the only available means through which litigants can
10 protect themselves from the consequences of judicial error.
11 Most judicial mistakes or wrongs are open to correction
12 through ordinary mechanisms of review, which are largely
13 free of the harmful side-effects inevitably associated with
14 exposing judges to personal liability.

11 To the extent Plaintiff is complaining about actions of the State Judicial
12 Defendants, those acts were performed by State Judicial Defendants in their judicial
13 capacity. Under these circumstances, the State Judicial Defendants are entitled to
14 absolute immunity from liability for their judicial acts, and must be dismissed with
15 prejudice from Plaintiff's pending suit.

16 3. State Judicial Defendants are immune from suit in this Court under the
17 Eleventh Amendment

18 Plaintiff filed his complaint against Superior Court for Gila County and Judge
19 Deninno for actions taken in their official capacity as judicial officers of the Arizona
20 Superior Court in Gila County. Thus, Plaintiff has sued Judicial Defendants as
21 representatives of the State. The Eleventh Amendment² confirms that "the fundamental

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(... continued)

23 performed in their official capacities. *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986).

24 ² "The Judicial power of the United States shall not be construed to extend to any suit in law or
25 equity, commenced or prosecuted against one of the United States by Citizens of another State,
or by Citizens or Subjects of any Foreign State." U.S. Const. Amend. XI

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1 principle of sovereign immunity limits the grant of judicial authority in Art. III.”
2 *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 98(1984). As stated in
3 *Pennhurst*:

4 That a state may not be sued without its consent is a
5 fundamental rule of jurisprudence having so important a
6 bearing upon the construction of the Constitution of the
7 United States that it has become established by repeated
8 decisions of this court that the entire judicial power granted
9 by the Constitution does not embrace authority to entertain a
10 suit brought by private parties against a state without consent
 given: not one brought by citizens of another state, or by
 citizens or subjects of a foreign state, because of the Eleventh
 Amendment; and not even one brought by its own citizens. . .

11 *Pennhurst*, 465 U.S. at 96 (citations omitted). Because of the Eleventh Amendment,
12 states and arms of the states may not be sued in federal court unless they consent to it in
13 *unequivocal terms* or unless Congress, pursuant to a valid exercise of power,
14 unequivocally expresses its intent to abrogate the immunity. *Id.*, at 99; *see also, Harris*
15 *v. Ariz. Bd. of Regents*, 528 F. Supp. 987, 994 (D. Ariz. 1981) (recognizing that the
16 Eleventh Amendment extends to arms of the state being sued by their own citizens.)

17 The Arizona Superior Court for Gila County is an arm of the State of Arizona.
18 Thus, it is also immune from suits under the Eleventh Amendment unless it consents to
19 this suit in federal court. Plaintiff does not suggest that State Judicial Defendants have
20 somehow waived its Eleventh Amendment immunity to suit in this Court. Accordingly,
21 because of the Eleventh Amendment and the State’s refusal to waive its sovereign
22 immunity to suits of this nature, there is no subject matter jurisdiction in this Court to
23 entertain an action against Judicial Defendants.

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1 4. Plaintiffs' claims against the State Defendants are barred by the *Rooker-Feldman*
2 Doctrine

3 Since the relief sought against the Judicial Defendants is a determination that a
4 state court incorrectly decided a state court matter, this Court lacks subject matter
5 jurisdiction under the *Rooker-Feldman* doctrine.

6
7 The *Rooker-Feldman* doctrine is the result of two decisions holding that federal
8 review of State court decisions is proper *only* in the U.S. Supreme Court, under 28
9 U.S.C. § 1257. *District of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462, 482
10 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923). Thus, the doctrine
11 bars suits “by state-court losers complaining of injuries caused by state-court judgments
12 rendered before the district court proceedings commenced and inviting district court
13 review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indust.*
14 *Corp.*, 544 U.S. 280, 284 (2005). Under this doctrine, the “district court, as a court of
15 original jurisdiction, has no authority to review the final determination of a state court in
16 judicial proceedings.” *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir.
17 1986). This is true even if the challenge is that the state court’s action was
18 unconstitutional. *Feldman*, 460 U.S. at 486. The *Rooker-Feldman* doctrine is
19 jurisdictional. *Olson Farms v. Barbosa*, 134 F.3d 933, 937 (9th Cir. 1998).

20 The Ninth Circuit has held that *Rooker-Feldman* bars any case that actually
21 requires a federal court to in essence review a state court decision. *Doe & Associates*
22 *Law Offices v. Napolitano*, 252 F.3d, 1026, 1029 (9th Cir. 2001). Where a District Court
23 would have to hold that a State court was wrong in order to find in favor of plaintiffs,
24 the issues presented to both courts are inextricably intertwined and the Court should
25 dismiss the case under *Rooker-Feldman*. 252 F.3d at 1029-1030.

26 The Ninth Circuit has also described the proper methodology for evaluating a

1 claim under the *Rooker-Feldman* doctrine. “[U]nder *Rooker-Feldman*, ‘we must pay
2 close attention to the relief sought by the federal court plaintiff.’” *Bianchi v.*
3 *Rylaarsdam*, 334 F3d 895, 900 (9th Cir. 2003), *quoting from Kenmen Eng’g v. City of*
4 *Union*, 314 F.3d 468, 476 (10th Cir. 2002). This methodology is easy to apply in this
5 case, since the relief sought is invalidation of the judicial decisions of the Superior
6 Court of Arizona in Gila County and the Arizona Court of Appeals in *Duwyenie v.*
7 *Moran*. This Court should look no further than the relief plaintiff demands to determine
8 that there is no subject matter jurisdiction over State Judicial Defendants. The *Rooker-*
9 *Feldman* doctrine requires that this Court dismiss the complaint for lack of subject
10 matter jurisdiction, since the relief sought is review and reversal of state court decision.

11 III. CONCLUSION

12 The State Judicial Defendants take no position on the merits of the claims against
13 defendant Antanelle Duwyenie. However, for the reasons set forth above, the State
14 Judicial Defendants respectfully request that the Plaintiff’s Complaint be dismissed for
15 lack of subject matter jurisdiction.

16 RESPECTFULLY SUBMITTED this 23rd day of September, 2009.

17 TERRY GODDARD
18 Attorney General

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20 s/ Brian P. Luse
21 Brian P. Luse
22 Assistant Attorney General
23 Attorneys for the Honorable Peter J.
24 Dennino and the Superior Court of Gila
25 County
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CERTIFICATE OF SERVICE

X I hereby certify that on September 23, 2009, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Allan Liebowitz, Attorney for Plaintiff
ALiebowitz@cox.net

X I hereby certify that on September, 2009, I caused the attached document to be served by first class mail to:

The Honorable Mary H. Murguia
United States District Court
Sandra Day O'Connor U.S. Courthouse, Suite 525
401 West Washington Street, SPC 53
Phoenix, AZ 85003-2154

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