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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

KEITH NEAL,	)	1:10-cv-00999 OWW GSA
	)	
Plaintiff,	)	<b>FINDINGS AND RECOMMENDATIONS</b>
	)	<b>REGARDING PLAINTIFF’S</b>
v.	)	<b>COMPLAINT</b>
	)	(Document 1)
SUPERIOR COURT,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Keith Neal (“Plaintiff”), appearing pro se and proceeding in forma pauperis, filed the instant complaint alleging damages for personal injuries against the “Superior Court” in Fresno County for its failure to respond to his complaint against the Honorable Don Penner in Department 11. He seeks damages of \$7,000,000. (Doc. 1.)

**DISCUSSION**

**A. Screening Standard**

Pursuant to Title 28 of the United States Code section 1915(e)(2), the Court must conduct an initial review of the complaint for sufficiency to state a claim. The Court must dismiss a

1 complaint or portion thereof if the Court determines that the action is legally “frivolous or  
2 malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from  
3 a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). If the Court determines  
4 that the complaint fails to state a claim, leave to amend may be granted to the extent that the  
5 deficiencies of the complaint can be cured by amendment.

6 A complaint must contain “a short and plain statement of the claim showing that the  
7 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
8 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
9 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing  
10 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff  
11 must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its  
12 face.’” *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555). While legal conclusions  
13 can provide a framework of a complaint, they must be supported by factual allegations. *Iqbal*,  
14 129 S.Ct. at 1950. While factual allegations are accepted as true, legal conclusion are not. *Iqbal*  
15 at 1949.

16 In reviewing a complaint under this standard, the Court must accept as true the allegations  
17 of the complaint in question, *Hospital Bldg. Co. V. Trustees of Rex Hospital*, 425 U.S. 738, 740  
18 (1976), construe the pro se pleadings liberally in the light most favorable to the Plaintiff, *Resnick*  
19 *v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s favor,  
20 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

21 A pleading may not simply allege a wrong has been committed and demand relief. The  
22 underlying requirement is that a pleading give “fair notice” of the claim being asserted and the  
23 “grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47-48 (1957); *Yamaguchi v.*  
24 *United States Department of Air Force*, 109 F.3d 1475, 1481 (9th Cir. 1997).

1           **B.     1983 Actions**

2           The Civil Rights Act under which this action was filed provides as follows:

3                     Every person who, under color of [state law] . . . subjects, or causes to be  
4                     subjected, any citizen of the United States . . . to the deprivation of any rights,  
5                     privileges, or immunities secured by the Constitution . . . shall be liable to the  
6                     party injured in an action at law, suit in equity, or other proper proceeding for  
7                     redress.

8           42 U.S.C. § 1983. Thus, to state a claim under Title 42 of the United States Code section 1983,<sup>1</sup>  
9           a plaintiff must allege that (1) the defendant acted under color of state law, and (2) the defendant  
10           deprived him of rights secured by the Constitution or federal law. *Long v. County of Los*  
11           *Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).

12           Moreover, section 1983 requires that there be an actual connection or link between the  
13           actions of defendant and the deprivation allegedly suffered. *See Monell v. Department of Social*  
14           *Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). The Ninth Circuit Court of  
15           Appeals has held that “a person ‘subjects’ another to deprivation of constitutional right, within  
16           the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative  
17           acts or omits to perform an act which he is legally required to do that causes the deprivation of  
18           which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

19           **C.     Plaintiff’s Allegations**

20           Plaintiff contends his Eighth Amendment right against cruel and unusual punishment has  
21           been violated because he wrote to the “Superior Courthouse” about Judge Penner and has not  
22           received a response. More particularly, he complains that on April 5, 2010, Judge Penner  
23           apparently continued a scheduled preliminary hearing in the absence of Plaintiff’s waiver of time.  
24           As a result, Plaintiff claims he should have been free from custody and able to sign a contract  
25           with Kirk Franklin, a gospel music producer. Rather, he remains incarcerated and unable to sign  
26           the contract, and thus, Plaintiff seeks \$7,000,000 in damages. (Doc. 1 at 3.)

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27           <sup>1</sup>All further statutory references are to Title 42 of the United States Code unless otherwise  
28           indicated.





1 judgment in a United States District Court, based on the losing party's claim that the state  
2 judgment itself violates the loser's federal rights." *Johnson v. DeGrandy*, 512 U.S. 997,  
3 1005-1006 (1994).

4 In sum, this Court does not have subject matter jurisdiction to review state court  
5 judgments.

#### 6 4. Eleventh Amendment

7 Additionally, the Eleventh Amendment prohibits federal courts from hearing suits  
8 brought against an unconsenting state. *Brooks v. Sulphur Springs Valley Elec. Co.*, 951 F.2d  
9 1050, 1053 (9th Cir. 1991) (citation omitted); *see also Seminole Tribe of Fla. v. Florida*, 116  
10 S.Ct. 1114, 1122 (1996); *Puerto Rico Aqueduct Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S.  
11 139, 144 (1993); *Austin v. State Indus. Ins. Sys.*, 939 F.2d 676, 677 (9th Cir. 1991). The  
12 Eleventh Amendment bars suits against state agencies as well as those where the state itself is  
13 named as a defendant. *See Natural Resources Defense Council v. California Dep't of Tranp.*, 96  
14 F.3d 420, 421 (9th Cir. 1996); *Brooks*, 951 F.2d at 1053; *Taylor v. List*, 880 F.2d 1040, 1045 (9th  
15 Cir. 1989); *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1989).  
16 "The Eleventh Amendment's jurisdictional bar covers suits naming state agencies and  
17 departments as defendants, and applies whether the relief is legal or equitable in nature." *Brooks*,  
18 951 F.2d at 1053.

19 The Eleventh Amendment's bar to actions against states and their entities in federal  
20 courts provides further grounds to recommend dismissal of the complaint. Because the Fresno  
21 County Superior Court is a state agency, Defendant "Superior Court" and/or "Superior  
22 Courthouse" are immune from this suit. Even assuming Plaintiff could state a cognizable claim,  
23 "[t]he Eleventh Amendment bars suits for money damages in federal court against a state, its  
24 agencies, and state officials in their official capacities." *Aholelei v. Dept. of Public Safety*, 488  
25 F.3d 1144, 1147 (9th Cir. 2007) (citations omitted). Thus, Plaintiff's claim for money damages  
26 from the state superior court fails as a matter of law.



1 **FINDINGS AND RECOMMENDATIONS**

2 For the foregoing reasons, the Court HEREBY RECOMMENDS that this action be  
3 DISMISSED WITHOUT LEAVE TO AMEND.

4 These findings and recommendations will be submitted to the Honorable Oliver W.  
5 Wanger pursuant to the provisions of section 636(b)(1). Within thirty (30) days after being  
6 served with these findings and recommendations, the parties may file written objections with the  
7 Court. The document should be captioned "Objections to Magistrate Judge's Findings and  
8 Recommendations." The parties are advised that failure to file objections within the specified  
9 time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153  
10 (9th Cir. 1991).

11  
12 IT IS SO ORDERED.

13 **Dated: November 1, 2010**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE