

United States District Court
For the Northern District of California

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E-filed on: 2/24/2009

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PAUL CONNES,

Plaintiff,

v.

STATE OF CALIFORNIA, DIVISION OF
THE CALIFORNIA HIGHWAY PATROL,
OFFICER T. CLARK, OFFICER S.
ADDLEMAN,

Defendants.

No. C-08-00663 RMW

ORDER GRANTING THE STATE'S
MOTION TO DISMISS

[Re Docket No. 19]

The state of California and California Highway Patrol move to dismiss plaintiff Paul Connes' claims against them (to the extent that they are named separately) on the grounds that California possesses sovereign immunity. In opposition, Connes "concedes that the State can not be compelled into Federal Court[.]" Opp'n at 2:21. Given this concession, the court finds that oral argument is not necessary to resolve this motion. Civil L.R. 7-1(b). The court agrees and grants the State's motion to dismiss with prejudice. The court therefore does not reach the State's alternative argument that its agency, the Highway Patrol, is not a "person" under section 1983.

In opposition, Connes also "seeks leave . . . to name J.A. Farrow, as an individual, who is the Commissioner of the California Highway Patrol and to add a negligent supervision claim." Opp'n at 2:22-23. Connes' request – which seeks to broaden substantially the scope of discovery in this case

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1 – needs to be raised by noticed motion and not in an opposition to a motion to dismiss on sovereign
2 immunity grounds.

3 In reply, the State makes a variety of new arguments as to why Connes' fifth claim for a
4 declaration of factual innocence is not properly brought before this court. The State's motion to
5 dismiss raised two issues: sovereign immunity and section 1983. It did not purport to address the
6 merits of Connes' fifth claim. As with Connes' request for leave to amend, the State's arguments
7 regarding the fifth claim also need to be raised in a separate, noticed motion.

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DATED: 2/24/2009



RONALD M. WHYTE
United States District Judge

