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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEXTER W. WILLIAMS,	)	No. C 11-2877 LHK (PR)
	)	
Plaintiff,	)	ORDER GRANTING MOTION
	)	TO RE-OPEN; DISMISSING
v.	)	WITH LEAVE TO AMEND
	)	
PEOPLE OF STATE OF CALIFORNIA,	)	
	)	(Docket Nos. 9, 11)
Defendant.	)	
	)	

Plaintiff, proceeding *pro se*, commenced this action by filing a motion to strike and supporting memorandum of points and authorities. On June 22, 2011, mail addressed to Plaintiff was returned to the Clerk of the Court with a notation that they were undeliverable. On August 29, 2011, the Court dismissed this action pursuant to Northern District Local Rule 3-11, and entered judgment. On September 8, 2011, Plaintiff filed a letter stating that he received the order of dismissal and judgment, but could not understand why his mail was returned as undeliverable because he has been on death row at San Quentin State Prison since 1996. The Court construed the letter as a motion to re-open, and directed Plaintiff to file a complaint and either a filing fee, or a completed application to proceed in forma pauperis within thirty days. Plaintiff has timely complied with the Court's order. Plaintiff's motion for leave to proceed in forma pauperis is GRANTED in a separate order. For the reasons stated below, Plaintiff's complaint is DISMISSED with leave to amend.

1 **DISCUSSION**

2 A. Standard of Review

3 A federal court must conduct a preliminary screening in any case in which a prisoner  
4 seeks redress from a governmental entity or officer or employee of a governmental entity. *See*  
5 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss  
6 any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or  
7 seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C.  
8 § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v.*  
9 *Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1988).

10 To state a claim under 42 U.S.C. § 1983, Plaintiff must allege two essential elements: (1)  
11 that a right secured by the Constitution or laws of the United States was violated, and (2) that the  
12 alleged violation was committed by a person acting under the color of state law. *See West v.*  
13 *Atkins*, 487 U.S. 42, 48 (1988).

14 B. Legal Claim

15 Plaintiff alleges in his complaint that the Fresno County Superior Court improperly  
16 ordered him to pay fines and restitution pursuant to state laws. Plaintiff claims that the  
17 imposition of fines and restitution violated the Ex Post Facto Clause, as well as his right to due  
18 process and equal protection.

19 Plaintiff names as Defendant, the State of California. However, the Eleventh  
20 Amendment bars from the federal courts suits against a state by its own citizens, citizens of  
21 another state or citizens or subjects of any foreign state. *Atascadero State Hosp. v. Scanlon*, 473  
22 U.S. 234, 237-38 (1985). To the extent Plaintiff wishes to sue Fresno County Superior Court, it  
23 is also prohibited by the Eleventh Amendment. *See, e.g., Greater Los Angeles Council on*  
24 *Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 & n.10 (9th Cir. 1987) (Eleventh Amendment bars  
25 suit against Superior Court of State of California regardless of relief sought). To the extent  
26 Plaintiff wishes to sue the judge who presided over his sentencing, a state judge is absolutely  
27 immune from civil liability for damages for acts performed in his judicial capacity. *See Pierson*  
28



1 **amended complaint within thirty days and in accordance with this order may result in a**  
2 **dismissal of this action.**

3 3. Plaintiff is advised that an amended complaint supersedes the original complaint.  
4 “[A] plaintiff waives all causes of action alleged in the original complaint which are not alleged  
5 in the amended complaint.” *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).

6 4. It is the plaintiff’s responsibility to prosecute this case. Plaintiff must keep the  
7 court informed of any change of address by filing a separate paper with the clerk headed “Notice  
8 of Change of Address,” and must comply with the Court’s orders in a timely fashion. Failure to  
9 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule  
10 of Civil Procedure 41(b).

11 IT IS SO ORDERED.

12 Dated: 11/3/11

  
\_\_\_\_\_  
LUCY H. KOH  
United States District Judge