

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BERNARD HESS,

Plaintiff,

v.

STATE OF CALIFORNIA,

Defendant.

Case No. 10cv88 BTM(NLS)

ORDER

Plaintiff Bernard Hess, a nonprisoner proceeding pro se, has submitted a complaint against the State of California, alleging, *inter alia*, violations of his right to a fair trial under the Sixth Amendment. On December 18, 2012, Plaintiff filed a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a).

Under § 1915(a), the Court may authorize the commencement of a suit without prepayment of fees if the plaintiff submits an affidavit, including a statement of all his assets, showing that he is unable to pay filing fees. See 28 U.S.C. § 1915(a). Plaintiff has submitted an affidavit which sufficiently shows that he lacks the financial resources to pay filing fees, and the Court accordingly GRANTS Plaintiff's motion to proceed in forma pauperis.

Notwithstanding payment of any filing fee or portion thereof, a complaint filed by any person proceeding in forma pauperis pursuant to 28 U.S.C. § 1915(a) is subject to a mandatory and sua sponte review and dismissal by the Court to the extent it is "frivolous, malicious, failing to state a claim upon which relief may be granted, or seeking monetary relief from a defendant immune from such relief." 28 U.S.C. § 1915(e)(2)(B); Calhoun v.

1 Stahl, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are
2 not limited to prisoners.”).

3 Under the Eleventh Amendment, “[t]he Judicial power of the United States shall not
4 be construed to extend to any suit in law or equity, commenced or prosecuted against one
5 of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign
6 State.” The Eleventh Amendment bars suits against states for alleged deprivations of civil
7 liberties unless the state has waived its immunity. Will v. Michigan Dept. of State Police, 491
8 U.S. 58, 66, 109 S. Ct. 2304, 2309, 105 L. Ed. 2d 45 (1989). As California has not waived
9 its sovereign immunity for alleged constitutional violations, Plaintiff’s suit is barred.
10 Therefore, the Court DISMISSES the complaint.

11

12 **IT IS SO ORDERED.**

13 DATED: December 26, 2012

14


BARRY TED MOSKOWITZ, Chief Judge
United States District Court

15

16

17

18

19

20

21

22

23

24

25

26

27

28