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SUPERIOR COURT OF CALIFORNIA
 COUNTY OF MONTEREY
 MONTEREY DIVISION

EUGENE FORTE,	
	Plaintiff,
v.	
ROBERT O'FARRELL, et al.,	Defendants.

CASE NO. M72599

**STATE JUDICIAL DEFENDANT'S
 REPLY TO OPPOSITION TO
 DEMURRER; MEMORANDUM
 OF POINTS AND AUTHORITIES
 IN SUPPORT THEREOF**

**Date: March 25, 2005
 Time: 9:00 a.m.
 Dept: 14**

Action Filed: December 17, 2004

Via Fax & File

COMES NOW the State judicial defendant, the Honorable Robert O'Farrell, and files the following memorandum of points and authorities in reply to plaintiff's opposition to the demurrer herein.

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Dated: March 17, 2005.

Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California
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Monterey Superior Court

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REPLY MEMORANDUM OF POINTS AND AUTHORITIES

PRELIMINARY STATEMENT

Rather than providing legal authorities or reference to factual allegations that might preserve his action from dismissal, plaintiff's opposition to the State judicial defendant's demurrer merely repeats unsupported conclusions asserting that the judge was acting in the "absence" of jurisdiction when holding plaintiff in contempt. Plaintiff is mistaken, and absolute judicial immunity bars his claims.

While purportedly not seeking to relitigate the merits of his long-final contempt conviction, the bulk of plaintiff's opposition (and the hundreds of pages of irrelevant attached documents) serve little purpose but as a challenge to the conviction. Under the *Heck-Coscia-Susag* line of cases, plaintiff's attempt to relitigate the merits of the contempt conviction is, however, foreclosed.

Finally, plaintiff admits that he did not file a claim with the proper state entity before filing suit, and his tort claims are barred for this additional reason.

ARGUMENT

I

**THE ALLEGATIONS OF THE COMPLAINT
DEMONSTRATE THAT ABSOLUTE JUDICIAL
IMMUNITY APPLIES TO BAR PLAINTIFF'S CLAIMS**

Plaintiff's opposition largely consists of lengthy, verbose and irrelevant character attacks against the State judicial defendant and his alleged "co-conspirators" who have purportedly wronged him. No caselaw is provided to support plaintiff's conclusion that his putative filing of a peremptory challenge rendered the acts of the judge, in holding him in contempt for his conduct while presenting the challenge, to be in absence of jurisdiction. The law is quite to the contrary. *Stump v. Sparkman*, 453 U.S. 349, 356-57 (1979); *Schucker v. Rockwood*, 846 F.2d 1202, 1203 (9th Cir.), cert. denied, 448 U.S. 995 (1988) (even acts allegedly performed in "excess" of judicial authority do not deprive judges of immunity); see *Blodgett v. Superior Court* (1930) 210 Cal.1, 12 (upon the hearing of a charge of the commission of a direct contempt, the person charged is not entitled to urge the disqualification of the judge against whose court the offense was

1 committed).

2 II

3 THE PUBLIC POLICY CONCERNS UNDERLYING HECK,
4 COSCIA AND SUSAG APPLY TO PREVENT PLAINTIFF'S
5 COLLATERAL ATTACK ON HIS CONTEMPT
6 CONVICTION

6 As noted in the introduction to the reply, plaintiff, although eschewing an attempt to
7 challenge his contempt conviction, spends most of his time doing just that. (E.g., Opp. to
8 Demurrer at p. 13: "summary contempt charge not warranted under circumstance.").
9 Consequently, the procedural rule of Heck, Coscia and Susag applies to bar plaintiff's claims.
10 "A plaintiff convicted of an offense should bear sole responsibility for the consequences of his or
11 her criminal acts." Coscia, supra, 25 Cal.4th at 1200.

12 III

13 PLAINTIFF ADMITS THAT HE FILED A CLAIM - BUT
14 WITH THE WRONG STATE ENTITY

15 Plaintiff's complaint failed to contain the requisite allegations setting forth his compliance
16 with the claim-filing provisions of the California Tort Claims Act, Government Code section 800
17 et seq. State of California v. Superior Court (Bodde) (204) 32 Cal.4th 1234, 1239. In his
18 opposition, he admits he filed a claim - but with the wrong public entity (the State Board of
19 Control), rather than the court executive officer, as required by Government Code section
20 915(c)(1). (See Opp. to Demurrer at p. 10 & Ex. 33). All his claims are, consequently, barred.
21 Munoz v. State (1995) 33 Cal.App.4th 1767, 1780 (mailing claim to wrong State entity does not
22 constitute substantial compliance with CTCA claim-filing requirement). It is too late now to
23 cure this defect. Govt. Code § 946.5 (claim must be filed within 6 months of accrual).

24 CONCLUSION

25 Plaintiff's claims against the State judicial defendant are barred, and his opposition fails to
26 establish any basis for granting leave to amend. Routh v. Quinn (1942) 20 Cal.2d 488, 493
27 (amendment denied where no liability exists and granting leave to amend would serve no useful
28 purpose). Consequently, the State judicial defendant respectfully requests that the demurrer be

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sustained without leave to amend.

Dated: March 17, 2005.

Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California
JAMES SCHIAVENZA
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TYLER B. PON
Lead Supervising Deputy Attorney General



PAUL T. HAMMERNESS
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Monterey Superior Court

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DECLARATION OF SERVICE BY FACSIMILE AND MAIL

Case Name: **EUGENE FORTE v. ROBERT O'FARRELL, et al.**

No.: **M72599**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is San Francisco. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business. My facsimile machine telephone number is (415) 703-5616.

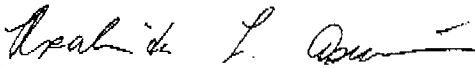
On March 17, 2005, I served the attached **State Judicial Defendant's Reply to Opposition to Demurrer; Memorandum of Points and Authorities in Support Thereof** by transmitting a true copy by facsimile machine, pursuant to California Rules of Court, rule 2008. The facsimile machine I used complied with Rule 2003, and no error was reported by the machine. Pursuant to rule 2008(e)(4), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration. In addition, I placed a true copy thereof enclosed in a sealed envelope with postage thereof fully prepaid, in the internal mail system of the Office of the Attorney General, addressed as follows:

Patrick McGreal
County Counsel
Office of the County Counsel
230 Church Street, Building 1
Salinas, CA 93901-5101
(831) 755-5283

Gene Forte
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Salinas, CA 93908
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 17, 2005, at San Francisco, California.

Rosalinda Asuncion
Declarant


Signature