

1 facts upon which the proposed amendment is based but fails to include them in the original
2 complaint, the motion to amend may be denied,” *E.E.O.C. v. Boeing, Co.*, 843 F.2d 1213, 1222
3 (9th Cir. 1988) (quoting *Jordan v. County of L.A.*, 669 F.2d 1311, 1324 (9th Cir. 1982),
4 *vacated on other grounds*, 459 U.S. 810 (1982)), and the “court’s discretion to
5 deny leave to amend is particularly broad where the court has already given the plaintiff an
6 opportunity to amend his complaint,” *Fidelity Financial Corp. v. Federal Home Loan Bank of*
7 *San Francisco*, 792 F.2d 1432, 1438 (9th Cir. 1986).

8 Plaintiff seeks leave to amend to include the CDCR’s internal affairs (“CDCR IA”). Pl.’s
9 Mot. 1. Plaintiff contends that the CDCR IA conducted an investigation on July 22, 2009 into
10 Plaintiff’s allegations in his first amended complaint. *Id.* at 2. Plaintiff alleges that the
11 investigation conducted after July 31, 2010 was a farce, since they claimed that no evidence
12 existed to support Plaintiff’s claims. *Id.* Plaintiff alleges a violation of 42 U.S.C. § 15602. *Id.* at
13 3.

14 Plaintiff’s motion is denied. Plaintiff seeks leave to amend to include CDCR as a
15 Defendant. First, CDCR is entitled to Eleventh Amendment immunity. The Eleventh
16 Amendment bars § 1983 actions against state agencies. *Lucas v. Dep’t of Corr.*, 66 F.3d 245,
17 248 (9th Cir. 1995) (per curiam).

18 Second, there is no cause of action pursuant to 42 U.S.C. § 15602. Section 15602, also
19 known as the Prison Rape Elimination Act, authorizes the reporting of incidents of rape in
20 prison, allocation of grants, and creation of a study commission. It does not, however, give rise
21 to a private cause of action. *See, e.g., McNaughton v. Arpaio*, No. CV 10-1250-PHX-DGC
22 (LOA), 2010 U.S. Dist. LEXIS 85033, at *6-7 (D. Ariz. July 21, 2010); *Bell v. County of L.A.*,
23 No. CV07-8187-GW(E), 2008 U.S. Dist. LEXIS 74763, 2008 WL 4375768, at *6 (C.D. Cal.
24 Aug 25, 2008); *LeMasters v. Fabian*, Civil No. 09-702 DSD/AJB, 2009 U.S. Dist. LEXIS 53016,
25 2009 WL 1405176, at *2 (D. Minn. May 18, 2009); *Rindahl v. Weber*, No. CIV. 08-4041-RHB,
26 2008 U.S. Dist. LEXIS 105792, 2008 WL 5448232, at *1 (D.S.D. Dec.31, 2008); *see also*
27 *Blessing v. Freestone*, 520 U.S. 329, 340-41 (1997) (particular statutory provision gives rise to a
28 federal right enforceable under § 1983 only where the statute “unambiguously imposed a binding

1 obligation on the States” by couching pertinent statutory requirements “in mandatory, rather than
2 precatory, terms”).

3 Plaintiff’s motion to amend is futile. *AmerisourceBergen Corp.*, 445 F.3d at 1136.

4 Accordingly, it is HEREBY ORDERED that Plaintiff’s motion to amend, filed June 21, 2011, is
5 DENIED.

6 IT IS SO ORDERED.

7 **Dated: November 29, 2011**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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