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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

BRIAN C. APPLGATE,  Plaintiff,  v.  CALIFORNIA DEPARTMENT OF CORRECTIONS,  Defendant.	) ) ) ) ) ) ) ) ) ) )	Case No.: 1:13-cv-01787 - AWI - JLT  FINDINGS AND RECOMMENDATIONS THAT THE ACTION BE DISMISSED WITHOUT PREJUDICE
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Brian Applegate (“Plaintiff”) is proceeding *pro se* and *in forma pauperis* with an action pursuant to the Freedom of Information Act. (Doc. 1.) Specifically, Plaintiff seeks to have the Court “direct[] the Appeal Coordinator, D. Goree, of CSP-Corcoran to perform according to 5 USCA §552(a)(2-7).” (*Id.* at 1.) Because the Freedom of Information Act does not apply to state agencies or state employees, the Court recommends the action be DISMISSED without prejudice.

**I. Screening Requirement**

When a plaintiff proceeds *in forma pauperis*, the Court is required to review the complaint, and shall dismiss the case at any time if the Court determines that the allegation of poverty is untrue, or the action or appeal is “frivolous, malicious or fails to state a claim on which relief may be granted; or . . . seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. 1915(e)(2). A claim is frivolous “when the facts alleged arise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992).

1 **II. Pleading Standards**

2 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A  
3 pleading stating a claim for relief must include a statement affirming the court’s jurisdiction, “a short  
4 and plain statement of the claim showing the pleader is entitled to relief; and . . . a demand for the  
5 relief sought, which may include relief in the alternative or different types of relief.” Fed. R. Civ. P.  
6 8(a). The Federal Rules adopt a flexible pleading policy, and *pro se* pleadings are held to “less  
7 stringent standards” than pleadings by attorneys. *Haines v. Kerner*, 404 U.S. 519, 521-21 (1972).

8 A complaint must give fair notice and state the elements of the plaintiff’s claim in a plain and  
9 succinct manner, and identify the grounds upon which the complaint stands. *Swierkiewicz v. Sorema*  
10 *N.A.*, 534 U.S. 506, 512 (2002); *Jones v. Cmty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir.  
11 1984). The Supreme Court noted,

12 Rule 8 does not require detailed factual allegations, but it demands more than an  
13 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers  
14 labels and conclusions or a formulaic recitation of the elements of a cause of action will  
not do. Nor does a complaint suffice if it tenders naked assertions devoid of further  
factual enhancement.

15 *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (internal quotation marks and citations omitted).

16 Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d  
17 266, 268 (9th Cir. 1982). The Court clarified further,

18 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim  
19 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when  
20 the plaintiff pleads factual content that allows the court to draw the reasonable  
21 inference that the defendant is liable for the misconduct alleged. [Citation]. The  
22 plausibility standard is not akin to a “probability requirement,” but it asks for more than  
a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a complaint  
pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of  
the line between possibility and plausibility of ‘entitlement to relief.’

23 *Iqbal*, 566 U.S. at 678 (citations omitted). When factual allegations in a complaint are well-pled, a  
24 court should assume their truth and determine whether the facts would make the plaintiff entitled to  
25 relief. *Id.* However, legal conclusions are not entitled to the same assumption of truth. *Id.*

26 **III. Discussion and Analysis**

27 Plaintiff asserts that he requested the California Department of Corrections (“CDCR”) make its  
28 “Screener’s Handbook” “available for public inspection and copying” pursuant to Cal. Gov. Code §§

1 6250-6253.1. (Doc. 1 at 1.) He asserts that he completed a “Request to Inspect Public Records” on  
2 October 6, 2013 for the “Screener’s Handbook,” which was not answered. (*Id.*) Therefore, Plaintiff  
3 requests that this Court “apply 5 USCA § 552(a)...and compel [the] CDCR appeal coordinator to  
4 provide the ‘Screener’s Handbook.’” (*Id.*)

5 Importantly, however, the Freedom of Information Act (“FOIA”) applies only to federal  
6 agencies and authorities. *St. Michael’s Convalescent Hosp. v. State of California*, 643 F.2d 1369, 1373  
7 (9th Cir. 1981) (FOIA “does not encompass state agencies or bodies”); *Kerr v. United States Dist.*  
8 *Court for N. Dist. Of California*, 511 F.2d 192, 197 (9th Cir. 1975) (explaining the purpose of FOIA  
9 was “to expand the access of the public to official records of federal agencies”). Consequently, this  
10 Court has determined that the Freedom of Information Act “is not applicable to the California  
11 Department of Corrections and Rehabilitation, a state agency.” *Spencer v. Scribner*, 2008 U.S. Dist.  
12 LEXIS 104379, at \*2 (E.D. Cal. Dec. 15, 2008) (*citing St. Michael’s*, 643 F.2d 1369; *Kerr*, 511 F.2d at  
13 197). As a result, Plaintiff is unable to state a claim against the CDCR, and this Court cannot compel  
14 the appeal coordinator to produce documents pursuant to 5 U.S.C. § 552.

15 **IV. Findings and Recommendations**

16 A plaintiff should be granted leave to amend when the deficiencies of the complaint can be  
17 cured by amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). When it appears beyond  
18 doubt that the Plaintiff can prove no set of facts, consistent with the allegations, in support of the claim  
19 or claims that would entitle him to relief, the a complaint would may be dismissed. *See Hishon v. King*  
20 *& Spalding*, 467 U.S. 69, 73 (1984) (*citing Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Here, it is  
21 clear that an amendment to the complaint would be futile, as the Freedom of Information Act does not  
22 apply to state agencies. Moreover, any remaining state causes of action must be pursued state court  
23 given this Court lacks the authority to adjudicate purely state law matters.

24 Accordingly, **IT IS HEREBY RECOMMENDED:**

- 25 1. Plaintiff’s complaint be DISMISSED without leave to amend; and
- 26 2. The Clerk of Court be directed to close this action.

27 These findings and recommendations are submitted to the United States District Judge assigned  
28 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of

1 Practice for the United States District Court, Eastern District of California. Within fourteen days of the  
2 date of service of these findings and recommendations, Plaintiff may file and serve written objections  
3 with the Court. A document containing objections should be captioned “Objections to Magistrate  
4 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the  
5 specified time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153  
6 (9th Cir. 1991).

7  
8 IT IS SO ORDERED.

9 Dated: December 16, 2013

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE