



1 As stated in the Findings and Recommendations, the Eleventh Amendment bars Plaintiff's  
2 claims for damages against the named Defendants in their official capacities. See Doe v. Lawrence  
3 Livermore Nat'l Lab., 131 F.3d 836, 839 (9th Cir. 1997); Eaglesmith v. Ward, 73 F.3d 857, 859 (9th  
4 Cir. 1996). State officers acting in their official capacities receive the same immunity as the  
5 government agency that employs them. Hafer v. Melo, 502 U.S. 21 (1991). Thus, a state prison  
6 officials sued for damages in his or her official capacity is entitled to Eleventh Amendment immunity.  
7 As correctly stated in the Findings and Recommendations, Defendants Ulit, Smith, Moon and Wang  
8 are immune from suit for monetary damages in their official capacities under the Eleventh  
9 Amendment and their motion to dismiss such claim is granted.

10 However, as Plaintiff points out in his objections, Plaintiff's also seeks liability against  
11 Defendants Ulit, Smith, Moon and Wang in their official capacity for injunctive relief. See Complaint  
12 at pgs. 2-3, 21.<sup>2</sup> The Eleventh Amendment does not provide immunity for claims seeking prospective  
13 relief to remedy constitutional violations against state employees in their official capacities. See  
14 Armstrong v. Exceptional Child Center, Inc., --- U.S. ----, 135 S.Ct. 1378, 1384 (2015); Will v.  
15 Michigan Dept of State Police, 491 U.S. 58, 89-90 (1989); Flint v. Dennison, 488 F.3d 816, 825 (9th  
16 Cir. 2007). Plaintiff's claim for prospective relief against the Defendants in their official capacities  
17 will not be dismissed from the action.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. The Findings and Recommendations, filed on May 7, 2015, is adopted in part as  
20 follows:
- 21 a. Defendants' motion to dismiss for failure to state a cognizable claim for relief is  
22 DENIED;
  - 23 b. Defendants' motion to dismiss based on qualified immunity is DENIED;
  - 24 c. Defendants' motion to dismiss Plaintiff's claims against Defendants Ulit, Smith, Moon  
25 and Wang in their official capacity for *monetary damages* is GRANTED and those

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27 <sup>2</sup> Because Plaintiff is a pro se litigant, his filings are to be "liberally construed" and "held to less stringent standards than  
28 formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007). Plaintiff prayer for injunctive relief  
supports the construction of the claim against Defendants Ulit, Smith, Moon and Wang at least in part as an official  
capacity claim.


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portions of Plaintiff's claims are DISMISSED; the action may proceed against these Defendants in their official capacity for injunctive relief; and

2. Within twenty-one (21) days from the date of service of this order, Defendants shall file a response to Plaintiff's motion for partial summary judgment filed March 30, 2015.

IT IS SO ORDERED.

Dated: June 25, 2015

  
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SENIOR DISTRICT JUDGE