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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 MARCOS ANTHONY GONZALEZ,

12 Plaintiff,

13 v.

14 STATE OF CALIFORNIA,

15 Defendant.  
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No. 1: 15-cv-01221---BAM

**ORDER DISMISSING COMPLAINT  
WITH LEAVE TO AMEND**

(Doc. 1)

**ORDER GRANTING APPLICATION TO  
PROCEED WITHOUT PREPAYMENT OF  
FEES OR COSTS**

(Doc. 2)

**ORDER DIRECTING PLAINTIFF TO  
RETURN CONSENT FORM**

20 **INTRODUCTION**

21 On August 6, 2015, Marcos Anthony Gonzalez ("Plaintiff"), appearing pro se, filed an  
22 application to proceed in forma pauperis. (Doc. 2.) A review of his application reveals that  
23 Plaintiff is entitled to proceed in forma pauperis and his application is GRANTED. 28 U.S.C. §  
24 1915(a).

25 Plaintiff also has filed a complaint naming the State of California as defendant in this  
26 action. (Doc. 1.) The Court has screened the complaint and orders that it be dismissed with leave  
27 to amend.

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1 relief can be granted and seeks monetary relief against a defendant who is immune from such  
2 relief. 28 U.S.C. § 1915(e)(2)(B)(ii), (iii). As Plaintiff is proceeding pro se, he will be given an  
3 opportunity to amend his complaint. To assist Plaintiff, the Court provides the following  
4 pleading and legal standards.

5 **A. Federal Rule of Civil Procedure 8**

6 Plaintiff's complaint does not contain a "short and plain statement of the claim showing  
7 that he is entitled to relief." Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible  
8 pleading policy, a complaint must give fair notice and state the elements of the claim plainly and  
9 succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). While detailed  
10 allegations are not required, a plaintiff must set forth "the grounds of his entitlement to relief [,]"  
11 which "requires more than labels and conclusions, and a formulaic recitation of the elements of a  
12 cause of action . . . ." *Twombly*, 550 U.S. at 555 (internal quotations and citations omitted).

13 In this instance, Plaintiff's mere labels of purported violations are not sufficient to satisfy  
14 the pleading requirements of Rule 8. Plaintiff must set forth the facts underlying his claims. If  
15 Plaintiff amends his complaint, he must include the factual basis of his allegations. Simply listing  
16 the parties or causes of action is not sufficient. Plaintiff must explain his case with specificity.

17 **B. Federal Rule of Civil Procedure 10(b)**

18 Rule 10(b) of the Federal Rules of Civil Procedure also requires a plaintiff to state claims  
19 in "numbered paragraphs, each limited as far as practicable to a single set of circumstances."  
20 Fed. R. Civ. P. 10(b). Moreover, "[i]f doing so would promote clarity, each claim founded on a  
21 separate transaction or occurrence . . . must be stated in a separate count." Fed. R. Civ. P. 10(b).  
22 Plaintiff's complaint style and formatting fails to comply with Rule 10(b). He must do more than  
23 simply list his purported causes of action. In Plaintiff's amended complaint, he must comply with  
24 Rule 10(b).

25 **C. Eleventh Amendment Immunity**

26 Plaintiff names the State of California as the defendant in this action.<sup>1</sup> The Eleventh

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27 <sup>1</sup> The State of California is the sole defendant identified in the caption. In the body of the complaint, Plaintiff  
28 identifies one defendant as the State of California Tulare County. (Doc. 1 at 2.)

1 Amendment erects a general bar against federal lawsuits brought against the state. *Wolfson v.*  
2 *Brammer*, 616 F.3d 1045, 1065-66 (9th Cir. 2010). While “[t]he Eleventh Amendment does not  
3 bar suits against a state official for prospective relief,” *Wolfson*, 616 F.3d at 1066, suits against  
4 the state or its agencies are barred absolutely, regardless of the form of relief sought. *E.g.*,  
5 *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100, 104 S.Ct. 900, 79 L.Ed.2d 67  
6 (1984); *Buckwalter v. Nevada Bd. of Medical Examiners*, 678 F.3d 737, 740 n. 1 (9th Cir.2012).  
7 Accordingly, Plaintiff may not bring a monetary damages action against the State of California.

### 8 **CONCLUSION AND ORDER**

9 For the reasons set forth above, the Court finds that Plaintiff’s complaint fails to comply  
10 with Federal Rules of Civil Procedure 8 and 10(b). Plaintiff’s complaint also fails to state a claim  
11 upon which relief can be granted and inappropriately seeks monetary relief against a defendant  
12 who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(ii), (iii). However, in an abundance  
13 of caution, and because Plaintiff is proceeding pro se, he will be given leave to amend the  
14 complaint to cure these deficiencies to the extent he can do so in good faith. Accordingly, it is  
15 HEREBY ORDERED that:

16 1. Plaintiff’s complaint is dismissed for failure to comply with Federal Rules of Civil  
17 Procedure 8 and 10, for failure to state a claim upon which relief can be granted and for seeking  
18 monetary relief against a defendant who is immune from such relief.

19 2. Within thirty (30) days from the date of service of this order, Plaintiff shall file a  
20 first amended complaint; and

21 3. The Clerk of the Court is directed to mail a Consent to Magistrate Jurisdiction  
22 Form to Plaintiff. Plaintiff shall complete the form and advise the Court whether or not he will  
23 consent to Magistrate Judge jurisdiction no later than **November 3, 2015**.

24 4. **If Plaintiff fails to comply with this order, the Court will dismiss this action**  
25 **for failure to obey a court order.**  
26 IT IS SO ORDERED.

27 Dated: **October 2, 2015**

28 /s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE

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