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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANCISCO J. FLORES,	)	
	)	2:08-cv-02499-GEB-JFM
Plaintiff,	)	
	)	<u>ORDER</u> *
v.	)	
	)	
ORLAND UNIFIED SCHOOL DISTRICT;	)	
and CHRIS VON KLEIST,	)	
	)	
Defendants.	)	
_____	)	

On November 18, 2008, Defendants Orland Unified School District ("OUSD") and Chris Von Kleist ("Von Kleist"), the district superintendent, filed a motion to dismiss Plaintiff's Complaint, arguing Plaintiff's claims are barred by the Eleventh Amendment. Plaintiff opposes the motion, but requests leave to file an amended Complaint in which Von Kleist is sued in his individual capacity if the dismissal motion is granted.

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\*This matter was determined to be suitable for decision without oral argument. L.R. 78-230(h).

1           The Ninth Circuit has held that school districts in  
2 California are "agent[s] of the state" and thus, "immune to suit under  
3 the Eleventh Amendment." Belanger v. Madera Unified Sch. Dist., 963  
4 F.2d 248, 254 (9th Cir. 1992). Further, a California school  
5 superintendent is entitled to Eleventh Amendment immunity when sued  
6 for damages in his or her official capacity. Eaglesmith v. Ward, 73  
7 F.3d 857, 859 (9th Cir. 1995). See also Hafer v. Melo, 502 U.S. 21,  
8 25 (1991) (holding state officials sued in their official capacity are  
9 entitled to Eleventh Amendment immunity).

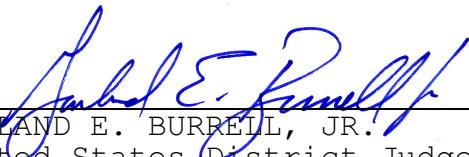
10           Plaintiff argues the school district is not a state agent  
11 under the Eleventh Amendment because any money judgment may be  
12 satisfied through liability insurance. (Pls. Opp'n at 4:16-25.)  
13 However, the Supreme Court has stated that it is not "the presence or  
14 absence of a third party's undertaking to indemnify the agency [that]  
15 determine[s] whether it is the kind of entity that should be treated  
16 as an arm of the State." Regents of the Univ. of Cal. v. Doe, 519  
17 U.S. 425, 437 (1997).

18           Plaintiff also argues the Eleventh Amendment does not bar  
19 his fourth claim, brought under the Uniform Services Employment and  
20 Re-employment Rights Act ("USERRA"), 38 U.S.C. § 4301. (Pls. Opp'n at  
21 5:4-17.) The Ninth Circuit, however, has held that Congress, through  
22 USERRA, did not unequivocally express the intent to abrogate the  
23 states' sovereign immunity. Townsend v. Univ. of Alaska, 543 F.3d  
24 478, 484 (9th Cir. 2008). Therefore, federal courts lack subject  
25 matter jurisdiction over claims brought against an arm of the state  
26 under USERRA. Townsend, 543 F.3d at 484-85.

27           For the reasons stated, Defendants' motion is granted and  
28 all claims against OUSD and the official capacity damages claims

1 against Von Kleist are dismissed. Plaintiff's request for leave to  
2 file an amended Complaint in which individual capacity claims are  
3 alleged against Von Kleist is granted, provided it is filed within ten  
4 days from the date on which this Order is filed.

5 Dated: January 13, 2009

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9 GARLAND E. BURRELL, JR.  
10 United States District Judge  
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