

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

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6	EDITH STONE,	)
7		)
8	Plaintiff,	) 2:09-cv-02139-GEB-KJM
9	v.	) <u>ORDER GRANTING DEFENDANTS'</u>
10	MATTHEW CATE, GLENDA PRESSLY,	) <u>MOTION TO DISMISS*</u>
11	NANCY HANLEY, TAMMIE SCHEID, and	)
12	the CALIFORNIA DEPARTMENT OF	)
13	CORRECTIONS AND REHABILITATION,	)
14	Defendants.	)
15	_____	)

On November 5, 2009, Defendants Matthew Cate, Glenda Pressly, Nancy Hanley, and the California Department of Corrections and Rehabilitation ("CDCR") (collectively, "Defendants") filed a motion to dismiss Plaintiff's Complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.<sup>1</sup> Further, Defendants Cate and Pressly argue they are

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\* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

<sup>1</sup> Defendants also seek dismissal of Plaintiff's Complaint based on the argument that a California State Personnel Board ("SPB") decision precludes Plaintiff's claims. This portion of the dismissal motion is denied since Defendants have not shown that the claims in Plaintiff's Complaint involve the same "primary right" that was "at stake" in the SPB decision. Takahashi v. Board of Trustees of Livingston Union School Dist., 783 F.2d 848, 850-51 (9th Cir. 1986) (finding that plaintiff's claim asserted a primary right already litigated and dismissing action on the ground of res judicata).

1 qualifiedly immune from the federal claims alleged in plaintiff's  
2 Complaint. Plaintiff has not opposed the motion.

### 3 **I. Background**

4 Plaintiff was hired as a substitute teacher at N.A.  
5 Chaderjian Youth Correctional Facility ("CHAD") on October 5, 2005.  
6 (Compl. ¶ 6.) As a substitute teacher, Plaintiff was required to  
7 possess a teaching credential issued by the California Commission on  
8 Teacher Credentialing ("CCTC"). (Id.) Plaintiff was notified on  
9 August 28, 2007, that she would be terminated effective September 12,  
10 2007 "because her teaching credential would be expiring and she had  
11 not presented a new one." (Id. ¶ 7.) Plaintiff alleges  
12 "[s]ubsequently, but not before the effective date of her termination  
13 of employment . . . [, her] teaching credential was renewed." (Id. at  
14 8.) Plaintiff alleges six claims in her Complaint under 42 U.S.C. §§  
15 1983, 1985(3), and 1986.

### 16 **II. Legal Standard**

17 "A Rule 12(b)(6) motion tests the legal sufficiency of a  
18 claim." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). To  
19 avoid dismissal, a plaintiff must allege "enough facts to state a  
20 claim to relief that is plausible on its face." Bell Atlantic Corp.  
21 v. Twombly, 550 U.S. 544, 570 (2007). When considering a dismissal  
22 motion, all "allegations of material fact are taken as true and  
23 construed in the light most favorable to the nonmoving party."  
24 Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002). However, this  
25 "tenet . . . is inapplicable to threadbare recitals of a cause of  
26 action's elements, supported by mere conclusory statements." Ashcroft  
27 v. Iqbal, 556 U.S. ---, 129 S.Ct. 1937, 1940 (2009).

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1 **III. Analysis**

2 **A. Sovereign Immunity**

3 Defendants CDCR and Matthew Cate argue they are entitled to  
4 sovereign immunity. These defendants argue since "Plaintiff alleges  
5 that the [CDCR] is a State Agency and sues Defendant Matthew Cate in  
6 his official capacity only . . . [Plaintiff's] claims against these  
7 Defendants must be dismissed without leave to amend on the grounds of  
8 Eleventh Amendment Immunity." (Mot. 7:26-8:2.)

9 CDCRC as an agency of the state is entitled to Eleventh  
10 Amendment immunity. "Under the Eleventh Amendment, agencies of the  
11 state are immune from private damage actions or suits for injunctive  
12 relief brought in federal court." Dittman v. State of California, 191  
13 F.3d 1020, 1025 (9th Cir. 1999) (quoting Mitchell v. Los Angeles Cmty.  
14 Coll. Dist., 861 F.2d 198, 201 (9th Cir.1989)). This immunity bars  
15 Plaintiff's claims against the CDCR. See Brown v. California Dept. of  
16 Corr., 554 F.3d 747, 752 (9th Cir. 2009) ("The district court  
17 correctly held that the California Department of Corrections and the  
18 California Board of Prison Terms were entitled to Eleventh Amendment  
19 immunity."). Therefore, Plaintiff's claims alleged against CDCR are  
20 dismissed without leave to amend on the basis of Eleventh Amendment  
21 immunity.

22 Cate argues:

23 While it is true that an individual, such as Cate,  
24 may be sued in his official capacity for  
25 prospective injunctive relief, the Complaint does  
26 not include a request for prospective injunctive  
27 relief here. Although the Plaintiff's prayer for  
28 relief seeks "injunctive relief", she confuses  
injunctive relief with monetary relief. The prayer  
states that she seeks injunctive relief in the form  
of back and front pay, and lost fringe benefits.

1 (Mot. 8:3-8). "A suit against a state official in his or her official  
2 capacity is not a suit against the official but rather is a suit  
3 against the official's office. As such, it is not different from a  
4 suit against the state itself." Will v. Michigan Dept. of State  
5 Police, 491 U.S. 58, 71 (1989) (cite omitted). "Therefore, state  
6 officials sued in their official capacities . . . are not 'persons'  
7 within the meaning of § 1983 and are therefore generally entitled to  
8 Eleventh Amendment immunity." Flint v. Dennison, 488 F.3d 816, 825  
9 (9th Cir. 2007). Further, although the Eleventh Amendment does not  
10 bar an action seeking prospective injunctive relief against a state  
11 official, "[a] remedy for past injury, even if it purports to be an  
12 injunction against state officers requiring the future payments of  
13 money, is . . . forbidden under the Eleventh Amendment." Seven Up  
14 Pete Venture v. Schweitzer, 523 F.3d 948, 956 (9th Cir. 2008) (quotes  
15 and brackets omitted).

16 Here, Plaintiff's Complaint states, "Defendant Cate is sued  
17 in his official capacity only." (Compl. ¶ 4(a).) Plaintiff seeks  
18 "equitable and injunctive relief in the form of reinstatement, back  
19 pay and front pay . . . and prospective equitable relief." (Id. at  
20 10:7-9, 14-15.) The relief Plaintiff seeks cannot be "properly  
21 characterized as prospective" since Plaintiff has alleged no "ongoing  
22 violation of federal law." Seven Up Pete Venture, 523 F.3d at 956.  
23 Therefore, Plaintiff's claims alleged against Cate are dismissed based  
24 on Eleventh Amendment Immunity.

25 **B. First Claim: Conspiracy Under 42 U.S.C. § 1985**

26 Defendant Hanley seeks dismissal of Plaintiff's first claim,  
27 arguing it is "premised on conclusory allegations." (Mot. 8:11.)  
28 Plaintiff alleges "Defendants Hanley and Schneid intentionally

1 violated 42 [U.S.C.] § 1985(3) by entering into an agreement between  
2 themselves . . . to withhold beneficial information from her because  
3 of her race or color." (Compl. ¶ 19.) "A claim under [§ 1985] must  
4 allege facts to support the allegation that defendants conspired  
5 together. A mere allegation of conspiracy without factual specificity  
6 is insufficient." Karim-Panahi v. Los Angeles Police Dept., 839 F.2d  
7 621, 626 (9th Cir. 1988). Plaintiff's Complaint contains only  
8 conclusory allegations of a conspiracy, unsupported by any factual  
9 allegations of an agreement. Therefore, Plaintiff's first claim is  
10 dismissed.

11 **C. Second Claim: Failure to Supervise Under 42 U.S.C. § 1986.**

12 Defendant Pressley seeks dismissal of Plaintiff's second  
13 claim, arguing it contains "bare assertions amount[ing] to nothing  
14 more than a formulaic recitation of the elements of [the claim]." (Mot. 11:20-22.) Plaintiff alleges Pressley "had knowledge of the  
15 wrongs Hanley and Schneid conspired to . . . and having the power to  
16 prevent or aid in preventing the commission of the same, failed to act  
17 . . . in violation of 42 [U.S.C.] § 1986." (Compl. ¶ 21.) "Section  
18 1986 imposes liability on every person who knows of an impending  
19 violation of section 1985 but neglects or refuses to prevent the  
20 violation. A claim can be stated under section 1986 only if the  
21 complaint contains a valid claim under section 1985." Karim-Panahi,  
22 839 F.2d at 626. Since Plaintiff has failed to state a section 1985  
23 claim, her section 1986 also fails. Therefore, Plaintiff's second  
24 claim is dismissed.  
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1 **D. Third Claim: Procedural Due Process**

2 Defendants Hanley and Pressley seek dismissal of Plaintiff's  
3 third claim, arguing "there is no constitutional right to notification  
4 of an expedited process for renewal of a credential." (Mot. 13:16-  
5 17.) Plaintiff alleges Defendants violated her rights "by withholding  
6 from [her] the process which was due, that is, information concerning  
7 the expedited processing of her application for renewal of her  
8 teaching credential or the availability of an exemption." (Compl. ¶  
9 24.) "[T]he Fourteenth Amendment does not require a remedy when there  
10 has been no deprivation of a protected interest." Davidson v. Cannon,  
11 474 U.S. 344, 348 (1986). Here, Plaintiff does not allege facts  
12 showing that Defendants Hanley and Pressley had a duty to inform her  
13 of a method for expediting her application or the availability of an  
14 exception. Therefore, Plaintiff has not demonstrated that she has  
15 been deprived of an interest protected by the Fourteenth Amendment.  
16 Therefore, Plaintiff's third claim is dismissed.

17 **E. Fourth and Fifth Claims: Substantive Due Process**

18 Defendants Hanley and Pressley also seek dismissal of  
19 Plaintiff's fourth and fifth claims, arguing they consist of  
20 "threadbare and conclusory allegations." (Mot. 14:17, 24.) Plaintiff  
21 alleges in her fourth claim that Defendants subjected her to "a  
22 deprivation of substantive due process of law in violation of the due  
23 process and equal protection of law clauses of the Fourteenth  
24 Amendment by depriving [Plaintiff] of her employment for reasons of  
25 her race or color in violation of 42 [U.S.C.] § 1983." (Compl. ¶ 26.)  
26 Plaintiff alleges in her fifth claim that Defendants subjected her to  
27 "a deprivation of substantive due process of law in violation of the  
28 due process of law clause of the Fourteenth Amendment by depriving

1 [Plaintiff] of her employment for arbitrary and capricious reasons in  
2 violation of 42 [U.S.C.] § 1983." (Compl. ¶ 28.) These "threadbare"  
3 recitals are insufficient to state a claim for violation of  
4 Plaintiff's substantive due process rights. Therefore, Plaintiff's  
5 fourth and fifth claims are dismissed.

6 **F. Sixth Claim: Retaliation**

7 Lastly, Defendants seek dismissal of Plaintiff's sixth  
8 claim, arguing Plaintiff's allegations are "sparse, vague, and  
9 conclusory." (Mot. 16:11.) Plaintiff alleges in her sixth claim that  
10 "[o]n or before December 1, 2008, [Plaintiff]'s teaching credential  
11 was renewed by the [CCTC]" yet "Hanley refused to *re-employ*  
12 [Plaintiff] even though there was a need . . . for her services."  
13 (Compl. ¶ 30 (emphasis added).) Plaintiff further alleges Defendants  
14 "were aware" that Plaintiff "had filed charges [against Defendant  
15 Cate] of employment discrimination with the United States Equal  
16 Employment Opportunity Commission (EEOC) and the California Department  
17 of Fair Employment and Housing (CDFEH)". (Compl. ¶ 31.) To state a  
18 claim for retaliation, a plaintiff must allege that (1) she was  
19 engaging in a protected activity, (2) she suffered an adverse  
20 employment decision, (3) there is a causal link between the protected  
21 activity and the adverse employment decision. Folkerson v. Circus  
22 Circus Enterprises, Inc., 107 F.3d 754, 755 (9th Cir. 1997).  
23 Plaintiff has not alleged a causal link between her filing of the EEOC  
24 and CDFEH Complaints and Hanley's refusal to "re-employ" her.  
25 Therefore, she has failed to state a claim for retaliation.  
26 Plaintiff's sixth claim is dismissed.

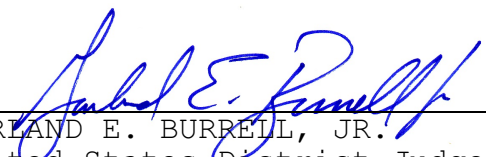
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1 **IV. Conclusion**

2 Since all of Plaintiff's claims have been dismissed, the  
3 merits of Defendants Cate and Pressly's qualified immunity arguments  
4 are not reached. For the stated reasons, Defendants' motion to  
5 dismiss is GRANTED with leave to amend, except the claims against  
6 Defendant CDCR, which are dismissed without leave to amend. Plaintiff  
7 is granted ten (10) days from the date on which this Order is filed  
8 within which to file a first amended complaint correcting the  
9 deficiencies in the claims dismissed.

10 Dated: March 3, 2010

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12 \_\_\_\_\_  
13 GARLAND E. BURRELL, JR.  
14 United States District Judge