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

STEPHEN VINCENT HUBBARD,

No. CIV S-09-2162-FCD-CMK

Plaintiff,

vs.

ORDER

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

_____/

Plaintiff, a former state prisoner proceeding in pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff's complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to screen complaints brought by litigants who have been granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and 1915A(b)(1), (2). Moreover, pursuant to Federal Rule of Civil Procedure 12(h), this court must

1 dismiss an action “[w]henver it appears . . . that the court lacks jurisdiction of the subject matter
2” Because plaintiff, who is not a prisoner, has been granted leave to proceed in forma
3 pauperis, the court will screen the complaint pursuant to § 1915(e)(2).

4 In this case, Plaintiff is challenging the terms of his parole. He does not appear to
5 be challenging the legality of his custody nor does he appear to contend that he is entitled to an
6 earlier or immediate release. Instead, he appears to be challenging the conditions of his parole,
7 much like a prisoner might challenge the conditions of his confinement. While he might be able
8 to state a claim under 28 U.S.C. § 1983, the only defendant he has named is the California
9 Department of Corrections.

10 The Eleventh Amendment prohibits federal courts from hearing suits brought
11 against a state both by its own citizens, as well as by citizens of other states. See Brooks v.
12 Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition
13 extends to suits against states themselves, and to suits against state agencies. See Lucas v. Dep’t
14 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th
15 Cir. 1989). A state’s agency responsible for incarceration and correction of prisoners is a state
16 agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438 U.S. 781, 782
17 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th cir. 1993) (en banc).

18 The Eleventh Amendment also bars actions seeking damages from state officials
19 acting in their official capacities. See Eaglesmith v. Ward, 73 F.3d 857, 859 (9th Cir. 1995);
20 Pena v. Gardner, 976 F.2d 469, 472 (9th Cir. 1992) (per curiam). The Eleventh Amendment
21 does not, however, bar suits against state officials acting in their personal capacities. See id.
22 Under the doctrine of Ex Parte Young, 209 U.S. 123 (1908), the Eleventh Amendment does not
23 bar suits for prospective declaratory or injunctive relief against state officials in their official
24 capacities. See Armstrong v. Wilson, 124 F.3d 1019, 1025 (9th Cir. 1997). The Eleventh
25 Amendment also does not bar suits against cities and counties. See Monell v. Dep’t of Soc.
26 Servs., 436 U.S. 658, 690 n.54 (1978).

1 As the only defendant named in the complaint is immune, the complaint must be
2 dismissed. In order to continue in this matter, Plaintiff must name a non-immune defendant in
3 which to proceed against.

4 **C. Conclusion**

5 Because it is possible that the deficiencies identified in this order may be cured by
6 amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the entire
7 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is
8 informed that, as a general rule, an amended complaint supersedes the original complaint. See
9 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to
10 amend, all claims alleged in the original complaint which are not alleged in the amended
11 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if
12 plaintiff amends the complaint, the court cannot refer to the prior pleading in order to make
13 plaintiff's amended complaint complete. See Local Rule 15-220. An amended complaint must
14 be complete in itself without reference to any prior pleading. See id.

15 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
16 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
17 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
18 each named defendant is involved, and must set forth some affirmative link or connection
19 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
20 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

21 Finally, plaintiff is warned that failure to file an amended complaint within the
22 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
23 1260-61; see also Local Rule 11-110. Plaintiff is also warned that a complaint which fails to
24 comply with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule
25 41(b). See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's complaint is dismissed with leave to amend; and
2. Plaintiff shall file an amended complaint within 30 days of the date of service of this order.

DATED: February 11, 2010



CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE