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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 RODERICK L. MITCHELL

No. 2:14-cv-2993 AC PS

12 Plaintiff,

## ORDER

14 JERRY BROWN, GOVERNOR OF  
CALIFORNIA, et al..

## Defendants.

18 Plaintiff has filed a motion to amend his complaint. ECF No. 12. The court has  
19 determined that this motion may be decided without argument or further briefing, and therefore  
20 waives plaintiff's non-compliance with the requirement that motions be properly noticed for  
21 hearing. See E.D. Cal. R. ("Local Rule") 230.<sup>1</sup>

## I. BACKGROUND

23 Plaintiff is proceeding in this action pro se and in forma pauperis. This proceeding was  
24 referred to this court by Local Rule 302(c)(21).

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26       <sup>1</sup> In the future, if plaintiff believes he needs leave of the court to file an amended complaint, he  
27       should include the proposed amended complaint as an attachment to the motion seeking leave to  
28       amend. See Local Rule 137(c). He should not, as he did here, separately file the proposed  
      amended complaint.

1 Plaintiff's original complaint names the Governor of California and the California  
2 Department of Corrections and Rehabilitation ("CDCR") as defendants, alleges facts showing  
3 that plaintiff is subject to "Meghan's Law," alleges that the law is unconstitutional, and requests  
4 that the court enjoin enforcement of the law. ECF No. 1 at 1, 5, 11. On February 3, 2015, this  
5 court dismissed the claims against the CDCR on the grounds that injunctive relief may not be  
6 granted directly against a state agency without a waiver of the state's sovereign immunity. ECF  
7 No. 3.

8 The court also granted plaintiff the alternative of serving the Governor and pursuing his  
9 claims "against only the Governor," or delaying serving the Governor and attempting to state a  
10 cognizable claim "against additional defendants, other than the CDCR itself." ECF No. 3 at 3.  
11 Plaintiff elected to serve the Governor, and has thus elected to proceed only against that  
12 defendant, who has since filed a motion to dismiss the complaint.

13 **II. MOTION TO AMEND**

14 Plaintiff has now filed a motion to amend his complaint, and has filed a proposed  
15 amended complaint. ECF Nos. 12 & 13. The proposed amended complaint does not name the  
16 Governor as a defendant, but does name the CDCR as well as the California Department of  
17 Justice. The proposed amended complaint is defective for the same reason the original complaint  
18 was defective: it seeks injunctive relief directly against agencies of the State of California. Such  
19 relief is barred by the Eleventh Amendment to the U.S. Constitution, in the absence of a waiver of  
20 sovereign immunity by the State. See Alabama v. Pugh, 438 U.S. 781, 782 (1978) (holding that  
21 an injunctive "suit against the State and its Board of Corrections is barred by the Eleventh  
22 Amendment"). No such waiver is alleged.

23 The motion to amend therefore would not remedy the deficiencies of the previous  
24 complaint. To the contrary, the proposed amended complaint compounds the deficiencies of the  
25 original complaint by omitting the one defendant who could conceivably be sued, and adding  
26 another defendant who is plainly immune from suit.<sup>2</sup> Accordingly, the requested amendment to

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27 <sup>2</sup> The court of course expresses no view at this time on the merits of the Governor's assertion in  
28 his motion to dismiss that he, too, is immune from suit.

the complaint would be futile, and the motion therefore will be denied.

Plaintiff is cautioned that the Governor, the sole remaining defendant, has filed a motion to dismiss the original complaint, and scheduled it for oral argument on June 17, 2015 at 10:00 a.m. ECF No. 9. **Plaintiff shall file his opposition to the motion, or a statement of non-opposition, no later than June 3, 2015.**

### III. CONCLUSION

For the reasons stated above, IT IS HEREBY ORDERED that:

1. Plaintiff's motion to amend the complaint (ECF No. 12) is DENIED; and
2. The Clerk of the Court shall STRIKE the proposed Amended Complaint (ECF No. 13) from the docket.

DATED: May 6, 2015

Allison Claire  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE