

1 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227–1228
2 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
3 indisputably meritless legal theory or where the factual contentions are “clearly baseless.”
4 Neitzke, 490 U.S. at 327.

5 *DISCUSSION*

6 Here plaintiff has filed an amended complaint which again names the California
7 Department of Corrections and Rehabilitation [CRDC].

8 The United States Supreme Court has held that State governmental agencies, of which the
9 CDCR is one, are immune from actions brought under 28 U.S.C. section 1983 pursuant to the
10 Eleventh Amendment to the federal Constitution. Quern v. Jordan, 440 U.S. 332, 338-339 (1979)
11 citing, *inter alia*, Alabama v. Pugh, 438 U.S. 781 (1978); Hutto v. Finney, 437 U.S. 678 (1978);
12 Milliken v. Bradley, 433 U.S. 267 (1977); Fitzpatrick v. Bitzer, 427 U.S. 445 (1976). This
13 defendant will be dismissed and plaintiff shall not name this defendant again in any subsequent
14 amended complaint.

15 Plaintiff may, however, name in his amended complaint individual defendants of CDCR
16 and/or San Diego County Jail. In some cases, the naming of Doe defendants would be
17 appropriate if discovery of a properly named defendant could later disclose the identities of the
18 Doe defendants. However, this case cannot proceed where the only remaining defendants are
19 unidentified Doe defendants, i.e., there are no identifiable defendants against whom discovery
20 could be taken. Moreover, although this district might be appropriate for venue purposes, if a
21 defendant or defendants were found to be residing in this district, see 28 U.S.C. section 1391
22 (b)(1) and (2), the court cannot ascertain that fact, or whether a substantial part of the tortious
23 activities occurred in this district, by a listing of fictitiously named Doe defendants.

24 Accordingly, IT IS HEREBY ORDERED that :

- 25 1. The CDCR is dismissed as a defendant;¹

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27 _____
28 ¹ Plaintiff has consented to the undersigned as presiding judge. ECF No. 14. As no defendants
have made an appearance in this action, the undersigned proceeds by way of order.

