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

DANIEL ALEM,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

No. 2:17-CV-0343-KJM-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding 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 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. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the

1 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it
2 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege
3 with at least some degree of particularity overt acts by specific defendants which support the
4 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
5 impossible for the court to conduct the screening required by law when the allegations are vague
6 and conclusory.

7 Plaintiff names the following as defendants: (1) the California Department of
8 Corrections and Rehabilitation; (2) M. Curry; (3) J. Ojo; and (4) Eric Arnold. By separate order,
9 the court has determined the complaint is appropriate for service on defendants Curry, Ojo, and
10 Arnold. The complaint is not, however, appropriate for service on the California Department of
11 Corrections and Rehabilitation. The Eleventh Amendment prohibits federal courts from hearing
12 suits brought against a state both by its own citizens, as well as by citizens of other states. See
13 Brooks v. Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This
14 prohibition extends to suits against states themselves, and to suits against state agencies. See
15 Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d
16 1040, 1045 (9th Cir. 1989). A state's agency responsible for incarceration and correction of
17 prisoners is a state agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438
18 U.S. 781, 782 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (en
19 banc). The California Department of Corrections and Rehabilitation is immune and must be
20 dismissed as a defendant to this action.

21 Because it does not appear possible that the deficiencies identified herein can be
22 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
23 the California Department of Corrections and Rehabilitation. See Lopez v. Smith, 203 F.3d 1122,
24 1126, 1131 (9th Cir. 2000) (en banc).

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Based on the foregoing, the undersigned recommends that the California Department of Corrections and Rehabilitation be dismissed as a defendant to this action.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: November 19, 2018



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE