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

FANCY MOORE LIPSEY, also known as  
Anthony Lamar Lipsey, II,

Plaintiff,

v.

K. YOUNG, et al.,

Defendants.

No. 2:20-CV-2071-KJM-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding with retained counsel, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff’s complaint, removed to this Court by Defendants, see ECF No. 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

1 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the  
2 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it  
3 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege  
4 with at least some degree of particularity overt acts by specific defendants which support the  
5 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
6 impossible for the Court to conduct the screening required by law when the allegations are vague  
7 and conclusory.

8           Among the defendants named in the complaint is the California Department of  
9 Corrections and Rehabilitation. The Eleventh Amendment prohibits federal courts from hearing  
10 suits brought against a state both by its own citizens, as well as by citizens of other states. See  
11 Brooks v. Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This  
12 prohibition extends to suits against states themselves, and to suits against state agencies. See  
13 Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d  
14 1040, 1045 (9th Cir. 1989). A state's agency responsible for incarceration and correction of  
15 prisoners is a state agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438  
16 U.S. 781, 782 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (en  
17 banc). Under these principles, Plaintiff may not proceed against the California Department of  
18 Corrections and Rehabilitation, which is immune from suit. By separate order, the Court has  
19 directed service of the complaint on the individually named defendants.

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

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

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

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10 Dated: August 6, 2021



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12 DENNIS M. COTA  
13 UNITED STATES MAGISTRATE JUDGE  
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