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1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 No. 2:21-cv-00479-KJM-KJN Donta Ladeal Kyle, 12 Plaintiffs, ORDER 13 v. 14 California Victim Compensation Board, et al., 15 Defendants. 16 17 Donta Ladeal a Kyle, a state prisoner proceeding pro se, has filed this civil rights action 18 seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate 19 Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 On April 9, 2021, the magistrate judge filed findings and recommendations, which were 21 served on plaintiff and which contained notice to plaintiff that any objections to the findings and 22 recommendations were to be filed within twenty-one days. F&Rs, ECF No. 5. The magistrate 23 judge recommends dismissing the complaint without leave to amend because the defendant, the 24 California Victim Compensation Board, is not a "person" under 42 U.S.C. § 1983. See generally 25 id. Kyle objects to the findings and recommendations, arguing he should be permitted to amend 26 his complaint to assert a claim against individual officers. See Objections, ECF No. 8.

State officials sued in their official capacity for injunctive relief are "persons" under § 1983. Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989). State officials may also

1 be sued in their personal capacity under § 1983. Hafer v. Melo, 502 U.S. 21, 31 (1991). The 2 court cannot conclude on this record that Kyle's proposed amendment would be futile, and Rule 3 15(a) imposes a "very liberal" policy in favor of amendment. AmerisourceBergen Corp. v. 4 Dialysist W., Inc., 465 F.3d 946, 951 (9th Cir. 2006). The complaint is thus dismissed with 5 leave to amend, and the findings and recommendations are adopted in part to that extent. Any 6 amended complaint must be filed within 60 days. This matter is referred again to the assigned 7 magistrate judge for all pretrial purposes. IT IS SO ORDERED. 8

DATED: June 7, 2021.

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CHIEF UNITED STATES DISTRICT JUDGE