

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DONALD RODRIGUEZ,
Plaintiff,
v.
STATE OF CALIFORNIA, et al.,
Defendants

No. C-08-5390 MMC

**ORDER DIRECTING PLAINTIFF TO
SHOW CAUSE WHY ACTION SHOULD
NOT BE DISMISSED FOR FAILURE TO
STATE A CLAIM; CONTINUING CASE
MANAGEMENT CONFERENCE**

By order filed April 15, 2009, the above-titled action was reassigned to the undersigned. Having read and considered plaintiff’s complaint and defendants’ answer, the Court, for the reasons discussed below, will order plaintiff to show cause why the complaint should not be dismissed for failure to state a claim.

In his complaint, plaintiff alleges violations of 42 U.S.C. § 1983; the only named defendants are the State of California and the California Department of Corrections and Rehabilitation. In their answer, defendants allege, as the Twelfth Affirmative Defense, that “[n]either the State of California nor any of its departments is a ‘person’ within the meaning of the Federal Civil Rights Act, 42 U.S. Code section 1983 et seq.” (See Answer at 4:10-11.)

The Supreme Court has held that neither a state nor a state agency is “subject to suit under § 1983 in either federal court or state court.” See Howlett v. Rose, 496 U.S.

1 356, 365 (1990); see also Will v. Michigan, 491 U.S. 58, 70-71 (1988) (holding that
2 although § 1983 suits can be brought against “local government units,” such suits cannot
3 be brought against states or state agencies; affirming dismissal of § 1983 suit brought
4 against state agency). Here, as noted, the only defendants are the State and a state
5 agency.

6 Accordingly, plaintiff is hereby ORDERED TO SHOW CAUSE, in writing and no later
7 than June 5, 2009, why the complaint should not be dismissed for failure to state a claim.
8 Defendants shall file any reply to plaintiffs’ response no later than June 12, 2009.

9 In light of the instant Order to Show Cause, the Case Management Conference is
10 hereby CONTINUED from June 5, 2009 to July 17, 2009. A Joint Case Management
11 Statement shall be filed no later than July 10, 2009.

12 **IT IS SO ORDERED.**

13
14 Dated: May 15, 2009


MAXINE M. CHESNEY
United States District Judge