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United States District Court
For the Northern District of California

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

STEVE J. HAYS,
Plaintiff,
v.
CALIFORNIA HIGHWAY PATROL and
THE STATE OF CALIFORNIA,
Defendants.

No. C-09-5247 MMC

**ORDER GRANTING MOTION TO
DISMISS; DISMISSING COMPLAINT
WITH LEAVE TO AMEND; CONTINUING
CASE MANAGEMENT CONFERENCE**

Before the Court is defendant California Highway Patrol’s Motion to Dismiss, filed April 8, 2010, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff Steve J. Hays has not filed opposition.¹ Having read and considered the California Highway Patrol’s motion, the Court rules as follows.

Although plaintiff’s complaint does not identify the constitutional or statutory authority under which plaintiff brings the instant action, the sole federal claim pleaded by the facts alleged therein is a violation of 42 U.S.C. § 1983. Neither a state nor a state agency, however, is “subject to suit under § 1983 in either federal court or state court.” See Howlett v. Rose, 496 U.S. 356, 365 (1990); see also Will v. Michigan, 491 U.S. 58, 70-71 (1988) (holding lawsuits can be brought under § 1983 against “local government units,” but cannot

¹ As the motion was noticed for hearing on May 21, 2010, plaintiff’s opposition was due no later than April 30, 2010. See Civil L.R. 7-3(a).

1 be brought against states or state agencies; affirming dismissal of § 1983 suit brought
2 against state agency). Here, the only defendants are the State of California and the
3 California Highway Patrol, a state agency. Consequently, plaintiff's complaint is subject to
4 dismissal for failure to state a claim.²

5 As defendant makes no argument suggesting an amendment to name individual
6 officers as defendants would be futile, the Court will afford plaintiff leave to file a First
7 Amended Complaint. See Saul v. United States, 928 F.2d 829, 843 (9th Cir. 1991) (holding
8 amendment may be denied where amendment "would be futile"); see also Fed. R. Civ. P.
9 15(a)(2) (providing "court should freely give leave when justice so requires").

10 CONCLUSION

11 For the reasons stated,

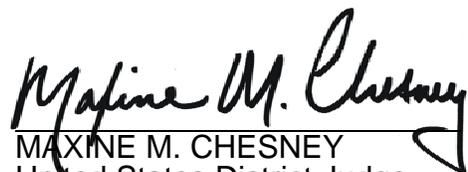
12 1. Defendant's motion to dismiss is hereby GRANTED, and plaintiff's complaint is
13 hereby DISMISSED with leave to amend.

14 2. Any First Amended Complaint shall be filed no later than June 25, 2010.

15 3. In light of the above ruling, the Case Management Conference is hereby
16 CONTINUED from May 14, 2010 to August 27, 2010; a Joint Case Management Statement
17 shall be filed no later than August 20, 2010.

18 **IT IS SO ORDERED.**

19
20 Dated: May 7, 2010

21 
22 MAXINE M. CHESNEY
23 United States District Judge
24

25 ² Although the motion states it is brought only on behalf of defendant California
26 Highway Patrol, the ruling herein is equally applicable to defendant State of California, and,
27 accordingly, the instant dismissal is of both defendants. See Silverton v. Dep't of the
28 Treasury, 644 F.2d 1341, 1345 (9th Cir. 1981) (holding district court "may properly on its
own motion dismiss an action as to defendants who have not moved to dismiss where such
defendants are in a position similar to that of moving defendants or where claims against
such defendants are integrally related").