

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 24 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

HECTOR GARCIA,

Plaintiff-Appellant,

v.

CALIFORNIA DEPARTMENT OF
PUBLIC HEALTH; STATE OF
CALIFORNIA,

Defendants-Appellees.

No. 21-16747

D.C. No. 2:20-cv-01309-KJM-DB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding

Submitted January 18, 2023**

Before: GRABER, PAEZ, and NGUYEN, Circuit Judges.

Hector Garcia appeals pro se from the district court's judgment dismissing his action alleging violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* We have jurisdiction under 28 U.S.C. § 1291. We review de novo a

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

a dismissal on the basis of Eleventh Amendment immunity. *Quillin v. Oregon*, 127 F.3d 1136, 1138 (9th Cir. 1997). We affirm.

The district court properly dismissed Garcia’s action on the basis of Eleventh Amendment immunity. *See Walden v. Nevada*, 945 F.3d 1088, 1093-94 (9th Cir. 2019) (“Congress’s enactment of the FLSA did not abrogate a State’s sovereign immunity from suit in federal court” and therefore “federal courts lack jurisdiction over FLSA cases brought against States in the absence of a waiver of immunity.”); *see also Krainski v. Nev. ex rel. Bd. of Regents of Nev. Sys. of Higher Educ.*, 616 F.3d 963, 967 (9th Cir. 2010) (“The Eleventh Amendment jurisdictional bar applies regardless of the nature of the relief sought and extends to state instrumentalities and agencies.”).

The district court did not abuse its discretion by denying Garcia leave to amend because amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and stating that leave to amend may be denied where amendment would be futile).

AFFIRMED.