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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

| | | |
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| JESSE D. GARZA, |) | NO. CV 10-7658-VBF (MAN) |
| |) | |
| Plaintiff, |) | MEMORANDUM AND ORDER DISMISSING |
| |) | |
| v. |) | FIRST AMENDED COMPLAINT WITH LEAVE |
| |) | |
| SALINAS VALLEY STATE PRISON, |) | TO AMEND |
| et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |
| _____ |) | |

18 On July 20, 2010, plaintiff, a state prisoner proceeding *pro se*,
19 filed a civil rights complaint, pursuant to 42 U.S.C. § 1983, in the
20 United States District Court for the Northern District of California.
21 On August 13, 2010, plaintiff filed a First Amended Complaint. The
22 Northern District of California then transferred the action to this
23 judicial district. On October 22, 2010, this Court granted plaintiff's
24 application to proceed *in forma pauperis*, and the First Amended
25 Complaint, which is the operative complaint, was filed in this court.

26
27 Congress has mandated that courts perform an initial screening of
28 prisoner civil rights actions. This Court "shall" dismiss such a civil

1 action before service of process if the Court concludes that the
2 complaint is frivolous, malicious, fails to state a claim upon which
3 relief may be granted, or seeks relief against a defendant who is immune
4 from suit. 28 U.S.C. § 1915A(b); 42 U.S.C. § 1997e(c)(1). In screening
5 such a complaint, the Court must construe the allegations of the
6 complaint liberally and must afford the plaintiff the benefit of any
7 doubt. See Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 623
8 (9th Cir. 1988). A *pro se* litigant must be given leave to amend his or
9 her complaint unless it is absolutely clear that the deficiencies of the
10 complaint cannot be cured by amendment. *Id.*; Noll v. Carlson, 809 F.2d
11 1446, 1448 (9th Cir. 1987).

12 13 **ALLEGATIONS OF THE FIRST AMENDED COMPLAINT**

14
15 Plaintiff is currently incarcerated at the Salinas Valley State
16 Prison ("SVSP"). (First Amended Complaint at 1.) He is suing the
17 following defendants: California State Prison-Los Angeles County ("CSP-
18 LAC"); SVSP; Chief Deputy Warden B.M. Cash; Correctional Officer Luis
19 Chavez; Facility Captain E.J. Hutchins; Correctional Officers G. Lage,
20 E.J. Williams, Rubio, and Solorzano; Lieutenant A. Espinoza; N. Grannis,
21 Chief of the Inmate Appeals Branch; "Facility Captain Appeals Examiner"
22 S. Wright; Lieutenant A. Sylva; Sergeant R. Valenzuela; Appeals
23 Coordinator J. Curiel; Correctional Officer J. Freye; B. Mendez, Cook;
24 Dr. T. Belavich, Health Care Manager; Associate Warden R.W. Nipper;
25 Lieutenant M. Nunez; Soliz, R.N.; Cabrera, R.N.; Warden F.B. Haws;
26 Facility Captain Dottaviano; Lieutenant Aaron Pfeil; Correctional
27 Officers Davila, Andy Puenes, P. Rohskothen; Napolitano, R.N.; Briones,
28 R.N.; T. Van Dongen, Health Care Appeals Coordinator; P. Gailbraith,

1 Health Care Appeals Coordinator; Special Agent Williams Wells;
2 Correctional Counselor R. Thomas; Lieutenant Galviz; C. Ynson; V.
3 Daniels, R.N.; A. Pangilinan; Correctional Officer Vadaro; A. Swaby;
4 H.C. Le, M.D.; J. Gocke N.P.; R. Ravikumar, M.D.; Finlander, M.D.;
5 Olukanmi; Fitter, M.D.; and Mostafania, M.D. (*Id.* at 2-3.)
6

7 Plaintiff alleges that, on July 17, 2009, while he was incarcerated
8 at CSP-LAC, defendant Correctional Officer Chavez entered his hospital
9 room and took his Bible. (First Amended Complaint at 3.) When
10 plaintiff objected, Chavez grabbed his injured arm, dragged him out of
11 bed, and repeatedly punched him. (*Id.*) Plaintiff suffered two broken
12 front teeth and other injuries, including a re-injury of his shoulder.
13 (*Id.*) Chavez then charged plaintiff with assaulting *him*. (*Id.*)
14

15 Plaintiff further alleges that, on another occasion, defendant
16 Chavez: tore away plaintiff's blanket and threw his wheelchair at him,
17 injuring plaintiff's ankle; made sexual advances to plaintiff; and
18 claimed to have urinated in plaintiff's kosher meal. (Complaint at 3.)
19 Plaintiff asserts that Chavez slandered plaintiff, called him names, and
20 endangered his safety, and Chavez and other CSP-LAC staff starved
21 plaintiff. (*Id.*) Plaintiff further contends that he was sexually
22 abused and tormented by Chavez and other CSP-LAC staff since his arrival
23 at the prison, and that the appeals coordinators and medical staff lied
24 and engaged in cover-ups. (*Id.*)
25

26 Plaintiff seeks release from prison to "a regular and civilian
27 hospital," an award of court costs, and methadone for his chronic pain.
28 (First Amended Complaint at 3-4.)

1 DISCUSSION

2
3 I. PLAINTIFF'S EXCESSIVE FORCE CLAIMS AGAINST DEFENDANT CHAVEZ
4 WITHSTAND SCREENING; PLAINTIFF'S OTHER CLAIMS AGAINST CHAVEZ MUST
5 BE DISMISSED.
6

7 Plaintiff's factual allegations are sufficient to allege Eighth
8 Amendment claims against defendant Chavez for excessive force on two
9 occasions: (1) on July 17, 2009, when Chavez allegedly dragged
10 plaintiff out of his hospital bed and repeatedly punched him; and (2)
11 on an unspecified date, when Chavez allegedly threw plaintiff's
12 wheelchair at him, injuring his ankle. (First Amended Complaint at 3.)
13

14 With respect to plaintiff's allegation that Chavez told him that
15 Chavez had urinated in plaintiff's food, it is unclear whether plaintiff
16 is alleging that Chavez actually did so, or only that Chavez verbally
17 harassed him by claiming to have done so. An allegation that a
18 correctional officer urinated in an inmate's food is sufficient to state
19 an Eighth Amendment claim. The protections of the Eighth Amendment,
20 however, do not extend to verbal harassment. See Blueford v. Prunty,
21 108 F.3d 251, 254-55 (9th Cir. 1997) (holding that a prison guard who
22 engaged in "vulgar same-sex trash talk" with inmates was entitled to
23 qualified immunity); Keenan v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996)
24 (holding that verbal threats and harassment do not state an Eighth
25 Amendment claim). For the same reason, plaintiff's allegations that
26 defendant Chavez slandered him and called him names do not state an
27 Eighth Amendment claim. See Oltarzewski v. Ruggiero, 830 F.2d 136, 139
28 (9th Cir. 1987) (directing vulgar language at an inmate does not state

1 a constitutional claim). Plaintiff may be alleging that the "names"
2 applied to him by Chavez endangered his safety; however, he has not
3 adequately alleged a claim for deliberate indifference to his safety,
4 because he does not state what the "names" were, in what manner they
5 endangered his safety, and whether the risk to his safety ever
6 materialized. *Contrast Valandingham v. Bojorquez*, 866 F.2d 1135, 1137-
7 38 (9th Cir. 1989)(allegations that prison guards called plaintiff a
8 "snitch" and other inmates then threatened plaintiff with harm stated
9 a claim).

10
11 With respect to plaintiff's allegations that Chavez made sexual
12 advances towards him and sexually abused him, prisoners have a right to
13 be free from sexual abuse by prison guards. See *Austin v. Terhune*, 367
14 F.3d 1167, 1171 (9th Cir. 2004); *Schwenk v. Hartford*, 204 F.3d 1187,
15 1197 (9th Cir. 2000). Verbal sexual harassment, however, does not
16 necessarily violate the Eighth Amendment. *Austin*, 367 F.3d at 1171-72
17 (finding no Eighth Amendment violation when prison guard in control
18 booth briefly exposed his genitals to inmate but never touched him).
19 Plaintiff's allegations are insufficiently specific to determine whether
20 he is alleging actionable sexual abuse.

21
22 To the extent plaintiff alleges that Chavez and other CSP-LAC
23 officials "starved" him, the Eighth Amendment requires prisoners to
24 receive food adequate to maintain health. *LeMaire v. Maass*, 12 F.3d
25 1444, 1456 (9th Cir. 1993). Plaintiff does not describe the nature of
26 the deficiency in the food he received, however, nor does he allege in
27 what manner Chavez was responsible for the deprivation. There is no
28 indication in the First Amended Complaint that Chavez was responsible

1 for preparing or delivering plaintiff's meals. See Leer v. Murphy, 844
2 F.2d 628, 633 (9th Cir. 1988)(deliberate indifference inquiry focuses
3 on the duties and responsibilities of particular defendant).
4

5 Accordingly, plaintiff's claims against defendant Chavez, except
6 for his excessive force claims, must be dismissed. **Plaintiff is**
7 **cautioned that although his excessive force claims against Chavez have**
8 **withstood screening, plaintiff must re-allege them in his Second Amended**
9 **Complaint in order to continue to pursue them.**

10
11 **II. PLAINTIFF FAILS TO ALLEGE A FACTUAL BASIS FOR SUING ANY DEFENDANT**
12 **EXCEPT CHAVEZ.**

13
14 In addition to defendant Chavez, plaintiff has sued 43 other
15 individuals and two entities. Plaintiff has neither identified the
16 nature of his claims against these other defendants nor set forth the
17 facts on which his claims against them are based. In his First Amended
18 Complaint, plaintiff has described incidents concerning defendant Chavez
19 alone.

20
21 The Court recognizes that plaintiff has attached to the First
22 Amended Complaint copies of his grievances, which mention individual
23 defendants other than Chavez. However, it is not the Court's
24 responsibility to scour through plaintiff's exhibits to determine
25 whether they contain a factual basis for a possible constitutional
26 claim. It is plaintiff's responsibility to set forth, with respect to
27 each defendant, "a short and plain statement of the claim" showing that
28 he is entitled to relief. Fed. R. Civ. P. 8(a). While plaintiff may

1 attach and incorporate exhibits to supplement his allegations, the
2 exhibits are not a substitute for the substantive allegations that must
3 be contained within the body of the complaint. See Hodgins v. Woodford,
4 2007 WL 852113, *4 (E.D. Cal., Mar. 21, 2007)("[Plaintiff] fails . . .
5 to state what it is that each defendant has done that constitutes a
6 deprivation of his constitutional rights. Instead, plaintiff apparently
7 intends to have the court and the parties sort through his exhibits and
8 put together the factual predicate of his claims."), adopted by 2007 WL
9 2789433 (E.D. Cal. Sep. 25, 2007).

10
11 To give each defendant the notice required by Rule 8, plaintiff
12 must "make clear connections between specific allegations and individual
13 defendants." McHenry v. Renne, 84 F.3d 1172, 1175 (9th Cir. 1996).
14 Plaintiff must set forth, as to each defendant, "factual content that
15 allows the court to draw the reasonable inference that the defendant is
16 liable for the misconduct alleged." Ashcroft v. Iqbal, ___ U.S. ___,
17 129 S. Ct. 1937, 1949 (2009). Because plaintiff has utterly failed to
18 identify, or provide a factual basis for, his claims against any
19 defendant except Chavez, his claims against the other defendants must
20 be dismissed.¹

21
22 If plaintiff elects to pursue this action, he must identify the
23 nature of the claim he is asserting against each defendant named in the
24 Second Amended Complaint. Furthermore, plaintiff must allege, with
25 respect to each defendant, facts from which the Court can reasonably
26

27 ¹ The Court also notes that some of the defendants are
28 apparently officials of SVSP rather than CSP-LAC. The First Amended
Complaint does not describe any incidents at SVSP.

1 infer that, if plaintiff's allegations are true, that defendant is
2 liable for the constitutional deprivation for which plaintiff seeks to
3 hold him or her liable. See Iqbal, 129 S. Ct. at 1949 (Rule 8 requires
4 more than an unadorned "the-defendant-unlawfully-harmed-me" accusation).
5 If plaintiff cannot truthfully allege a factual basis for asserting
6 constitutional claims against some of the 46 defendants, he should omit
7 those defendants from the Second Amended Complaint.

8
9 **III. PLAINTIFF'S CLAIMS AGAINST SVSP AND CSP-LAC ARE BARRED BY THE**
10 **ELEVENTH AMENDMENT.**

11
12 Plaintiff has included as defendants two prisons, SVSP and CSP-LAC.
13 (Complaint at 2.)

14
15 The Eleventh Amendment prohibits federal jurisdiction over claims
16 against a state and its agencies unless the state consents to suit.
17 Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 100, 104 S.
18 Ct. 900, 908 (1984). The Ninth Circuit has explained: "In the absence
19 of a waiver by the state or a valid congressional override, under the
20 [E]leventh [A]mendment, agencies of the state are immune from private
21 damage actions or suits for injunctive relief brought in federal court."
22 Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999)(*internal*
23 *quotation marks and citation omitted*). The State of California has not
24 waived its Eleventh Amendment immunity with respect to claims brought
25 under Section 1983 in federal court, and the Supreme Court has held that
26 Section 1983 was not intended to abrogate a State's Eleventh Amendment
27 immunity. Dittman, 191 F.3d at 1025-26.

1 SVSP and CSP-LAC are entities within the California Department of
2 Corrections and Rehabilitation ("CDCR"), which is a state agency immune
3 from suit under the Eleventh Amendment. See Brown v. California Dept.
4 of Corrections, 554 F.3d 747, 752 (9th Cir. 2009)(CDCR is entitled to
5 Eleventh Amendment immunity). Thus, plaintiff's claims against SVSP and
6 CSP-LAC are barred by Eleventh Amendment immunity,² and his claims
7 against SVSP and CSP-LAC must be dismissed for this additional reason.

8
9 **IV. PLAINTIFF CANNOT ALLEGE A CONSTITUTIONAL CLAIM BASED ON THE**
10 **PROCESSING OF HIS GRIEVANCES.**

11
12 The defendants sued by plaintiff in this action include: N.
13 Grannis, Chief of the Inmate Appeals Branch; "Facility Captain Appeals
14 Examiner" S. Wright; Appeals Coordinator J. Curiel; T. Van Dongen,
15 Health Care Appeals Coordinator; and P. Gailbraith, Health Care Appeals
16 Coordinator. (First Amended Complaint at 3.) Plaintiff may also have
17 sued other defendants based on their involvement in processing his
18 grievances. (See *id.*).

19
20 A prisoner cannot state a due process claim based on the handling
21 of his grievances. See Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir.
22 2003)("inmates lack a separate constitutional entitlement to a specific
23 prison grievance procedure"); Mann v. Adams, 855 F.2d 639, 640 (9th Cir.

24
25 _____
26 ² In his original complaint, plaintiff also named the CDCR as
27 a defendant. Plaintiff has omitted the CDCR from the list of defendants
28 in the First Amended Complaint. Thus, the CDCR is not currently a
defendant. In any event, the Eleventh Amendment precludes plaintiff
from pursuing Section 1983 claims against the CDCR in federal court.
See Brown, 554 F.3d at 752.

1 1988)("There is no legitimate claim of entitlement to a grievance
2 procedure."); see also Larkin v. Watts, 300 Fed. Appx. 501, 2008 WL
3 4946284, *1 (9th Cir., Nov. 12, 2008)(plaintiff's "claim that the
4 defendants improperly processed his administrative complaints or
5 grievances does not give rise to a cognizable constitutional or Bivens
6 claim.")(citable under Fed. R. App. P. 32.1(a) and Ninth Circuit Rule
7 36-3).

8
9 Accordingly, to the extent plaintiff's claims arise out of his
10 dissatisfaction with the handling of his grievances, they must be
11 dismissed for this additional reason.

12 13 CONCLUSION

14
15 For the foregoing reasons, the First Amended Complaint is dismissed
16 with leave to amend. If plaintiff wishes to pursue this action, he is
17 granted thirty (30) days from the date of this Memorandum and Order
18 within which to file a Second Amended Complaint that attempts to cure
19 the defects in the First Amended Complaint described herein. The Second
20 Amended Complaint, if any, shall be complete in itself. It shall not
21 refer in any manner to the original Complaint or the First Amended
22 Complaint. **Plaintiff may not add new claims or new defendants without**
23 **obtaining prior leave of court. Fed. R. Civ. P. 15(a)**

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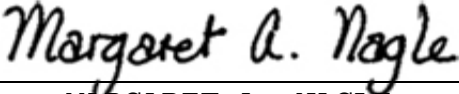
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1 Plaintiff is explicitly cautioned that failure to timely file a
2 Second Amended Complaint, or failure to correct the deficiencies
3 described herein, may result in a recommendation that this action be
4 dismissed pursuant to Fed. R. Civ. P. 41(b).

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6 DATED: December 8, 2010

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10 MARGARET A. NAGLE
11 UNITED STATES MAGISTRATE JUDGE
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