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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TREMAINE CARROLL,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

Case No. 2:18-cv-01832-SVW-JC

ORDER (1) DISMISSING COMPLAINT WITH LEAVE TO AMEND; (2) DENYING PLAINTIFF’S REQUEST FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION; AND (3) DIRECTING PLAINTIFF TO RESPOND TO ORDER

I. INTRODUCTION

On or about February 27, 2018, Tremaine Carroll (“plaintiff”), who is in custody, is proceeding *pro se*, and has been granted leave to proceed without prepayment of filing fees (“IFP”), submitted a document entitled “Petition for Preliminary Injunctive Relief, Temporary Restraining Order, Civil Action U.S. 1983, Appointment of Counsel,” which is liberally construed as a Civil Rights Complaint (“Complaint” or “Comp.”) filed pursuant to 42 U.S.C. § 1983 (“Section 1983”) and the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101, *et seq.*¹ (Docket No. 1). The Complaint sues the following unnamed defendants in

¹As detailed in this Court’s March 18, 2021 Order (Docket No. 13 at 2-4), this case was previously dismissed without prejudice on May 15, 2018, due to plaintiff’s prolonged failure to
(continued...)

1 their individual and official capacities: (1) the State of California (Doe 1); (2) the
2 Director of the California Department of Corrections and Rehabilitation (“CDCR”)
3 (Doe 2); (3) the Secretary of the CDCR (Doe 3); (4) the Chief Medical Officer of
4 the CDCR (Doe 4); (5) the “Contract/Signer of Contract” for the CDCR (Doe 5);
5 (6) the Warden of the California State Prison - Los Angeles County (“CSP-LAC”)
6 (Doe 6); (7) the “CMO” (Doe 7); (8) the “CDCR Mental Health CMO” (Doe 8);
7 (9) the Mental Health Supervisor (Doe 9); and (10) the CSP-LAC Nursing
8 Supervisor (Doe 10). (Comp. at 3). Although far from clear, the Complaint
9 appears to claim that defendants violated plaintiff’s rights under the ADA and the
10 United States Constitution by retaliating against him for submitting complaints and
11 by failing to accommodate plaintiff’s disabilities, to protect him from harm, and to
12 provide adequate medical care, among other violations.² (See Comp. at 1-3).
13 Within the Complaint, plaintiff also requests a temporary restraining order
14 (“TRO”) and preliminary injunction to have plaintiff removed from CDCR custody
15 and placed in a “federal medical facility” because there is “nowhere safe for him to
16 go in CDCR” due to his “medical/mental health impairments and CDCR’s constant
17 retaliation for [plaintiff] reporting being the victim of employee sexual
18 misconduct.” (See Comp. at 1-2).

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21 ¹(...continued)

22 comply with the Court’s orders and applicable rules by either paying the filing fee or submitting
23 an IFP request and inmate trust account statement, among other requirements. On March 18,
24 2021, the case was reopened as the Court vacated the dismissal order and judgment upon finding
25 sufficient grounds for reopening this action based on excusable neglect. Plaintiff was again
ordered to either pay the filing fee or submit an IFP request and inmate trust account statement.
After further delays, plaintiff eventually submitted the required IFP documents, and the Court
granted plaintiff leave to proceed IFP on June 24, 2022. (Docket No. 20).

26 ²Although the Complaint does not mention the Constitution or any provisions therein, the
27 Court construes the Complaint liberally and assumes plaintiff intends to assert claims for
28 violation of his constitutional rights, as discussed below.

1 For the reasons explained below, the Complaint is dismissed with leave to
2 amend, and plaintiff's request for a TRO and preliminary injunction is denied
3 without prejudice.

4 **II. THE COMPLAINT**

5 **A. Allegations**

6 The Complaint, liberally construed, alleges the following:

7 Plaintiff suffers from mental and physical disabilities, including mobility
8 and hearing impairments, for which he is designated by CDCR at the "EOP"
9 (Enhanced Outpatient) level of care. (Comp. at 1). The CDCR assertedly does not
10 heed the requirements of the ADA or federal and state laws regarding such
11 disabilities. (Comp. at 2).

12 At CSP-LAC, where plaintiff was previously housed, the California
13 Inspector General deemed the facilities non-compliant with ADA accessibility
14 guidelines due to the lack of ramps, railings, and other accommodations in the
15 showers, cells, restrooms, paths of travel, and all other areas accessed by inmates
16 and staff who rely on mobility assistance devices. (Comp. at 2). When plaintiff
17 arrived at CSP-LAC, he submitted several administrative complaints and
18 reasonable accommodation requests noting that his placement at the prison violates
19 his ADA rights, but he received no response. (Comp. at 2).

20 Plaintiff was severely injured while falling in his wheelchair, and he
21 continues to suffer due to a lack of adequate medical treatment following the
22 incident. (Comp. at 2). However, plaintiff's health care requests and grievances
23 have been ignored, denied, lost, rejected, or cancelled, in an effort by CDCR to
24 deprive plaintiff of due process and prevent him from exhausting his administrative
25 remedies regarding issues that place him in "clear imminent danger" of physical
26 injury or death. (Comp. at 2-3).

27 Plaintiff has also been subject to "CDCR's constant retaliation for [plaintiff]
28 reporting being the victim of employee sexual misconduct." (Comp. at 2).

1 Plaintiff seeks damages for defendants’ “failure to protect” him from
2 “physical/mental injury,” and for “participating/supervising [and] authorizing
3 cover-ups, code-of-silence, etc.” (Comp. at 3).

4 **B. Pertinent Law**

5 **1. The Screening Requirement**

6 As plaintiff is a prisoner proceeding IFP on a civil rights complaint against
7 governmental defendants, the Court must screen the Complaint, and is required to
8 dismiss the case at any time it concludes the action is frivolous or malicious, fails
9 to state a claim on which relief may be granted, or seeks monetary relief against a
10 defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(B),
11 1915A; 42 U.S.C. § 1997e(c); Byrd v. Phoenix Police Dep’t, 885 F.3d 639, 641
12 (9th Cir. 2018) (citations omitted).

13 When screening a complaint to determine whether it states any claim that is
14 viable, the Court applies the same standard as it would when evaluating a motion
15 to dismiss under Federal Rule of Civil Procedure 12(b)(6). See Rosati v. Igbinoso,
16 791 F.3d 1037, 1039 (9th Cir. 2015) (citation omitted). Rule 12(b)(6), in turn, is
17 read in conjunction with Rule 8(a) of the Federal Rules of Civil Procedure.
18 Zixiang Li v. Kerry, 710 F.3d 995, 998-99 (9th Cir. 2013). Under Rule 8, each
19 complaint filed in federal court must contain a “short and plain statement of the
20 claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While
21 Rule 8 does not require detailed factual allegations, at a minimum a complaint
22 must allege enough specific facts to provide *both* “fair notice” of the particular
23 claim being asserted *and* “the grounds upon which [that claim] rests.” Bell
24 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 & n.3 (2007) (citation and quotation
25 marks omitted); see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (Rule 8
26 pleading standard “demands more than an unadorned, the-defendant-unlawfully-
27 harmed-me accusation”) (citing Twombly, 550 U.S. at 555).

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1 To avoid dismissal on screening, a complaint must “contain sufficient
2 factual matter, accepted as true, to state a claim to relief that is plausible on its
3 face.” Byrd, 885 F.3d at 642 (citations omitted); see also Johnson v. City of
4 Shelby, Mississippi, 574 U.S. 10, 12 (2014) (per curiam) (Twombly and Iqbal
5 instruct that plaintiff “must plead facts sufficient to show that [plaintiff’s] claim
6 has substantive plausibility”). A claim is “plausible” when the facts alleged in the
7 complaint would support a reasonable inference that the plaintiff is entitled to relief
8 from a specific defendant for specific misconduct. Iqbal, 556 U.S. at 678 (citation
9 omitted); see also Keates v. Koile, 883 F.3d 1228, 1242 (9th Cir. 2018) (“[A]
10 [Section 1983] plaintiff must plead that each Government-official defendant,
11 through the official’s own individual actions, has violated the Constitution.”)
12 (quoting Iqbal, 556 U.S. at 676); Gauvin v. Trombatore, 682 F. Supp. 1067, 1071
13 (N.D. Cal. 1988) (complaint “must allege the basis of [plaintiff’s] claim against
14 *each* defendant” to satisfy Rule 8 requirements) (emphasis added). Allegations
15 that are “merely consistent with” a defendant’s liability, or reflect only “the mere
16 possibility of misconduct” do not “show[] that the pleader is entitled to relief” (as
17 required by Fed. R. Civ. P. 8(a)(2)), and thus are insufficient to state a claim that is
18 “plausible on its face.” Iqbal, 556 U.S. at 678-79 (citations and quotation marks
19 omitted).

20 At this preliminary stage, “well-pleaded factual allegations” in a complaint
21 are assumed true, while “[t]hreadbare recitals of the elements of a cause of action”
22 and “legal conclusion[s] couched as a factual allegation” are not. Id. (citation and
23 quotation marks omitted); Jackson v. Barnes, 749 F.3d 755, 763 (9th Cir. 2014)
24 (“mere legal conclusions ‘are not entitled to the assumption of truth’”) (quoting
25 Iqbal, 556 U.S. at 678-79), cert. denied, 574 U.S. 1077 (2015). In addition, the
26 Court is “not required to accept as true conclusory allegations which are
27 contradicted by documents referred to in the complaint,” Steckman v. Hart
28 Brewing, Inc., 143 F.3d 1293, 1295-96 (9th Cir. 1998) (citation omitted), and

1 “need not [] accept as true allegations that contradict matters properly subject to
2 judicial notice or by exhibit,” Sprewell v. Golden State Warriors, 266 F.3d 979,
3 988 (9th Cir.), amended on denial of reh’g, 275 F.3d 1187 (9th Cir. 2001) (citation
4 omitted).

5 In general, civil rights complaints are interpreted liberally in order to give
6 *pro se* plaintiffs “the benefit of any doubt.” Byrd, 885 F.3d at 642 (citations and
7 internal quotation marks omitted). Nonetheless, a *pro se* plaintiff must still follow
8 the rules of procedure that govern all litigants in federal court, including the
9 Rule 8 requirement that a complaint minimally state a short and plain statement of
10 a claim that is plausible on its face. See Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir.
11 1995) (per curiam) (“Although we construe pleadings liberally in their favor, pro
12 se litigants are bound by the rules of procedure.”) (citation omitted), cert. denied,
13 516 U.S. 838 (1995); see also Chapman v. Pier 1 Imports (U.S.) Inc., 631 F.3d 939,
14 954 (9th Cir. 2011) (en banc) (“[A] liberal interpretation of a . . . civil rights
15 complaint may not supply essential elements of [a] claim that were not initially
16 pled.”) (quoting Pena v. Gardner, 976 F.2d 469, 471 (9th Cir. 1992)) (quotation
17 marks omitted; ellipses in original).

18 If a *pro se* complaint is dismissed because it does not state a viable claim,
19 the court must freely grant “leave to amend” if it is “at all possible” that the
20 plaintiff could fix the identified pleading errors by alleging different or new facts.
21 Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1058 (9th
22 Cir. 2011) (citation omitted); Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir.
23 2000) (en banc) (citations and internal quotation marks omitted).

24 **2. Section 1983 Claims**

25 To state a Section 1983 claim, a complaint must allege that a defendant,
26 while acting under color of state law, caused a deprivation of the plaintiff’s federal
27 rights. 42 U.S.C. § 1983; West v. Atkins, 487 U.S. 42, 48 (1988) (citations
28 omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (citation omitted).

1 There is no vicarious liability in Section 1983 lawsuits. Iqbal, 556 U.S. at 676.
2 (citing, *inter alia*, Monell v. Dep’t of Soc. Servs. of the City of New York, 436
3 U.S. 658, 691 (1978)). Hence, a government official may not be held liable under
4 Section 1983 unless the particular official’s own actions caused the alleged
5 constitutional deprivation. OSU Student Alliance v. Ray, 699 F.3d 1053, 1069
6 (9th Cir. 2012) (citing Iqbal, 556 U.S. at 676), cert. denied, 571 U.S. 819 (2013).
7 A Section 1983 plaintiff must establish both causation-in-fact and proximate (*i.e.*,
8 legal) causation. See Harper v. City of Los Angeles, 533 F.3d 1010, 1026 (9th Cir.
9 2008). Allegations regarding Section 1983 causation “must be individualized and
10 focus on the duties and responsibilities of each individual defendant whose acts or
11 omissions are alleged to have caused a constitutional deprivation.” Leer v.
12 Murphy, 844 F.2d 628, 633 (9th Cir. 1988) (citations omitted). “Sweeping
13 conclusory allegations [regarding causation] will not suffice” Id. (citation
14 omitted).

15 An individual “causes” a constitutional deprivation basically when he
16 (1) “does an affirmative act, participates in another’s affirmative acts, or omits to
17 perform an act which he is legally required to do that causes the deprivation”; or
18 (2) “set[s] in motion a series of acts by others which the [defendant] knows or
19 reasonably should know would cause others to inflict the constitutional injury.”
20 Lacey v. Maricopa County, 693 F.3d 896, 915 (9th Cir. 2012) (en banc) (quoting
21 Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978)) (quotation marks
22 omitted).

23 Similarly, a government official acting in a supervisory capacity “causes” a
24 deprivation to the extent he (1) personally participates in or directs a subordinate’s
25 constitutional violation; or (2) was not “physically present when the [plaintiff’s]
26 injury occurred,” but the constitutional deprivation can, nonetheless, be “directly
27 attributed” to the supervisor’s own wrongful conduct. Starr v. Baca, 652 F.3d
28 1202, 1207 (9th Cir. 2011), cert. denied 566 U.S. 982 (2012); see also OSU

1 Student Alliance, 699 F.3d at 1069 (citing Iqbal, 556 U.S. at 676). Under the latter
2 theory, even absent “overt personal participation,” a supervisor may be liable under
3 Section 1983 if he or she created, promulgated, implemented, advanced, or was
4 otherwise responsible for the continued operation of a policy that “requires
5 subordinates to commit constitutional violations,” and enforcement of the policy
6 (either by the defendant-supervisor or his/her subordinates) proximately caused the
7 plaintiff’s constitutional injury. OSU Student Alliance, 699 F.3d at 1076 (citing
8 Dodds v. Richardson, 614 F.3d 1185, 1199 (10th Cir. 2010), cert. denied, 563 U.S.
9 960 (2011)); see also Crowley v. Bannister, 734 F.3d 967, 977 (9th Cir. 2013)
10 (supervisory officials may be held liable “even without overt personal participation
11 in the offensive act if supervisory officials implement a policy so deficient that the
12 policy ‘itself is a repudiation of constitutional rights’ and is ‘the moving force of a
13 constitutional violation’”) (citation and internal quotation marks omitted).

14 **C. Discussion**

15 Plaintiff’s Complaint is dismissed with leave to amend for violation of
16 Rules 8 and 10 of the Federal Rules of Civil Procedure, among other deficiencies.

17 The Complaint fails to comply with Rule 10(a) because it does not name “all
18 the parties” in the caption. See Ferdik v. Bonzelet, 963 F.2d 1258, 1263 (9th Cir.),
19 as amended (May 22, 1992) (affirming dismissal of action based on failure to
20 comply with court order that complaint be amended to name all defendants in
21 caption as required by Rule 10(a)), cert. denied, 506 U.S. 915 (1992). The caption
22 names only the “State of California, et al.,” which does not suffice. (Comp. at 1).
23 Dismissal with leave to amend is therefore warranted for violation of Rule 10(a).

24 The Complaint violates Rule 8(a) because it fails to provide “fair notice” as
25 to which defendants are being sued for what particular conduct, and on what legal
26 grounds. See Twombly, 550 U.S. at 555 & n.3 (Rule 8(a) requires a complaint to
27 give “fair notice” of the particular claims being asserted against them and “the
28 grounds upon which [the claims] rest[.]”) (citation and quotation marks omitted);

1 McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (purpose of Rule 8(a) is to
2 ensure that a complaint “fully sets forth who is being sued, for what relief, and on
3 what theory, with enough detail to guide discovery”); see also Cafasso, 637 F.3d at
4 1058 (a complaint violates Rule 8 if a defendant would have difficulty
5 understanding and responding to the complaint). The three-page handwritten
6 Complaint (not including exhibits) instead generally alleges various purported civil
7 rights violations or other conduct – such as “failure to protect, physical/mental
8 injury, participating/supervising, authorizing cover-ups, code-of-silence, etc.”
9 (Comp. at 3) – and lists ten different (albeit unnamed) defendants who hold a
10 variety of different positions within the CDCR and CSP-LAC, yet plaintiff never
11 indicates what each defendant did to harm plaintiff, or on what legal ground(s)
12 each defendant is being sued. Moreover, aside from general references to Section
13 1983 and the ADA, plaintiff fails to identify any statutes, constitutional provisions,
14 or other legal grounds at issue in this action. As such, the Complaint clearly fails
15 to give defendants fair notice of the claims against them, and dismissal is therefore
16 warranted for violation of Rule 8. To remedy this problem, plaintiff must, at a
17 minimum, separate each legal predicate into a separate claim and expressly identify
18 which defendant(s) are sued in each claim, and which allegations are at issue in
19 each claim.

20 Given these violations of the Federal Rules of Civil Procedure, the Court
21 must dismiss the Complaint with leave to amend. The Court will nevertheless
22 highlight several other deficiencies in the Complaint.

23 First, plaintiff fails to allege a violation of his rights under ADA. To state an
24 ADA claim, plaintiff must essentially show that (1) he is a qualified individual
25 with a disability; (2) he was excluded from participation in or otherwise
26 discriminated against with regard to a public entity’s services, programs, or
27 activities, and (3) such exclusion or discrimination was by reason of his

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1 disability.³ Lovell v. Chandler, 303 F.3d 1039, 1052 (9th Cir. 2002), cert. denied,
2 537 U.S. 1105 (2003); see 42 U.S.C. § 12132. Plaintiff alleges that CSP-LAC’s
3 facilities do not comply with ADA accessibility guidelines because the facilities
4 are “unsafe” due to “hazardous” showers, restrooms, cells, and paths of travel, and
5 a lack of “ramps, rails, etc.” to accommodate plaintiff’s mobility impairment.
6 (Comp. at 2). However, notwithstanding these general allegations of non-
7 compliance, plaintiff fails to allege facts showing that he was excluded from any
8 service, program, or activity because of his disabilities, as required to state an ADA
9 claim.⁴

10 Second, plaintiff also fails to state a claim predicated on defendants’
11 retaliation against him for reporting misconduct. To prevail on a First Amendment
12 retaliation claim, plaintiff must demonstrate that (1) he engaged in conduct that is
13 protected under the First Amendment; (2) a government official took “adverse
14 action” against him; (3) plaintiff’s protected conduct was the “substantial or
15 motivating factor” behind the official’s action; (4) the official’s retaliatory action
16 “would chill or silence a person of ordinary firmness from future First Amendment
17 activities”; and (5) the action “did not advance legitimate goals” institution because
18 it was either “arbitrary and capricious” or “unnecessary to the maintenance of order
19 in the institution.” Watison v. Carter, 668 F.3d 1108, 1114-15 (9th Cir. 2012)

21 ³The provisions of the ADA only provide for causes of action against public entities, not
22 public officials sued in their individual capacities. See 42 U.S.C. § 12132; Miranda B. v.
23 Kitzhaber, 328 F.3d 1181, 1187 (9th Cir. 2003); see also Baribeau v. City of Minneapolis, 596
24 F.3d 465, 484 (8th Cir. 2010) (“Individuals in their personal capacities [] are not subject to suit
25 under Title II [of the ADA], which provides redress only from public entities.”) (per curiam)
(citing Alsbrook v. City of Maumelle, 184 F.3d 999, 1005 n.8 (8th Cir. 1999) (en banc), cert.
dismissed, 529 U.S. 1001 (2000)).

26 ⁴In addition, to obtain damages under Title II of the ADA, plaintiff would need to
27 demonstrate that the defendant public entity acted with deliberate indifference. Duvall v. County
28 of Kitsap, 260 F.3d 1124, 1138-39 (9th Cir. 2001). Moreover, any claim for injunctive relief
with respect to CSP-LAC appears to be moot here as plaintiff is no longer housed at such
facility, as discussed below.

1 (citations and internal quotation marks omitted). A complaint that does not allege
2 a “chilling effect” may still state a viable retaliation claim if it alleges that plaintiff
3 “suffered some other harm . . . that is more than minimal. . . .” Id. at 1114
4 (citations and internal quotation marks omitted). Here, plaintiff simply alludes to
5 “CDCR’s constant retaliation for [plaintiff] reporting being the victim of employee
6 sexual misconduct,” without providing any more facts about the nature or
7 circumstances of the purported retaliation. (Comp. at 2). This vague allegation
8 alone fails to plausibly demonstrate that CDCR took any “adverse action” to
9 silence or harm plaintiff, or that plaintiff’s reports were the “substantial or
10 motivating factor” behind the adverse actions. See Watison, 668 F.3d at 1114-15.

11 Third, the Complaint fails to state a claim predicated on a failure to provide
12 humane conditions of confinement or protect plaintiff from harm. To state an
13 Eighth Amendment claim predicated on a failure to provide “humane conditions of
14 confinement” or to protect plaintiff from harm caused by such conditions, plaintiff
15 must allege facts showing that his conditions posed a “substantial risk of serious
16 harm” and that defendants responded to these conditions with “deliberate
17 indifference” – *i.e.*, that defendants actually knew that the conditions posed a
18 substantial risk of serious harm to plaintiff, but purposely “disregard[ed] that risk
19 by failing to take reasonable measures to abate it.” See Farmer v. Brennan, 511
20 U.S. 825, 837, 847 (1994). Here, as stated above, plaintiff alleges that CSP-LAC’s
21 facilities do not comply with ADA accessibility guidelines and are “unsafe” due to
22 “hazardous” showers, restrooms, cells, and paths of travel, and a lack of “ramps,
23 rails, etc.” to accommodate plaintiff’s mobility impairment. (Comp. at 2). Plaintiff
24 also alleges that he “was severely injured while falling in his wheelchair” (Comp.
25 at 2), but he offers no information about the circumstances that caused the injury.
26 These general allegations do not sufficiently demonstrate that any of conditions
27 presented a “substantial risk of serious harm” to plaintiff or that any defendants
28 were aware of or deliberately indifferent to such risk.

1 Fourth, the Complaint similarly fails to state a claim predicated on a failure
2 to provide adequate medical care. Prison officials violate the Eighth Amendment
3 when they respond with deliberate indifference to an inmate’s serious medical
4 needs. Estelle v. Gamble, 429 U.S. 97, 103-05 (1976) (citations and footnotes
5 omitted). An inmate’s medical need is sufficiently “serious” if, objectively, the
6 failure to treat it “will result in significant injury or the unnecessary and wanton
7 infliction of pain.” Peralta v. Dillard, 744 F.3d 1076, 1081 (9th Cir. 2014) (en
8 banc) (citations and internal quotation marks omitted). A prison official acts with
9 deliberate indifference when the official is subjectively aware of, but *purposefully*
10 ignores or fails to respond to an “excessive risk to inmate health” (*i.e.*, a serious
11 medical need). Colwell v. Bannister, 763 F.3d 1060, 1066 (9th Cir. 2014)
12 (citations omitted). Here, plaintiff alleges that he “continues to suffer” because he
13 received “either inadequate or no medical treatment” after being injured from a fall
14 in his wheelchair, and his subsequent health care requests and grievances regarding
15 his injuries have been rejected or ignored. (Comp. at 2-3). However, plaintiff does
16 not allege any facts about the type or severity the injuries he suffered, defendants’
17 awareness of these injuries, or the medical treatment (if any) that he received. As
18 such, plaintiff fails to plausibly show that defendants were deliberately indifferent
19 to any “serious medical need.”

20 Fifth, plaintiff fails to state a claim predicated on the processing of plaintiff’s
21 administrative grievances or appeals. (See Comp. at 2-3). Plaintiff has no due
22 process right to a certain grievance procedure, and the processing or rejection of
23 grievances or appeals, without more, cannot serve as a basis for Section 1983
24 liability.⁵ See Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (Prisoners do
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26 ⁵While a prison official’s alleged failure to process an inmate grievance may implicate a
27 prisoner’s First Amendment right of access to the courts, the Complaint fails to state such a
28 claim because plaintiff does not plausibly allege that an actual injury resulted simply from any

(continued...)

1 not have a “separate constitutional entitlement to a specific prison grievance
2 procedure.”) (citation omitted), cert. denied, 541 U.S. 1063 (2004); Mann v.
3 Adams, 855 F.2d 639, 640 (9th Cir.) (due process not violated simply because
4 defendant fails properly to process grievances submitted for consideration), cert.
5 denied, 488 U.S. 898 (1988); see also Shallowhorn v. Molina, 572 F. App’x 545,
6 547 (9th Cir. 2014) (district court properly dismissed Section 1983 claims against
7 defendants who “were only involved in the appeals process”) (citing Ramirez, 334
8 F.3d at 860).

9 Sixth, even if plaintiff had adequately alleged a violation of his rights, he
10 still fails to allege that any of the individual defendants caused such purported
11 violations. As indicated above, “[a] public official is liable under § 1983 only ‘if
12 he *causes* the plaintiff to be subjected to a deprivation of his constitutional rights.’”
13 Baker v. McCollan, 443 U.S. 137, 142 (1979) (citation omitted; emphasis in
14 original); Harper, 533 F.3d at 1026. Public officials cannot be held liable for civil
15 rights violations based simply on their supervisory roles. See Taylor, 880 F.2d at
16 1045 (“There is no respondeat superior liability under section 1983.”) (citation
17 omitted). Instead, as explained above, a government official acting in a
18 supervisory capacity “causes” a deprivation only if he or she personally
19 participated in or directed the alleged violation, or if the alleged violation can
20 otherwise be “directly attributed” to the supervisor’s own wrongful conduct. Starr
21 v. Baca, 652 F.3d at 1207. Here, plaintiff fails to provide facts showing that any
22 defendant caused an alleged violation of plaintiff’s rights.

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25 ⁵(...continued)

26 defendant’s failure to process plaintiff’s grievances, or that any such misconduct actually
27 “hindered his efforts to pursue a [nonfrivolous] legal claim.” Lewis v. Casey, 518 U.S. 343,
28 351-53, 354-55 (1996) (To establish any denial of access claim, a plaintiff must show that he
suffered an “actual injury” as a result of the defendants’ actions.); see generally Bounds v.
Smith, 430 U.S. 817, 821 (1977) (well-established that prisoners have a constitutional right of
access to the courts), abrogated in part on other grounds by, Lewis, 518 U.S. at 354.

1 Seventh, plaintiff cannot assert claims for damages against the State of
2 California or against defendants in their official capacities. An official capacity
3 suit against a public employee is equivalent to a suit against his/her employer.
4 Kentucky v. Graham, 473 U.S. 159, 166 (1985); Hartmann, 707 F.3d at 1127. In
5 this case, the named defendants are employees of the CDCR, a state agency.
6 Holley v. Cal. Dep’t of Corrs., 599 F.3d 1108, 1111 (9th Cir. 2010); Brown v. Cal.
7 Dep’t of Corrs., 554 F.3d 747, 752 (9th Cir. 2009). The Eleventh Amendment
8 prohibits suits against a state or its agencies or departments for legal or equitable
9 relief, Papasan v. Allain, 478 U.S. 265, 276-77 (1986); Pennhurst State Sch. &
10 Hosp. v. Halderman, 465 U.S. 89, 100 (1984), and it bars federal court damages
11 actions. Will v. Mich. Dep’t of State Police, 491 U.S. 58, 71 (1989). “The State of
12 California has not waived its Eleventh Amendment immunity with respect to
13 claims brought under § 1983 in federal court, and the Supreme Court has held that
14 ‘§ 1983 was not intended to abrogate a State’s Eleventh Amendment immunity[.]’”
15 Dittman v. State of Cal., 191 F.3d 1020, 1025-26 (9th Cir. 1999) (citations
16 omitted), cert. denied, 530 U.S. 1261 (2000); Brown, 554 F.3d at 752. Thus, the
17 Eleventh Amendment bars plaintiff’s Section 1983 claims for damages against the
18 State of California and against defendants in their official capacities. Will, 491
19 U.S. at 71; Green v. Mansour, 474 U.S. 64, 73-74 (1985); Graham, 473 U.S. at
20 169-70.

21 Finally, to the extent plaintiff seeks prospective injunctive relief with respect
22 to CSP-LAC, such claims appear moot since plaintiff is no longer housed at such
23 facility and does not allege he has any reasonable expectation of returning to it.
24 See Alvarez v. Hill, 667 F.3d 1061, 1064 (9th Cir. 2012); Johnson v. Moore, 948
25 F.2d 517, 519 (9th Cir. 1991) (per curiam); see also Pride v. Correa, 719 F.3d
26 1130, 1138 (9th Cir. 2013) (“When an inmate challenges prison conditions at a
27 particular correctional facility, but has been transferred from the facility and has no
28 reasonable expectation of returning, his claim [for injunctive relief] is moot.”);

1 Nelson v. Heiss, 271 F.3d 891, 897 (9th Cir. 2001) (“[W]hen a prisoner is moved
2 from a prison, his action will usually become moot as to conditions at that
3 particular facility.”).

4 Accordingly, plaintiff’s Complaint warrants dismissal with leave to amend.

5 **III. REQUEST FOR TEMPORARY RESTRAINING ORDER AND**
6 **PRELIMINARY INJUNCTION**

7 As noted above, plaintiff requests a TRO and preliminary injunction to have
8 plaintiff removed from CDCR custody and placed in a “federal medical facility”
9 because there is “nowhere safe for him to go in CDCR” due to his “medical/mental
10 health impairments and CDCR’s constant retaliation for [plaintiff] reporting being
11 the victim of employee sexual misconduct.” (See Comp. at 1-2).

12 Federal Rule of Civil Procedure 65 authorizes courts to issue TROs and
13 preliminary injunctions. “The standard for issuing a temporary restraining order is
14 identical to the standard for issuing a preliminary injunction.” Lockheed Missile &
15 Space Co. v. Hughes Aircraft Co., 887 F. Supp. 1320, 1323 (N.D. Cal. 1995). A
16 TRO is simply a means to preserve the status quo and prevent irreparable harm
17 until a hearing may be held on the propriety of a preliminary injunction. See Reno
18 Air Racing Ass’n, Inc. v. McCord, 452 F.3d 1126, 1131 (9th Cir. 2006). In either
19 case, courts consider whether a plaintiff is likely to succeed on the merits, whether
20 he is likely to suffer irreparable harm in the absence of preliminary relief, whether
21 the balance of equities tips in his favor, and whether an injunction is in the public
22 interest.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); Edge v.
23 City of Everett, 929 F.3d 657, 663 (9th Cir. 2019), cert. denied, 140 S. Ct. 1297
24 (2020). A preliminary injunction “may only be awarded upon a clear showing that
25 the plaintiff is entitled to such relief.” Winter, 555 U.S. at 22; American Beverage
26 Ass’n v. City & County of San Francisco, 916 F.3d 749, 754 (9th Cir. 2019) (en
27 banc). Here, plaintiff has not clearly shown that he is entitled to the injunctive
28 relief he requests.

1 “A federal court may issue an injunction if it has personal jurisdiction over
2 the parties and subject matter jurisdiction over the claim; it may not attempt to
3 determine the rights of persons not before the court.” Zepeda v. U.S. Immigration
4 & Naturalization Serv., 753 F.2d 719, 727 (9th Cir. 1985); Price v. City of
5 Stockton, 390 F.3d 1105, 1117 (9th Cir. 2004). Here, no defendant has yet been
6 served or appeared in this action and, in light of the dismissal of the Complaint
7 herein, it is not appropriate at this juncture for the Court to order any defendant to
8 be served. As such, this Court has no personal jurisdiction over any defendant.
9 See Omni Capital Intern., Ltd. v. Rudolf Wolff & Co., Ltd., 484 U.S. 97, 104
10 (1987) (“Before a federal court may exercise personal jurisdiction over a
11 defendant, the procedural requirement of service of summons must be satisfied.”);
12 Crowley v. Bannister, 734 F.3d 967, 974-75 (9th Cir. 2013) (“A federal court is
13 without personal jurisdiction over a defendant unless the defendant has been served
14 [with the summons and complaint] in accordance with Fed. R. Civ. P. 4.”) (citation
15 and internal quotation marks omitted). Plaintiff’s requests are therefore premature.
16 See, e.g., Hussain v. Ponce, 2019 WL 1055235, *2 (C.D. Cal. 2019) (“Plaintiff’s
17 [third amended complaint] has not yet been screened in accordance with 28 U.S.C.
18 §§ 1915(e)(2) and 1915A(a) to determine whether it states cognizable claims. The
19 Court therefore has not issued summons and ordered service of the [third amended
20 complaint], and the defendant has not been served or appeared in this action.
21 Accordingly, the Court does not have jurisdiction over the defendant. Without
22 jurisdiction over the defendant, the Court thus lacks the authority to issue
23 injunctive relief against her.”) (citations omitted); Smith v. Oreol, 2017 WL
24 11296962, *2 (C.D. Cal. 2017) (“Plaintiff’s preliminary injunction is premature.
25 Plaintiff has not yet filed a complaint that contains a cognizable claim for relief,
26 and by extension, no defendants have been served with a summons and complaint.
27 Therefore, the Court lacks jurisdiction over any of the individuals alleged to be
28 ///

1 involved in the harassment.”). Accordingly, plaintiff’s request for a TRO and
2 preliminary injunction must be denied without prejudice.

3 **IV. ORDERS**

4 In light of the foregoing, IT IS HEREBY ORDERED that the Complaint is
5 dismissed with leave to amend, and plaintiff’s request for a TRO and preliminary
6 injunction is denied without prejudice.

7 IT IS FURTHER ORDERED that within twenty (20) days of the date of this
8 Order, plaintiff must do one of the following:

9 1. File a First Amended Complaint which cures the pleading defects set
10 forth herein;⁶ or

11 2. Sign and file the attached Notice of Dismissal which will result in
12 the voluntary dismissal of this action without prejudice; or

13 3. File a Notice of Intent to Stand on Complaint, indicating plaintiff’s
14 intent to stand on the original Complaint despite the pleading defects set forth
15 herein, which may result in the dismissal of this action in its entirety based upon
16 such defects.

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19
20 ⁶The Clerk is directed to provide plaintiff with a Central District of California Civil
21 Rights Complaint Form, CV-66, to facilitate plaintiff’s filing of a First Amended Complaint if he
22 elects to proceed in that fashion. Any First Amended Complaint must: (a) be labeled “First
23 Amended Complaint”; (b) be complete in and of itself and not refer in any manner to the original
24 Complaint – *i.e.*, it must include all claims on which plaintiff seeks to proceed (Local Rule 15-
25 2); (c) contain a “short and plain” statement of each of the claim(s) for relief (Fed. R. Civ. P.
26 8(a)); (d) make each allegation “simple, concise and direct” (Fed. R. Civ. P. 8(d)(1)); (e) set
27 forth clearly the sequence of events giving rise to the claim(s) in sequentially “numbered
28 paragraphs, each limited as far as practicable to a single set of circumstances” (Fed. R. Civ. P.
10(b)); (f) allege specifically what the defendant did and how that individual’s conduct
specifically violated plaintiff’s civil rights; (g) state the names of all defendants in the caption
and not include in the body of the First Amended Complaint defendants who are not also named
in the caption (Fed. R. Civ. P. 10(a)); (h) be signed by plaintiff who is proceeding *pro se* (Fed. R.
Civ. P. 11; Local Rule 11-1); and (i) not add defendants or claims that are not reasonably related
to the claim asserted in the original Complaint.

