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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAWRENCE CHRISTOPHER SMITH,

Plaintiff,

vs.

BRIAN L. PARRIOT, et al.,

Defendants.

1:19-cv-00286-NONE-GSA-PC

**ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND THE
COMPLAINT
(ECF No. 36.)**

I. BACKGROUND

Lawrence Christopher Smith (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on February 14, 2019, in the Sacramento Division of the United States District Court for the Eastern District of California. (ECF No. 1.) On March 4, 2019, the case was transferred to this court. (ECF No. 3.)

1 On August 13, 2020, the court screened the Complaint and issued an order requiring
2 Plaintiff to either file an amended complaint or notify the court that he is willing to proceed only
3 with the claims found cognizable by the court. (ECF No. 21.) On September 10, 2020, Plaintiff
4 filed the First Amended Complaint. (ECF No. 22.)

5 The court screened the First Amended Complaint and issued findings and
6 recommendations on September 22, 2020, recommending that this case proceed only against
7 defendants Cantu, W. Gutierrez, and Mattingly for use of excessive force in violation of the
8 Eighth Amendment, and that all other claims and defendants be dismissed for Plaintiff's failure
9 to state a claim, without leave to amend. (ECF No. 24.)

10 On December 10, 2020, the district judge adopted the findings and recommendations in
11 full. (ECF No. 27.) Plaintiff's claims challenging his guilty finding at the disciplinary hearing
12 and his loss of credits were dismissed from this § 1983 case as barred by the decisions in Heck
13 v. Humphrey and Edwards v. Balisok, without prejudice to his filing of a petition for writ of
14 habeas corpus; Plaintiff's unrelated claims were dismissed from this action for violation of Rules
15 18(a) and 20(a) of the Federal Rules of Civil Procedure, without prejudice to filing new cases
16 addressing those claims; all other claims and defendants were dismissed from this case due to
17 Plaintiff's failure to state a claim upon which relief may be granted under § 1983, including
18 defendants Lt. Parriot, Kern County Board of Supervisors, Lisa Green, John Doe (Secretary,
19 CDCR), Kim Holland, L. Gordon Isen, J. Gutierrez, C/O Richard Cuellar, Patrick Matzen, Lt.
20 David Crouse, Lt. T. Kephart, C/O J. Davis, C/O Jon Reimers, and Sgt. R. Cole; and Plaintiff's
21 claims for inadequate medical care, Fourth Amendment violations, conspiracy, due process, false
22 reports and retaliation were likewise dismissed from this action due to Plaintiff's failure to state
23 a claim. (Id.)

24 The First Amended Complaint was served and defendants Cantu, W. Gutierrez, and
25 Mattingly filed an Answer on June 14, 2021. (ECF No. 33.) On June 15, 2021, the court issued
26 a Discovery and Scheduling Order setting forth pretrial deadlines for the parties. (ECF No. 35.)
27 This case is now in the discovery phase.

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1 On July 16, 2021, Plaintiff filed a motion for leave to amend the First Amended
2 Complaint along with a Request for Judicial Notice, and submitted a proposed Second Amended
3 Complaint. (ECF No. 36.) On July 30, 2021, defendants Cantu, W. Gutierrez, and Mattingly
4 filed an opposition to Plaintiff's motion. (ECF No. 37.) The motion is now before the court.
5 Local Rule 230(l).

6 **II. LEAVE TO AMEND – RULE 15(a)**

7 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party's
8 pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is
9 one to which a responsive pleading is required, 21 days after service of a responsive pleading or
10 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. Fed. R. Civ.
11 P. 15(a)(1). Otherwise, a party may amend its pleading only with the opposing party's written
12 consent or the court's leave, and the court should freely give leave when justice so requires. Fed.
13 R. Civ. P. 15(a)(2). Here, Plaintiff has previously amended the complaint, and Defendants have
14 opposed Plaintiff's motion for leave to amend. Therefore, Plaintiff requires leave of court to file
15 an amended complaint.

16 "Rule 15(a) is very liberal and leave to amend 'shall be freely given when justice so
17 requires.'" AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir. 2006)
18 (quoting Fed. R. Civ. P. 15(a)). However, courts "need not grant leave to amend where the
19 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue
20 delay in the litigation; or (4) is futile." Id. The factor of "[u]ndue delay by itself . . . is
21 insufficient to justify denying a motion to amend." Owens v. Kaiser Foundation Health Plan,
22 Inc., 244 F.3d 708, 712, 713 (9th Cir. 2001) (quoting Bowles v. Reade, 198 F.3d 752, 757-58
23 (9th Cir. 1999)). The factors are not given equal weight and futility alone is sufficient to justify
24 the denial of a motion to amend. Washington v. Lowe's HIW Inc., 75 F.Supp.3d 1240, 1245
25 (N.D. Cal. 2014), appeal dismissed (Feb. 25, 2015).

26 **III. PLAINTIFF'S PROPOSED SECOND AMENDED COMPLAINT**

27 Plaintiff is presently incarcerated at Corcoran State Prison, in Corcoran, California. The
28 events at issue in the proposed Second Amended Complaint allegedly took place at the California

1 Correctional Institution (CCI) in Tehachapi, California, when Plaintiff was incarcerated there in
2 the custody of the California Department of Corrections and Rehabilitation (CDCR). Plaintiff
3 names as defendants Kamala D. Harris (former Attorney General, State of California), Doe
4 Defendant (Secretary, CDCR), Kern County Board of Supervisors, Lisa S. Green (District
5 Attorney (D.A.), Kern County), Kim Holland (Warden, California Correctional Institution
6 (CCI)), L. Gordon Isen (Deputy D.A., Kern County), J. Gutierrez (Associate Warden, CCI),
7 Patrick Matzen (Associate Warden, CCI), Lieutenant (Lt.) Kephardt, Lt. Brian L. Parriot, Lt.
8 David Crouse, Sergeant (Sgt.) R. Cole, Sgt. Andres Cantu, Correctional Officer (C/O) Wilfredo
9 Gutierrez, C/O James Mattingly, C/O Richard Cuellar, C/O Jon Reimers, and C/O J. Davis
10 (collectively, "Defendants").

11 A summary of Plaintiff's allegations, as titled by Plaintiff, follows:

12 **Conspiracy**

13 The defendants have conspired to deny me access to the courts in violation of the First
14 Amendment. Based on my initiating the action of Smith v. Allison, 1:10-cv-01814-DAD-JLT
15 before this very court a § 1983 suit which was lodged against several state law enforcement
16 officials for their transgressions against me while incarcerated at California Substance Abuse
17 Treatment Facility and State Prison, transgressions which included the denial of due process
18 rights during disciplinary proceedings and deliberate indifference to serious medical needs etc.,
19 a complaint and its contentions which later led to the actions of Smith v. Chanelo, 1:16-cv-01356-
20 DAD-BAM, Smith v. Knowlton, 1:18-cv-0081-NONE-BAM, Smith v. Weiss, 1:18-cv-00852-
21 DAD-BAM, and Smith v. Gibbs, 1:18-cv-00854-DAD-BAM being opened by the court on its
22 own volition, that the defendants have offensively conspired to silence my voice before the court
23 by denying substantive rights afforded to all under the U.S. Constitution, egregious conduct
24 which has primarily rested on the defendants utilizing violence and denying me due process
25 rights, the facts of which is pled below in concise paragraphs.

26 **Excessive Force**

27 In direct response to a ruling of law entered on the docket for the action of Smith v.
28 Allison, et al., 1:10-cv-01814-DAD-JLT (PC) and as a reprisal of an offensive nature based on

1 utilization of the Department's administrative grievance process against correctional staff,
2 defendants Cantu, W. Gutierrez, Mattingly, Cole, and Parriot utilized illegal physical force
3 against me on February 25, 2015 while conducting their duties as peace officers within the SHU
4 complex at CCI.

5 Concisely submitted is that upon the conclusion of a disciplinary hearing held against me
6 concerning the allegation of my having assaulted defendant Cantu on February 4, 2015 during
7 the escort of me back to my assigned cell within housing unit #8 at CCI by defendants W.
8 Gutierrez, Mattingly, and Cantu, an escort which was monitored by defendants Parriot, Cole, and
9 Cuellar. Defendants W. Gutierrez and Mattingly midway through this escort of me back to my
10 assigned cell for no viable penological reasons whatsoever threw me to the ground face first
11 where defendants W. Gutierrez, Mattingly, and Cantu along with a few other correctional staff
12 members who I cannot identify then began to beat me with their hands, feet, and batons, this
13 while I lay on the ground within mechanical restraints defenseless. Based on this offensive
14 conduct by the defendants, including defendant Cole prohibiting medical staff from properly
15 examining me, I suffered from serious injuries.

16 **Denial of Due Process/Equal Protection**

17 In support of their offensive conduct as stated in subsection A of this complaint,
18 defendants Cantu, W. Gutierrez, Mattingly, Cole, Parriot, and Cuellar authored a false
19 crime/incident report against me for the allegation of my having committed an aggravated battery
20 on defendant Cantu by spitting on his face and for the allegation of having assaulted defendant
21 W. Gutierrez by attempting to ram him with my shoulder. Further, defendants Davis, Kephart,
22 J. Gutierrez, Matzen, Crouse, and Reimers failed to author a report against defendants W.
23 Gutierrez, Cantu, Mattingly for their blatant illegal use of force against me. Furthermore,
24 defendants Holland, Matzen, and J. Gutierrez besides [illegible] through misconduct the false
25 charge of my having committed an aggravated battery on defendant Cantu said defendants along
26 with defendant Crouse sustained the charge of my having committed an aggravated battery on
27 defendant Cantu during a Department tribunal held for this allegation by denying me the right to
28 be heard during the adjudication of this charge against me based on this finding of guilt to which

1 Department officials in Sacramento adopted in full and imposed a determinate SHU term for me
2 to serve.

3 **Failures to Act/Deliberate Indifference**

4 The conduct of the defendants as cited in subsections A and B above are offensive actions
5 which were authorized to be committed against me by defendant Doe based on my initiating civil
6 actions against the Department's personnel before this very court. Such a contention warrants
7 review before the court, based on strong circumstantial evidence and defendant Doe's repeated
8 failures to act, this despite being provided with sufficient notice prior to or and after the date of
9 February 25, 2015 of the abuses of process repeatedly being utilized against me by the
10 Department's personnel that he was charged with leading, notification which was provided to
11 defendant Doe through the Department's litigation coordinator and through the Department's
12 administrative grievance process, as defendant Doe was the ultimate authority in adjudicating all
13 appeals submitted by inmates to the Department's administrative grievance system and more, the
14 Department's disciplinary system itself was defendant Doe's sole domain as well.

15 Upon notification of the defendants transgressions against me as cited in subsections A
16 and B above, notifications that were provided to defendants Green and Isen through
17 administrative channels between CDCR and the Kern County District Attorney's office and by
18 myself personally on several occasions, defendants Green and Isen failed to act, choosing instead
19 not only to enforce a code of silence on behalf of the above named defendants but defendants
20 Green and Isen further went and initiated malicious prosecutions against me for my complaints,
21 conduct by defendants Green and Isen which has made defendant Harris liable in this action for
22 at least the failure to train subordinates under her direction.

23 Additionally, based on defendants Green and Isen's conduct, the municipality of Kern
24 County is liable for suit in this action as well primarily for enforcing a code of silence, negligence,
25 deliberate indifference, and failures to train its county officers based on all of the aforementioned
26 facts cited above.

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1 Plaintiff seeks monetary damages, including punitive damages and injunctive relief.
2 Plaintiff seeks to have the disciplinary charge cleared from his correctional file and restoration
3 of credits lost due to the disciplinary charge.

4 **IV. DEFENDANTS' OPPOSITION TO MOTION TO AMEND**

5 Defendants maintain that Plaintiff's filing of a motion to amend continues a long history
6 of abusive and bad faith tactics in this Court which have resulted in the dismissal of multiple
7 other cases filed by Plaintiff. Defendants argue that Plaintiff again seeks to add unrelated
8 allegations, unrelated Defendants, and Defendants that have already been dismissed by the court.
9 In addition, Defendants argue that Plaintiff's motion should be denied on the basis that (1)
10 Plaintiff's request to amend was made in bad faith, (2) Plaintiff unduly delayed requesting the
11 amendment, (3) amendment would cause prejudice to Defendants, (4) amendment would be
12 futile, and (5) Plaintiff has already had the opportunity to amend in this action.

13 Defendants make reference to five prior cases filed by Plaintiff which were dismissed for
14 failure to state a claim and for bad behavior such as attempting to amend his complaint to add
15 unrelated or previously dismissed defendants, engaging in harassing sexual comments to the
16 female Deputy Attorney General and the Magistrate Judge, and refusing to attend his deposition.

17 **V. DISCUSSION**

18 Plaintiff's proposed Second Amended Complaint suffers from serious deficiencies.

19 **A. First,** Plaintiff's proposed Second Amended Complaint violates Rule 8(a) of the
20 Federal Rules of Civil Procedure.

21 Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited
22 exceptions. Swierkiewicz v. Sorema, N.A., 534 U.S. 506, 512 (2002). Under federal notice
23 pleading, a complaint is required to contain "a short and plain statement of the claim showing
24 that the pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). "Such a statement must simply
25 give defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests."
26 Swierkiewicz, 534 U.S. at 512. Detailed factual allegations are not required, but "[t]hreadbare
27 recitals of the elements of a cause of action, supported by mere conclusory statements, do not
28 suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,

1 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). While a plaintiff’s allegations are taken as
2 true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc.,
3 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). To state a
4 viable claim for relief, Plaintiff must set forth sufficient factual allegations sufficient to state a
5 plausible claim for relief. Iqbal, 556 U.S. at 678-679; Moss v. U.S. Secret Service, 572 F.3d 962,
6 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting this plausibility
7 standard. Id.

8 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d
9 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any
10 heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P.
11 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Rule 8 requires Plaintiff
12 to set forth his claims in short and plain terms, simply, concisely and directly. See Swierkiewicz,
13 534 U.S. at 514 (“Rule 8(a) is the starting point of a simplified pleading system, which was
14 adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8. The Court (and
15 defendant) should be able to read and understand Plaintiff’s pleading within minutes. McHenry
16 v. Renne, 84 F.3d 1172, 1179–80 (9th Cir. 1996).

17 Plaintiff’s proposed Second Amended Complaint, Request for Judicial Notice and
18 exhibits are 678 pages long, which is clearly in violation of Rule 8.

19 **B. Second**, Plaintiff may not reinstate claims or defendants in the proposed Second
20 Amended Complaint that were dismissed from the First Amended Complaint.

21 On September 22, 2020, the Court dismissed all of Plaintiff’s claims and defendants
22 except his excessive force claim against defendants Cantu, W. Gutierrez, and Mattingly. (ECF
23 No. 27.) Plaintiff attempts to reinstate claims and defendants in the proposed Second Amended
24 Complaint that were previously dismissed. Plaintiff attempts to reinstate his claims for
25 conspiracy, violation of due process, claims challenging his guilty finding at the disciplinary
26 hearing, inadequate medical care, false reports, and retaliation. He also attempts to reinstate
27 defendants Lieutenant (Lt.) Brian L. Parriot, Kern County Board of Supervisors, Lisa S. Green
28 (Kern County D.A.), John Doe (Secretary, CDCR), Kim Holland (Warden, CCI), L. Gordon Isen

1 (Deputy D.A., Kern County), J. Gutierrez (Associate Warden), C/O Richard Cuellar, Patrick
2 Matzen (Associate Warden), Lt. David Crouse (Hearing Officer), Lt. T. Kephart, C/O J. Davis,
3 C/O Jon Reimers, and Sgt. R. Cole. All of these claims and defendants were dismissed from the
4 First Amended Complaint by the court on December 10, 2020, without leave to amend.

5 **C. Third,** Plaintiff's state law claims for negligence, failure to train, assault, and
6 battery are subject to dismissal because Plaintiff has not alleged compliance with California's
7 Victim Compensation and Government Claims Board. Plaintiff is required to specifically allege
8 compliance in his complaint. Shirk v. Vista Unified Sch. Dist., 42 Cal.4th 201, 208-09 (Cal.
9 2007); State v. Superior Court of Kings Cnty. (Bodde), 32 Cal.4th 1234, 1239 (Cal. 2004); Mabe
10 v. San Bernardino Cnty. Dep't of Pub. Soc. Servs., 237 F.3d 1101, 1111 (9th Cir. 2001); Mangold
11 v. California Pub. Utils. Comm'n, 67 F.3d 1470, 1477 (9th Cir. 1995);); Karim-Panahi v. Los
12 Angeles Police Dept., 839 F.2d 621, 627 (9th Cir. 1988). Plaintiff has not done so. Therefore,
13 it would be futile to add these claims in a Second Amended Complaint.

14 **D. Finally,** Plaintiff fails to state an excessive force against defendants Parriot, Cole,
15 and Cuellar in the proposed Second Amended Complaint.

16 In the First Amended Complaint Plaintiff alleged that on February 25, 2015, he was being
17 escorted by defendants Cantu, W. Gutierrez, and Mattingly and monitored by defendants Parriot,
18 Cole, and Cuellar when defendants W. Gutierrez and Mattingly "abruptly threw [Plaintiff] to the
19 ground face first where W. Gutierrez, Mattingly, and Cantu, along with several other Correctional
20 staff members whom I cannot identify then began to beat Plaintiff with their hands, feet, and
21 batons." (ECF No. 22 at 5.) There are no allegations in the First Amended Complaint that
22 defendants Parriot, Cole, or Cuellar used any force against Plaintiff.

23 In the proposed Second Amended Complaint Plaintiff alleges that defendants Cole and
24 Parriot "utilized illegal physical force" against Plaintiff on February 25, 2015 "while conducting
25 their duties as Peace Officers within the SHU Complex at CCI." (ECF No. 36 at 21 ¶ 3.) This
26 new allegation of physical force by defendants Cole and Parriot is too conclusory to state a claim.
27 It is not sufficient to merely allege that physical force was used. To state a claim Plaintiff must
28 set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on

1 its face.” Iqbal, 556 U.S. at 678. “[W]henver prison officials stand accused of using excessive
2 physical force in violation of the Cruel and Unusual Punishments Clause, the core judicial inquiry
3 is . . . whether force was applied in a good-faith effort to maintain or restore discipline, or
4 maliciously and sadistically to cause harm.” Id. at 7. “In determining whether the use of force
5 was wanton and unnecessary, it may also be proper to evaluate the need for application of force,
6 the relationship between that need and the amount of force used, the threat reasonably perceived
7 by the responsible officials, and any efforts made to temper the severity of a forceful response.”
8 Id. (internal quotation marks and citations omitted). “The absence of serious injury is . . . relevant
9 to the Eighth Amendment inquiry, but does not end it.” Id.

10 It would be futile to allow this claim to go forward as alleged because it would be subject
11 to dismissal.

12 **VI. CONCLUSION AND ORDER**

13 Based on the foregoing, the court finds it would be futile for Plaintiff to file the proposed
14 Second Amended Complaint he submitted to the court. It would be futile to allow Plaintiff to
15 reinstate claims and defendants that were dismissed from the First Amended Complaint by the
16 court on December 10, 2020. Plaintiff’s allegations in the proposed Second Amended Complaint
17 concerning these claims and defendants are nearly identical to those which the court dismissed
18 from the First Amended Complaint.¹

19 The fact that Plaintiff has already amended his Complaint [with ample guidance from the
20 court] also weighs against granting leave to amend. See Johnson v. Buckley, 356 F.3d 1067,
21 1077 (9th Cir. 2004) (holding that, in considering whether to grant leave to amend, courts should
22 consider whether the plaintiff has previously amended the complaint); see also City of Los
23 Angeles v. San Pedro Boat Works, 635 F.3d 440, 454 (9th Cir. 2011) (“[T]he district court’s
24 discretion to deny leave to amend is particularly broad where plaintiff has previously amended
25 the complaint.”) (quotation omitted).

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28 ¹ The court notes that Plaintiff did not file any objections to the court’s recommendations
to dismiss those claims and defendants.

1 Accordingly, **IT IS HEREBY ORDERED** that:

- 2 1. Plaintiff's motion for leave to amend, filed on July 16, 2021, is denied; and
3 2. In light of this ruling, Plaintiff's request for judicial notice is also denied.

4
5 **IT IS SO ORDERED.**

6 Dated: **August 13, 2021**

/s/ Gary S. Austin
7 UNITED STATES MAGISTRATE JUDGE