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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
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8 JEREMY J. SMILEY,  
9 Plaintiff,

No. C 08-2592 SI (pr)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

10 v.

11 E. DURHAM; et al.,  
12 Defendants.

13  
14 **INTRODUCTION**

15 Jeremy J. Smiley, an inmate at Salinas Valley State Prison, filed a pro se civil rights  
16 action under 42 U.S.C. § 1983. His complaint is now before the court for review under 28  
17 U.S.C. § 1915A.  
18

19 **BACKGROUND**

20 In his complaint, Smiley alleges that he was subjected to a cell search on November 10  
21 and again five days later on November 15, 2007, "with negative results." Complaint, p. 3. He  
22 complains that the second search started out in a frightening manner with an excessive show of  
23 force by prison staff, although he was not forcibly removed from the cell. There was yelling and  
24 banging on the cell door, and this scared Smiley, who claims he was sensitive because he was  
25 mentally ill. Officers Zorchak, Valdez and their supervisors allowed the intimidating approach  
26 to removing Smiley and his cellmate from the cell. He was tightly handcuffed and put in a  
27 holding cell where he had to stand for five hours.  
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1 all prisoners with the basic necessities of life such as food, clothing, shelter, sanitation, medical  
2 care and personal safety. See Farmer v. Brennan, 511 U.S. 825, 832 (1994); Wilson v. Seiter,  
3 501 U.S. 294, 297-98 (1991); Johnson v. Lewis, 217 F.3d 726, 731-33 (9th Cir. 2000). The  
4 allegations of the complaint, liberally construed, state a cognizable Eighth Amendment claim  
5 for the 2-day placement on contraband watch. The problem for Smiley is that his complaint  
6 does not link any defendant to this event. The defendants' acts are described with respect to the  
7 cell search and to the teasing, but not with respect to the placement and retention in the  
8 contraband watch cell for two days. Leave to amend will be granted so that Smiley may attempt  
9 to link one or more defendants to this claim by explaining what each defendant did or failed to  
10 do that caused a violation of his constitutional rights. See Leer v. Murphy, 844 F.2d 628, 634  
11 (9th Cir. 1988); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (§ 1983 arises only upon  
12 a showing of personal participation by defendant)

13 The allegations of the complaint that Smiley was not allowed to pray while on contraband  
14 watch, liberally construed, might state a claim for relief under the Free Exercise Clause of the  
15 First Amendment, see Shakur v. Schriro, 514 F.3d 878, 883-84 (9th Cir. 2008), but there is not  
16 enough information about what happened. In his amended complaint, Smiley should clarify if  
17 the denial-of-prayer was a consequence of being in the strip cell, restrained and with dirty hands,  
18 or someone actually told him that he could not pray. Also, as with the Eighth Amendment claim  
19 mentioned in the preceding paragraph, the complaint does not connect any defendant to this  
20 event. Leave to amend will be granted so that plaintiff may attempt to link one or more  
21 defendants to this claim by explaining what each defendant did or failed to do that denied him  
22 his ability to pray.

23 The allegations of the complaint do not state a § 1983 claim based on the acts of the  
24 prison officials in the cell search. Yelling and a show of force to scare inmates into compliance  
25 with orders so that contraband will not be destroyed do not amount to an Eighth Amendment  
26 violation. The claim is dismissed.

27 The allegation that defendant Durham made derogatory comments, e.g., that it looked like  
28 Smiley was wearing a dress, does not state a § 1983 claim. Allegations of verbal harassment

1 and abuse fail to state a claim cognizable under 42 U.S.C. § 1983. See Freeman v. Arpaio, 125  
2 F.3d 732, 738 (9th Cir. 1997); Keenan v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996), amended 135  
3 F.3d 1318 (9th Cir. 1998) (disrespectful and assaultive comments by prison guard not enough  
4 to implicate 8th Amendment). The claim is dismissed.

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6 **CONCLUSION**

7 For the foregoing reasons, the complaint is dismissed with leave to amend. The amended  
8 complaint must be filed no later than **October 31, 2008**, and must include the caption and civil  
9 case number used in this order and the words AMENDED COMPLAINT on the first page.  
10 Plaintiff is cautioned that his amended complaint must be a complete statement of his claims and  
11 will supersede existing pleadings. See London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th  
12 Cir. 1981) ("a plaintiff waives all causes of action alleged in the original complaint which are  
13 not alleged in the amended complaint.") Failure to file the amended complaint by the deadline  
14 will result in the dismissal of the action.

15 IT IS SO ORDERED.

16 Dated: September 29, 2008

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19 SUSAN ILLSTON  
20 United States District Judge  
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