



1 elements: (1) that a right secured by the Constitution or laws of the United States was  
2 violated, and (2) that the alleged violation was committed by a person acting under the color  
3 of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

4 B. Plaintiff's Claims

5 Plaintiff complains about events that occurred when he was incarcerated at Salinas  
6 Valley State Prison ("SVSP"). Specifically, plaintiff alleges that on March 29, 2008, several  
7 correctional officers, in response to derogatory statements plaintiff made about one of the  
8 officers, forcibly attacked and beat plaintiff, and several other officers refused to intervene to  
9 stop the assault. (Compl. ¶¶ 23-28.) Additionally, plaintiff alleges the officers conspired to  
10 cover up each other's involvement in the assault. (Id. ¶ 30.)

11 Plaintiff further alleges that when he stated he would file administrative grievances  
12 and pursue legal action against the officers, he was falsely charged with an administrative  
13 rules violation, and the officers also retaliated against him by conducting a cell search and by  
14 persuading other prisoners to pressure plaintiff into recanting his accusations. (Id. ¶¶ 30-31.)

15 Plaintiff maintains the above actions were part of an ongoing pattern of misconduct at  
16 SVSP by a group of correctional officers known as the Green Wall, and that supervisory  
17 officials at SVSP either condoned such actions or allowed them to persist due to a lack of  
18 adequate training and supervision. (Id. ¶¶ 34-36.)

19 Based on the above allegations, plaintiff claims defendants conspired to deprive him  
20 of his right to equal protection, used excessive force against him in violation of the Eighth  
21 Amendment, and retaliated against him in violation of the First Amendment. (Id. ¶¶ 44-52.)  
22 He seeks monetary damages.

23 1. Conspiracy Claim

24 To state a claim for a conspiracy to violate one's constitutional rights under 42 U.S.C.  
25 § 1983, a plaintiff must state specific facts to support the existence of the claimed conspiracy.  
26 Olsen v. Idaho State Bd. of Medicine, 363 F.3d 916, 929 (9th Cir. 2004) (internal quotation  
27 and citation omitted). Conclusory allegations of conspiracy are not enough to support a  
28 § 1983 conspiracy claim. Burns v. County of King, 883 F.2d 819, 821 (9th Cir. 1989).

1 Rather, a plaintiff must plead with particularity which defendants conspired, how they  
2 conspired, and how the conspiracy led to a deprivation of the plaintiff's constitutional rights.  
3 Harris v. Roderick, 126 F.3d 1189, 1195-96 (9th Cir. 1997). To prove a conspiracy under §  
4 1983, an "agreement or meeting of minds to violate [the plaintiff's] constitutional rights must  
5 be shown." Woodrum v. Woodward County, 866 F.2d 1121, 1126 (9th Cir. 1989).  
6 Here, plaintiff has not alleged facts sufficient to state a conspiracy claim under § 1983. As  
7 an initial matter, plaintiff has not identified the particular constitutional right of which he was  
8 deprived by the alleged conspiracy. Specifically, it is unclear from the allegations in the  
9 body of the complaint whether plaintiff is alleging that the correctional officers who used  
10 excessive force against him conspired to engage in the use of force, conspired to cover up the  
11 use of force, or conspired to cause other injuries to plaintiff separate from the use of force.  
12 Further, while plaintiff, in the section of the complaint in which he sets forth his legal claims,  
13 asserts that defendants conspired to deprive him of "equal protection and benefit of the laws"  
14 and "due process of law," he does not specify which facts support his allegations of either an  
15 equal protection or due process violation. (Compl. ¶ 44.) Finally, plaintiff's conspiracy  
16 allegations are conclusory, in that he has not pleaded with particularity specific facts that  
17 would show the named defendants had an agreement or meeting of the minds to violate  
18 plaintiff's constitutional rights.

19 Based on the foregoing, plaintiff's conspiracy claim must be dismissed. Plaintiff may,  
20 however, file an amended complaint if he can in good faith allege facts, subject to proof, that  
21 cure the pleading deficiencies noted above.

22 2. Excessive Force Claim

23 Whenever prison officials stand accused of using excessive force in violation of the  
24 Eighth Amendment, the core judicial inquiry is whether force was applied in a good-faith  
25 effort to maintain or restore discipline, or maliciously and sadistically to cause harm.  
26 Hudson v. McMillian, 503 U.S. 1, 6-7 (1992). In determining whether the use of force was  
27 for the  
28 purpose of maintaining or restoring discipline, or for the malicious and sadistic purpose of

1 causing harm, a court evaluates, inter alia, the need for application of force, the relationship  
2 between that need and the amount of force used, the extent of any injury inflicted, the threat  
3 reasonably perceived by the responsible officials, and any efforts made to temper the  
4 severity of a forceful response. Id. at 7. Prison officials who personally use excessive force  
5 against a prisoner as well as those who fail to intervene to stop the actions of other prison  
6 officials can violate a prisoner’s Eighth Amendment right to be free from the use of excessive  
7 force. Robins v. Meecham, 60 F.3d 1436, 1442 (9th Cir. 1995) .

8 The Court finds plaintiff’s allegations, when liberally construed, state cognizable  
9 excessive force claims under the Eighth Amendment against defendants A. Villalobos,  
10 Machuca, Picazo, M.A. Celso, Vasquez and Crawford.

11 3. Retaliation Claim

12 Retaliation by a state actor for the exercise of a constitutional right is actionable under  
13 42 U.S.C. § 1983, even if the act, when taken for different reasons, would have been proper.  
14 Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 283-84 (1977). “Within the prison  
15 context, a viable claim of First Amendment retaliation entails five basic elements: (1) An  
16 assertion that a state actor took some adverse action against a prisoner (2) because of (3) that  
17 prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his  
18 First Amendment rights, and (5) the action did not reasonably advance a legitimate  
19 correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).

20 Plaintiff’s allegations fail to state a cognizable claim for retaliation as he has failed to  
21 allege facts that show the alleged retaliatory actions of which he complains were taken  
22 because of plaintiff’s protected conduct. Specifically, plaintiff states in his complaint that  
23 correctional officers Celso and Villalobos filed a false administrative rules violation report  
24 against plaintiff “[i]n response to plaintiff’s pledge to institute grievance and prospective  
25 legal action” as to the use of excessive force against him. (Compl. ¶ 31.) Additionally, he  
26 states that “[u]pon discovery of plaintiff’s persistence and courage to report his abuses and  
27 bring exposure to the involved defendants” Celso and Villalobos conducted a retaliatory  
28 search of plaintiff’s cell, and Machuca, Villalobos, Picazo and “other defendants” attempted

1 to persuade other prisoners to pressure plaintiff into recanting his accusations. (Id. ¶ 33.) In  
2 neither instance, however, does plaintiff identify what form his “pledge” and “persistence”  
3 took, i.e., the nature of his protected conduct, or how each of the named correctional officers  
4 knew about plaintiff’s conduct. Without allegations of protected conduct and knowledge of  
5 such conduct by the correctional officers, no claim for retaliation is stated.

6 Accordingly, plaintiff’s retaliation claim will be dismissed. Plaintiff may, however,  
7 file an amended complaint if he can in good faith allege facts, subject to proof, that cure the  
8 pleading deficiencies noted above.

9 C. Pending Motions

10 Plaintiff has filed two motions asking the Court to review his complaint under the  
11 provisions of 28 U.S.C. § 1915A. As the Court has done so in this order, plaintiff’s motions  
12 will be denied as moot.

13 **CONCLUSION**

14 For the reasons stated above, the Court orders as follows:

15 1. Plaintiff’s motions for Court review of his claims are hereby DENIED as moot.  
16 (Docket Nos. 4 & 5.)

17 2. Plaintiff’s claims of excessive force are cognizable. Those claims will not be  
18 ordered served, however, until the deadline for plaintiff to file an amended complaint has  
19 passed or plaintiff has informed the Court that he does not intend to proceed further with his  
20 conspiracy and retaliation claims.

21 3. Plaintiff’s conspiracy and retaliation claims are hereby DISMISSED with leave to  
22 amend. Within **thirty (30)** days of the date this Order is filed, plaintiff may file an  
23 AMENDED COMPLAINT, **using the court’s form civil rights complaint**, a copy of which  
24 is provided herewith, in order to cure the deficiencies noted above. Plaintiff shall complete  
25 the form, and include in the caption both the case number of this action, No. C 09-0069  
26 MMC (PR), and the phrase “AMENDED COMPLAINT.”

27 An amended complaint supersedes the initial complaint and may not incorporate by  
28 reference any parts of the original complaint. London v. Coopers & Lybrand, 644 F.2d 811,

1 814 (9th Cir. 1981). Defendants not named in an amended complaint are no longer  
2 defendants. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir.1992). These rules govern  
3 actions filed by pro se litigants as well as litigants represented by counsel. See King v.  
4 Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Accordingly, if plaintiff wishes to amend his  
5 complaint to cure the pleading deficiencies noted above, he must file an amended complaint  
6 that includes any claims from the original complaint he wishes to preserve.


7 **If plaintiff fails to timely file an amended complaint in conformity with this**  
8 **order, the claims that have been dismissed with leave to amend will be dismissed**  
9 **without prejudice, and the claims found cognizable herein will be ordered served.**

10 4. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court  
11 informed of any change of address and must comply with the court's orders in a timely  
12 fashion. Failure to do so may result in the dismissal of this action, pursuant to Federal Rule  
13 of Civil Procedure 41(b), for failure to prosecute.

14 This order terminates Docket Nos. 4 and 5.

15 IT IS SO ORDERED.

16 DATED: August 26, 2009

17   
18 MAXINE M. CHESNEY  
United States District Judge