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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FELIX COLON,)	
)	
Plaintiff(s),)	No. C 10-2362 CRB (PR)
)	
vs.)	ORDER
)	
C. WILSON, et al.,)	
)	
Defendant(s).)	
_____)	

Plaintiff, a prisoner at Mule Creek State Prison (MCSP), filed a complaint for damages under 42 U.S.C. § 1983 alleging that, while he was incarcerated at Salinas Valley State Prison (SVSP) in 2007, his mother and fiancée were subjected to inappropriate body searches by various prison officials. According to plaintiff, his mother and fiancée were told that the searches were required before any visitation could be allowed because officials had received a confidential tip that they were trying to smuggle contraband into the prison. Plaintiff learned about the body searches only last year, but since has experienced "emotional trauma" and "mental anguish" causing him "intense pain on one side of his head, accompanied by tearing of the eye and a runny nose." Compl. at 6.

1 Per order filed on June 7, 2010, the court screened and dismissed the
2 complaint for failure to state a claim under the authority of 28 U.S.C. §
3 1915A(b). The court explained:

4 It is well established that "[n]o Federal civil action may be
5 brought by a prisoner confined in a jail, prison or other correctional
6 facility for mental or emotional injury suffered while in custody
7 without a prior showing of physical injury." 42 U.S.C. § 1997e(e).
8 There is no showing or indication of a qualifying physical injury
9 here. Plaintiff's alleged physical symptoms – headache, teary eye
10 and runny nose – are not sufficiently separate from his allegations
11 of emotional trauma and mental anguish to qualify as "a prior
12 showing of physical injury" under § 1997e(e). See Davis v. District
13 of Columbia, 158 F.3d 1342, 1349 (D.C. Cir. 1998) (holding that
14 "somatic manifestations of emotional distress" such as weight loss,
15 appetite loss and insomnia cannot establish physical injury under
16 § 1997e(e)). Nor do they amount to anything more than de minimis
17 injuries insufficient to satisfy § 1997e(e). See Oliver v. Keller, 289
18 F.3d 623, 627-29 (9th Cir. 2002) (holding that back and leg pain
19 caused by sitting on cement floor, undefined injuries from being
20 assaulted by another prisoner and a painful canker sore were de
21 minimis injuries insufficient to satisfy § 1997e(e)).

22 Plaintiff's mother and fiancée may be able to pursue a §
23 1983 claim for their alleged treatment by SVSP officials. But the
24 claim must be brought by them in a separate action. Plaintiff has
25 no standing to bring it on their behalf. See Powers v. Ohio, 499
26 U.S. 400, 410 (1991).

27 June 7, 2010 Order at 2-3.

28 Plaintiff filed a motion for relief from the court's order and corresponding
entry of judgment under Federal Rule of Civil Procedure 60(b) arguing that §
1997e(e) does not bar a claim for nominal and punitive damages for alleged
constitutional violations.

Per order filed on August 9, 2010, the court denied the motion and
explained:

The Ninth Circuit has held that if a plaintiff "has actionable claims
for compensatory, nominal or punitive damages – premised on
violations of his [constitutional] rights, and not on any alleged
mental or emotional injury – [said] claims are not barred by §
1997e(e)." Oliver, 289 F.3d at 630. But plaintiff states no such
actionable claim. His assertion that defendants' body searches of
his mother and fiancée "infringed upon" his rights to freedom of

1 association and to maintain familial relationships does not compel a
2 different conclusion. It simply cannot be said that defendants' body
3 searches of his mother and fiancée after a confidential tip (and
4 eventual warrant from the superior court) amounted to such a
5 severe, permanent or arbitrary restriction on plaintiff's rights to
6 freedom of association and/or to maintain familial relationships so
7 as to have violated his constitutional rights. See Overton v.
8 Bazzetta, 539 U. S. 126, 131-32, 136-17 (2003) (noting that right to
9 freedom of association is among the rights least compatible with
10 incarceration and that withdrawal of visitation privileges for limited
11 periods is one of the restraints that should be expected as a
12 consequence of incarceration).

13 Aug. 9, 2010 Order at 2-3.

14 Plaintiff did not appeal or again move for reconsideration; rather, he
15 submitted a proposed amended complaint claiming to correct the deficiencies of
16 the original complaint. The proposed amended complaint does not. For
17 essentially the same reasons noted in the court's two prior orders, the proposed
18 amended complaint fails to state a claim upon which relief may be granted.

19 SO ORDERED.

20 DATED: Jan. 5, 2011

21 
22 _____
23 CHARLES R. BREYER
24 United States District Judge