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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RAZMI AHMED BADWI,

Plaintiff,

vs.

WARDEN ANTHONY HEDGPETH, et al.,

Defendants.

Case No: C 08-2221 SBA

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

Docket 88

Plaintiff Razmi Ahmed Badwi, a prisoner who is now represented by counsel, brings the instant action pursuant to 42 U.S.C. § 1983, based on an incident which occurred at Salinas Valley State Prison ("SVSP") on or about April 24, 2007. The parties are presently before the Court on Plaintiff's Motion Seeking Leave to File Second Amended Complaint. Dkt. 88. Having read and considered the papers submitted and the record in this action, and being fully informed, the Court hereby GRANTS the motion. The Court adjudicates the instant motion without oral argument. Fed. R. Civ. P. 78(b); Civ. L.R. 7-1(a).

I. BACKGROUND

Plaintiff is a disabled, wheelchair bound inmate in the custody of the California Department of Corrections. In 2007, while housed at SVSP, Plaintiff was housed with an inmate who sexually assaulted him. Plaintiff submitted a Form 602 administrative grievance to prison officials, but he received no response. Plaintiff now claims that prison officials failed to process his grievances to prevent him from exhausting his administrative

1 remedies so that he could not file a lawsuit, and as retaliation for complaining about the
2 assault.

3 On April 29, 2008, Plaintiff, acting pro se, filed the instant action in this Court,
4 pursuant to 42 U.S.C. § 1983. He alleges that various prison officials violated his Eighth
5 Amendment constitutional rights by deliberately ignoring the serious risk of assault by his
6 cellmate, that they participated in a cover-up of the sexual assault by destroying evidence
7 and documents, and that his due process rights were violated due to the failure of SVSP
8 officials to place him in a single cell. Plaintiff seeks injunctive relief. As Defendants,
9 Plaintiff named Evans, Oyarzabal, Moore, Lews, Lee, Kates, Jones, Hjeiden, Medina,
10 Mantel, Kessler, Mojica, Galloway, Hogan, Hubbard, Gonsan, Hatton, Bowman, Kumar,
11 and “John Doe 1 to 60.”

12 On January 11, 2011, the Court conducted an initial screening of Plaintiff’s
13 Complaint, pursuant to 28 U.S.C. § 1915A(a). 1/11/11 Order at 6-8, Dkt. 9. The Court
14 found that Plaintiff was suing Defendants in their official capacity “[b]ecause Plaintiff
15 seeks only injunctive relief and does not allege facts showing the named Defendants’
16 involvement in the alleged constitutional violations.” Id. at 2. Warden Hedgpeth was thus
17 substituted in place of Evans. After finding that Plaintiff had stated cognizable Eighth
18 Amendment and conspiracy claims against Defendants Hedgpeth and Oyarzabal, the Court
19 dismissed the claims against the remainder of the named Defendants with prejudice and the
20 claims against Doe Defendants without prejudice. Id. at 4-8. The Court also reserved the
21 issue of whether Plaintiff has exhausted his administrative remedies for “a later stage of the
22 case.” Id. at 5. Finally, the Court dismissed Plaintiff’s due process claim for failure to state
23 a cognizable claim for relief. Id. at 5-6.

24 In accordance with the January 11 Order, Plaintiff submitted his Amended
25 Complaint. On April 13, 2011, the Court issued an Order reviewing the sufficiency of the
26 amended pleadings. Dkt. 29. In its Order, the Court affirmed its previous dismissal of the
27 claims alleged against Defendants other than Hedgpeth and Oyarzabal, and denied
28 reconsideration with respect to Plaintiff’s due process claim. Id. at 3-5. After an

1 unsuccessful settlement conference before Magistrate Judge Vadas on April 20, 2011,
2 Defendants filed their answer to the Amended Complaint. Shortly thereafter, the Court
3 appointed Cooley Godward LLP as counsel for Plaintiff. Dkt. 33.

4 On June 13, 2011, Defendants filed an unenumerated motion to dismiss under Rule
5 12(b) of the Federal Rules of Civil Procedure for failure to exhaust administrative remedies,
6 and under Rule 12(b)(6) for failure to state a claim. On February 14, 2012, the Court issued
7 an Order denying Defendants' motion. Dkt. 97. The Court found that Defendants had
8 failed to demonstrate that Plaintiff had not exhausted his administrative remedies. In
9 addition, the Court rejected Defendants' arguments regarding the sufficiency of the
10 pleadings and qualified immunity.

11 Shortly before the Court issued its ruling on the aforementioned motion to dismiss,
12 Plaintiff filed the instant motion for leave to file a Second Amended Complaint ("SAC").
13 Specifically, Plaintiff seeks to add First Amendment claims based on allegations that
14 Defendants inadequately handled and responded to his grievances in order to deny him
15 access to the courts and to retaliate against him for reporting the sexual assault. See
16 Proposed SAC ¶¶ 67, 78, 79. In addition, Plaintiff seeks to add a prayer for damages and
17 additional factual allegations to support his claims. Defendants respond that the SAC "is
18 based on the same allegations as his first amended complaint," and that Plaintiff failed to
19 exhaust those claims, as required by the Prison Litigation Reform Act ("PLRA").
20 Alternatively, Defendants contend that Plaintiff does not have a constitutional right to a
21 grievance system, and therefore, his proposed claims are futile.¹

22 **II. DISCUSSION**

23 Federal Rule of Civil Procedure 15 provides that leave to amend a complaint should
24 be "freely given when justice so requires." Fed. R. Civ. P. 15(a)(2). Rule 15 "is to be
25 applied with extreme liberality." Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048,
26 1051 (9th Cir. 2003). "Four factors are commonly used to determine the propriety of a
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28 ¹ Defendants have not expressed any opposition to the other proposed amendments.

1 motion for leave to amend. These are: bad faith, undue delay, prejudice to the opposing
2 party, and futility of amendment.” Ditto v. McCurdy, 510 F.3d 1070, 1079 (9th Cir. 2007)
3 (citations and internal quotation marks omitted). Of these factors, prejudice “carries the
4 greatest weight.” Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir.
5 2003). The party opposing the amendment carries the burden of showing why leave to
6 amend should not be granted. DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 187 (9th
7 Cir. 1987). The decision to grant or deny a request for leave to amend rests in the
8 discretion of the trial court. See California v. Neville Chem. Co., 358 F.3d 661, 673 (9th
9 Cir. 2004).

10 Defendants do not claim that permitting Plaintiff to join additional claims would be
11 prejudicial, or that he unduly delayed or is acting in bad faith in seeking to amend. In fact,
12 their only argument as to why leave to amend should be denied is that such amendment
13 would be futile because Plaintiff allegedly failed to exhaust his administrative remedies.
14 Defs.’ Opp. to Pl.’s Mot. for Leave to File a SAC, Dkt. No. 902012) (“Opp’n”) at 4-13. In
15 particular, Defendants argue that Mr. Badwi failed to exhaust because he did not submit a
16 timely grievance form following the sexual assault as required by the PLRA. Id. at 10.
17 However, this is the same argument which Defendants made in their previous motion to
18 dismiss and which the Court rejected in its order denying said motion. 2/14/12 Order at 5-
19 7.²

20 Defendants also argue that Plaintiff’s proposed First Amendment claims are futile on
21 the grounds that prisoners lack a liberty interest in a prison grievance system. Opp’n at 13.
22 It is true that “inmates lack a separate constitutional entitlement to a specific prison
23 grievance procedure.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003). But Plaintiff
24 is not alleging that the prison’s grievance system itself is flawed. Rather, he is claiming
25 that Defendants failed to adequately process his grievances so that he could not exhaust his
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27 ² In fairness to Defendants, the Court notes that Defendants’ filed their opposition to
28 Plaintiff’s motion for leave to amend before the Court issued its ruling on Defendants’
motion to dismiss.

1 claim, and ergo, seek judicial relief. Proposed SAC ¶¶ 67, 78. Prisoners have a
2 constitutional right to meaningful access to the courts, and prison authorities may not
3 penalize or retaliate against an inmate for exercising this right. Bradley v. Hall, 64 F.3d
4 1276, 1279 (9th Cir. 1995). Prison officials may be sued under § 1983 for retaliating
5 against a prisoner for exercising his or her constitutional rights. Pratt v. Rowland, 65 F.3d
6 802, 806 & n. 4 (9th Cir. 1995). As such, whether or not Plaintiff has a liberty interest in
7 the prison's grievance system is inapposite.

8 **III. CONCLUSION**

9 For the reasons set forth above,

10 IT IS HEREBY ORDERED THAT:

11 1. Plaintiff's Motion Seeking Leave to File Second Amended Complaint is
12 GRANTED. Plaintiff shall e-file his Second Amended Complaint within two days of the
13 date this Order is filed.

14 2. This Order terminates Docket No. 88.

15 IT IS SO ORDERED.

16 Dated: April 27, 2012



SAUNDRA BROWN ARMSTRONG
United States District Judge