WARNING: AT LEAST ONE DOCUMENT COULD NOT BE INCLUDED!
You were not billed for these documents.
Please see below.

Selected docket entries for case 23−55090

Generated: 08/30/2024 08:35:11

Filed	Document Description	Page	Docket Text
10/18/2023	14		FILED MEMORANDUM (SIDNEY R. THOMAS, M. MARGARET MCKEOWN and ANDREW D. HURWITZ) Stevenson's motion to appoint counsel (Docket Entry No. 4) is denied. AFFIRMED. FILED AND ENTERED JUDGMENT. [12811795] (CPA)
	14 Memorandum	2	
	14 Post Judgment Form **DOCUMENT COULD NOT BE RETRIEVED!**		

NOT FOR PUBLICATION

FILED

OCT 18 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL DWAYNE STEVENSON, Plaintiff-Appellant, v. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Chief Office of Appeals, Defendant-Appellee.	No. 23-55090 D.C. No. 2:22-cv-01791-MWF-AFM MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

Submitted October 10, 2023**

Before: S.R. THOMAS, McKEOWN, and HURWITZ, Circuit Judges.

California state prisoner Carl Dwayne Stevenson appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging various claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo.

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012) (dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii)); *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (dismissal under 28 U.S.C. § 1915A). We affirm.

The district court properly dismissed Stevenson's action because Stevenson's official capacity claims were barred by sovereign immunity, and Stevenson otherwise failed to allege facts sufficient to state a plausible claim. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (explaining that although pro se pleadings are construed liberally, a plaintiff must present factual allegations sufficient to state a plausible claim for relief); *Brown v. Cal. Dep't of Corr.*, 554 F.3d 747, 752 (9th Cir. 2009) (holding that the California Department of Corrections is entitled to Eleventh Amendment immunity); *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (holding that an inmate could not bring a due process challenge to the processing of his grievances because "inmates lack a separate constitutional entitlement to a specific prison grievance procedure").

We reject as unsupported by the record Stevenson's allegations of judicial bias.

Stevenson's motion to appoint counsel (Docket Entry No. 4) is denied.

AFFIRMED.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CARL STEVENSON,

Plaintiff,

v.

CHIEF OFFICE OF APPEALS, CALIFORNIA DEPARTMENT OF CORRECTIONS REHABILITATION, *et al.*,

Defendants.

Case No. 2:22-cv-01791-MWF (AFM)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Michael W. Fitzgerald, United States District Judge, pursuant to the provisions of 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California. For the reasons set forth below, it is recommended this action be dismissed based on Eleventh Amendment immunity and failure to state a federal civil rights claim.

I. SUMMARY OF PROCEEDINGS

On March 16, 2022, plaintiff, proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff is a state prisoner who is presently incarcerated at the California State Prison, Los Angeles County ("CSP-

LAC"). Plaintiff also filed a Request to Proceed Without Prepayment of Filing Fees, which was granted. (ECF Nos. 2, 4, 8, 10-11.) Plaintiff filed a First Amended Complaint on May 5, 2022. (ECF No 7; "FAC".) In the caption of the FAC, plaintiff named as defendants the "Dept. of Justice, State of CA [sic], Office of Attorney General," but in the body of the pleading, plaintiff named as a defendant only Rob Bonta, the California Attorney General. The sole defendant was named in his official capacity only. (*Id.* at 1, 3.) Plaintiff listed incident dates for two claims as "1/2021 – current." (*Id.* at 3.) Plaintiff did not appear to seek any relief. (*Id.* at 6.) The FAC appeared to raise a single claim, but it referenced both the Eighth and Fourteenth Amendments. (*Id.* at 5.) In an attachment to the pleading, plaintiff alleged that the "following civil right [sic] has been violated: United States Fourteenth Amendment of the United States Constitution, Equal Protection / Due Process Clause." (*Id.* at 7.)

In accordance with the mandate of the Prison Litigation Reform Act of 1995 ("PLRA"), the Court screened the FAC prior to ordering service to determine whether the action is frivolous or malicious; fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915A, 1915(e)(2); 42 U.S.C. § 1997e(c)(1). Following careful review of the FAC, the Court found that plaintiff's pleading failed to comply with Fed. R. Civ. P. 8 because it did not include a short and plain statement of each claim that is sufficient to give any defendant fair notice of what plaintiff's claims are and the grounds upon which they rest. Further, the factual allegations appeared insufficient to state a federal civil rights claim on which relief may be granted against any defendant, and some of plaintiff's claims appeared to be barred by the Eleventh Amendment. Accordingly, the FAC was dismissed with leave to amend to correct the deficiencies as discussed in the Court's Order Dismissing First Amended Complaint With Leave to Amend (ECF No. 16; "Court's Order"). *See Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2017) ("A district court should not dismiss a *pro se* complaint without leave to amend unless it is absolutely clear that the

deficiencies of the complaint could not be cured by amendment.") (internal quotation marks omitted).

If he desired to pursue this action, Plaintiff was ordered to file a Second Amended Complaint remedying the deficiencies discussed in that Order no later than thirty (30) days after the date of the Court's Order. Further, plaintiff was admonished that, if he failed to timely file a Second Amended Complaint or failed to remedy the deficiencies of his FAC, the Court would recommend that this action be dismissed without further leave to amend. (ECF No. 16 at 4-5, 11-12.)

Plaintiff filed a Second Amended Complaint on August 8, 2022. (ECF No. 18; "SAC.") The caption of the pleading lists as a defendant only the "Chief Office of Appeals California Department of Corrections, Rehabilitation, Official Capacity" (*Id.* at 1.) In the body of the SAC, plaintiff lists as the only defendant "California Department of Corrections, Rehabilitation Official Capacity, Chief Office of Appeals." (*Id.* at 3.) In the top portion of the title page of the SAC, plaintiff set forth a quotation that appears to cite the case *Marbury v. Madison*, 5 U.S. 137 (1803). (*Id.* at 1.) Additionally, on the title page of the SAC, plaintiff set forth a lengthy and nearly unintelligible narration that begins by stating: "In relations to grounds, original civil action was filed, resulting from an April 8, 1994 organized hit carried out on [his] life," apparently at a state prison; plaintiff was "hit three times in [his] heart area, while [his] back was turned"; "grounds in [sic] which organized hit was carried on, [he] was oppressed / still to this day, by the oppressor . . .by means of suppression to an innocuous [sic] state of being by this system noted as California Department of Corrections in it's [sic] official capacity." Plaintiff also describes his injuries and medical issues. (*Id.* at 1 (punctuation in original, capitalization altered).) Plaintiff does not appear to be stating a claim with this text.

Once again, plaintiff appears to provide an incident date for the two claims, but each is given as "1 – 2021 – current." (*Id.* at 3.) The incidents are alleged to have taken place at "California State Prison, Los Angeles County." (*Id.* at 2.) In a

lengthy narration in the section of the SAC entitled "Request for Relief," plaintiff mentions the "racial / political mind set of this prison system noted as California Department of Corrections / California State Prison Los Angeles County"; states that he "actually inherit [sic] the power structure thoughts, some thoughts are dis-respectful"; again cites a 1994 "organized hit carried out on [his] life"; and alleges that the "deficiency's [sic] which this racial / political system noted as CA Department of Corrections continue to use ... results in constant migraine headaches, lower back pain," and other symptoms. Plaintiff seeks monetary damages. (*Id.* at 7.)

II. LEGAL STANDARDS

The Court's screening of the pleading is governed by the following standards. A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts alleged under a cognizable legal theory. *See, e.g., Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1093 (9th Cir. 2017); *see also Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (when determining whether a complaint should be dismissed for failure to state a claim under the PLRA, the court applies the same standard as applied in a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6)). In determining whether the pleading states a claim on which relief may be granted, its allegations of fact must be taken as true and construed in the light most favorable to plaintiff. *See, e.g., Soltysik v. Padilla*, 910 F.3d 438, 444 (9th Cir. 2018). However, the "tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rather, a court first "discount[s] conclusory statements, which are not entitled to the presumption of truth, before determining whether a claim is plausible." *Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1129 (9th Cir. 2013); *see also Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012). Nor is the Court "bound to accept as true a legal conclusion couched as a factual allegation or an unadorned, the-defendant-unlawfully-harmed-

me accusation." *Keates v. Koile*, 883 F.3d 1228, 1243 (9th Cir. 2018) (internal quotation marks and citations omitted).

Because plaintiff is appearing *pro se*, the Court must construe the allegations of the pleading liberally and must afford plaintiff the benefit of any doubt. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010); *see also Alvarez v. Hill*, 518 F.3d 1152, 1158 (9th Cir. 2008) (because plaintiff was proceeding *pro se*, "the district court was required to 'afford [him] the benefit of any doubt' in ascertaining what claims he 'raised in his complaint'") (alteration in original). Nevertheless, the Supreme Court has held that "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted, alteration in original); *see also Iqbal*, 556 U.S. at 678 (To avoid dismissal for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." (internal citation omitted)).

In addition, Fed. R. Civ. P. 8(a) ("Rule 8") states:

> A pleading that states a claim for relief must contain: (1) a short and plain statement of the grounds for the court's jurisdiction . . .; (2) *a short and plain statement of the claim* showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(Emphasis added). Rule 8(d)(1) provides: "Each allegation must be simple, concise, and direct. No technical form is required." Although the Court must construe a

pro se plaintiff's pleadings liberally, a plaintiff nonetheless must allege a minimum factual and legal basis for each claim that is sufficient to give each defendant fair notice of what plaintiff's claims are and the grounds upon which they rest. *See, e.g., Brazil v. U.S. Dep't of the Navy*, 66 F.3d 193, 199 (9th Cir. 1995); *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991) (a complaint must give defendants fair notice of the claims against them). If a plaintiff fails to clearly and concisely set forth factual allegations sufficient to provide defendants with notice of which defendant is being sued on which theory and what relief is being sought against them, the pleading fails to comply with Rule 8. *See, e.g., McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996); *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981). A claim has "substantive plausibility" if a plaintiff alleges "simply, concisely, and directly [the] events" that entitle him to damages. *Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014). Failure to comply with Rule 8 constitutes an independent basis for dismissal of a pleading that applies even if the claims are not found to be "wholly without merit." *See McHenry*, 84 F.3d at 1179.

Moreover, a federal court has "an 'independent obligation' to assess whether it has jurisdiction" before proceeding to the merits of a case. *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2292 (2021) (quoting *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006)); *see also Lance v. Coffman*, 549 U.S. 437, 439 (2007) ("Federal courts must determine that they have jurisdiction before proceeding to the merits."). "'Federal courts are courts of limited jurisdiction,' possessing 'only that power authorized by Constitution and statute.'" *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994)). To support federal question jurisdiction under 28 U.S.C. § 1331, a plaintiff must present a substantial federal question on the face of a complaint. *See Rivet v. Regions Bank*, 522 U.S. 470, 475 (1998); *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1086 (9th Cir. 2009) (for a federal court to exercise federal question jurisdiction under § 1331, "the federal question must be disclosed upon the face of

the complaint" (internal quotation marks omitted)). "A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears." *Stevedoring Servs. of Am. Inc. v. Eggert*, 953 F.2d 552, 554 (9th Cir. 1992). Further, a "plaintiff bears the burden of proving" the existence of subject matter jurisdiction and "must allege facts, not mere legal conclusions" to support the court's jurisdiction. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

"Absent a substantial federal question," a district court lacks subject matter jurisdiction, and claims that are "wholly insubstantial," or "obviously frivolous," are insufficient to "raise a substantial federal question for jurisdictional purposes." *Shapiro v. McManus*, 577 U.S. 39, 45-46 (2015); *see also Denton v. Hernandez*, 504 U.S. 25, 31-33 (1992) (a claim lacks an "arguable basis in fact" "when the facts alleged rise to the level of the irrational or the wholly incredible").

III. DISCUSSION

A. Eleventh Amendment Immunity

The Eleventh Amendment bars federal jurisdiction over suits brought by individuals against a State and its instrumentalities or agencies, unless either the State consents to waive its sovereign immunity or Congress abrogates it. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99-100 (1984); *Alabama v. Pugh*, 438 U.S. 781, 782 (1978) (per curiam) (finding a suit against state's Board of Corrections barred by the Eleventh Amendment). In addition, "the eleventh amendment bars actions against state officers sued in their official capacities for past alleged misconduct involving a complainant's federally protected rights, where the nature of the relief sought is retroactive, *i.e.*, money damages." *Bair v. Krug*, 853 F.2d 672, 675 (9th Cir. 1988). To overcome this Eleventh Amendment bar, the State's consent or Congress' intent must be "unequivocally expressed." *Pennhurst*, 465 U.S. at 99. While California has consented to be sued in its own courts pursuant to the California Tort Claims Act, such consent does not constitute consent to suit in federal court. *See BV Engineering v. Univ. of Calif., Los Angeles*, 858 F.2d 1394, 1396 (9th Cir.

1988); *see also Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985) (Art. III, § 5 of the California Constitution does not constitute a waiver of California's Eleventh Amendment immunity) (*superseded on other grounds as recognized, Lane v. Pena*, 518 U.S. 187, 197-200 (1996)). Finally, Congress has not repealed state sovereign immunity against suits brought pursuant to 42 U.S.C. § 1983.

Here, plaintiff's only defendant appears to be either the Office of Appeals for the California Department of Corrections and Rehabilitation ("CDCR") or a CDCR official (in his or her official capacity) in charge of the Office of Appeals. (ECF No. 18 at 1, 3.) In this action, plaintiff seeks only monetary damages. (*Id.* at 7.) The CDCR is not a separate legal entity. Rather, it is an agency of the State of California. Accordingly, the CDCR, its offices and departments, as well as its employees named in their official capacities, "enjoy the same immunity as the state of California." *BV Engineering*, 858 F.2d at 1395; *see also Brown v. Cal. Dep't of Corr.*, 554 F.3d 747, 752 (9th Cir. 2009) (the Eleventh Amendment bars action against the CDCR). Because Eleventh Amendment immunity is "immunity from suit," plaintiff is barred from bringing any federal civil rights claims against the CDCD or any of its agencies or departments. *See, e.g., Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993) ("this Court has consistently held that an un-consenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State"). Because plaintiff seeks monetary damages in this action, Eleventh Amendment immunity extends to any official in charge of the CDCR's Office of Appeals in his or her official capacity. *See, e.g., Flint v. Dennison*, 488 F.3d 816, 824-25 (9th Cir. 2007) (state officials sued for damages in their official capacities are entitled to Eleventh Amendment immunity).

Accordingly, the Court recommends that plaintiff's claims against the CRCR, the CDCR's Office of Appeals, and any claims against an official in charge of the CDCR's Office of Appeals in his or her official capacity be dismissed based on Eleventh Amendment immunity.

B. Claims Against a CDCR Official in His or Her Individual Capacity

The SAC appears to allege Claim I under the Eighth and Fourteenth Amendments and Claim II under the Equal Protection Clause or Due Process Clause of the Fourteenth Amendment. (ECF No. 18 at 5-6.) Plaintiff does not appear to name any specific CDCR official as a defendant, and he does not mention any individual CDCR official in the narrations that accompany each of his "claims." Although plaintiff does not appear to name any CDCR official in his or her individual capacity, the Court has liberally construed his allegations in determining whether the pleading states a plausible claim on which relief may be granted.

When naming the "Chief Office of Appeals" as the only defendant, plaintiff appears to allege that some unspecified official or officials are "exercising their political empowerment" and "dictat[ing] thoughts ... control [of plaintiff's] bathroom runs." (*Id.* at 3.) In Claim I, plaintiff generally discusses the "racial / political empowered structure" and "racial / political discrimination" that he has "been subjected to" since he because a prisoner in 1993. Plaintiff alleges that "having to function on [his] bones / muscle stability / the severity of the pain [he has] had to subject [himself] to / still do to this day is cruel / unusual punishment." (*Id.* at 5.) Plaintiff appears to argue that the CDCR "has to be dismantled / revised to a system that can be trusted / respected" (*id.*), but he does not seek injunctive relief in this action (*id.* at 7). In Claim II, plaintiff references a "Civil Action" that he filed in the "Superior Court of California, County of Los Angeles." Plaintiff alleges that he had a "false positive Covid-19 test," and that he was "racially / politically forced to move" to a facility "where all positive known [sic] inmates for Covid-19 were housed." Plaintiff alleges that his life was placed "in immediate danger," but he was "never known to have any symptoms." Within this "claim," plaintiff also alleges that he filed two grievances, but he did not receive a response to either. Plaintiff also did not receive a response to "an inquiry" he filed "with Chief of Inmate Appeals." (*Id.* at 6.) Plaintiff, however, does not set forth any factual allegations against any specific

official (or defendant) in this claim.

The Court finds that plaintiff's SAC violates Rule 8 because it fails to allege a minimum factual and legal basis for any claim that is sufficient to give any defendant fair notice of what claim(s) is raised against any defendant or the factual basis of each claim. To the extent that plaintiff is purporting to raise any federal civil rights claim against any individual CDCR official (in his or her individual capacity) in this action, plaintiff's SAC fails to meet his pleading burden of alleging specific facts showing how a named individual, acting under color of state law, deprived plaintiff of a right guaranteed under the United States Constitution or a federal statute. *See West v. Atkins*, 487 U.S. 42, 48 (1988). "A person deprives another 'of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that *causes* the deprivation of which [the plaintiff complains].'" *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)) (emphasis and alteration in original).

To state a claim against an individual defendant, plaintiff must allege sufficient factual allegations *against that defendant* to nudge each claim plaintiff wishes to raise "across the line from conceivable to plausible." *See Twombly*, 550 U.S. at 570; *see also McHenry*, 84 F.3d at 1177 (Rule 8 requires at a minimum that a pleading allow each defendant to discern what he or she is being sued for). Plaintiff fails to state any such allegations. In addition, to the extent that plaintiff may be attempting to hold an individual official at the Officer of Appeals liable in his or her supervisory capacity, supervisory personnel are not liable under § 1983 on a theory of *respondeat superior*. *See, e.g., Iqbal*, 556 U.S. at 676 ("Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*"). Plaintiff fails to allege any facts showing that any defendant set "in motion a series of acts by others," or "knowingly refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably should have

known would cause others to inflict a constitutional injury." *Starr v. Baca*, 652 F.3d 1202, 1207-08 (9th Cir. 2011). Further, to the extent that plaintiff is purporting to raise a federal civil rights claim arising from his allegations that he filed administrative grievances and an appeal to which he did not receive responses, plaintiff has no constitutional right to an effective grievance or appeal procedure. *See Ramirez v. Galaza,* 334 F.3d 850, 860 (9th Cir. 2003) (holding that a prisoner has no constitutional right to an effective grievance or appeal procedure); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). Accordingly, plaintiff may not state a federal civil rights claim against any CDCR official arising from a failure to properly process plaintiff's administrative grievances. While plaintiff alleges generally that he has been subjected to "racial / political discrimination" while a prisoner, the Court disregards such unsupported and conclusory statements in determining whether any claim raised in plaintiff's pleading is plausible. *See, e.g., Salameh*, 726 F.3d at 1129; *Keates*, 883 F.3d at 1243.

The statements in the SAC that could liberally be construed as raising "factual" allegations are untethered to any claim having an arguable basis in either fact or law. Rather, plaintiff appears to be discussing his general disgruntlement with the CDCR and its "racial / political empowered structure" and arguing that the CDCR is an "oppressor" that has been subjecting plaintiff to "racial / political discrimination." Plaintiff contends that the "empowered structure noted as CDC [sic] has to be dismantled / revised to a system that can be trusted / respected." In this civil rights action filed by plaintiff, however, plaintiff seeks only monetary damages. (ECF No. 18 at 1, 3, 5, 7.) Plaintiff's rambling narrative throughout the pleading does not give rise to any non-frivolous federal claim upon which relief may be granted against any CDCR official; plaintiff does not name any specific official as a defendant; and plaintiff does not seek any relief against any identified CDCR official for a specific constitutional injury or deprivation. Accordingly, plaintiff's SAC fails to state a substantial federal claim that has an arguable basis in law or fact. Allegations that

are "wholly insubstantial," irrational, or "obviously frivolous" are insufficient to raise a more than an insubstantial claim and "[a]bsent a substantial federal question," a district court lacks subject matter jurisdiction. *Shapiro*, 577 U.S. at 44-46; *see also Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (to invoke federal jurisdiction, a plaintiff must clearly allege facts showing that he has suffered "an injury in fact" that is "fairly traceable to the challenged conduct" of a specific defendant, and he must seek a remedy that is likely to be redress the alleged injury); *Denton*, 504 U.S. at 31-33.

In sum, plaintiff's SAC again fails to meet his duty to "simply, concisely, and directly" allege facts sufficient to show that a federal claim against a specific defendant has substantive "plausibility." *Johnson*, 574 U.S. at 12. While plaintiff's factual allegations need not establish a likelihood that he will prevail on any particular claim, he must set forth sufficient facts against a named defendant to nudge a claim against that defendant "across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570; s*ee also Iqbal*, 556 U.S. at 678-79. Moreover, because the SAC fails to "present a substantial federal question on the face," the Court lacks jurisdiction over this action. *See Rivet*, 522 U.S. at 475.

C. The SAC Should be Dismissed Without Further Leave to Amend

In the Court's Order Dismissing First Amended Complaint With Leave to Amend, plaintiff was apprised of the deficiencies in his pleadings, and he was provided with an opportunity to amend his pleading to correct such deficiencies. (*See* ECF No. 16.) As plaintiff's third attempt at stating a federal claim, the SAC does not name any defendant who took any action, participated in the action of another, or failed to take an action that he or she was legally obligated to do that *caused* plaintiff to suffer a constitutional deprivation. To the contrary, the SAC does not allege that any identified CDCR official took any action at any particular time, and the SAC does not allege that plaintiff suffered a specific constitutional deprivation within the dates that he alleges his civil rights were violated (January 2021 to "current" (*see*

ECF No. 18 at 3)) as opposed to generally over the decades since he first became a prisoner (*id.* at 5). Accordingly, plaintiff fails to allege any facts raising more than a sheer possibility that the actions of, or failure to act by, any CDCR official caused plaintiff to suffer a particular constitutional deprivation at a specific time.

Plaintiff was also admonished that, if he decided to file an amended pleading, he must present a substantial federal question on the face of that pleading in order to support federal question jurisdiction. (ECF No. 16 at 5-6 (citing *Rivet*, 522 U.S. at 475).) Further, plaintiff was informed that the Eleventh Amendment bars his claims for monetary damages against state officials named in their official capacities. (*Id.* at 7-8.) Moreover, the Court admonished plaintiff that he must comply with Rule 8 if he filed an amended pleading by setting forth specific factual allegations to support his conclusory statements and by alleging that a particular defendant took an affirmative act, participated in another's affirmative act, or failed to perform an act that he or she was legally required to do that caused plaintiff to suffer a constitutional deprivation at a particular time. (*Id.* at 10-11.) The Court clearly directed plaintiff that, if he wished to proceed with a claim against an individual defendant, then he "must allege sufficient factual allegations *against that defendant* to nudge each claim plaintiff wishes to raise "across the line from conceivable to plausible," and he must set forth a "separate, short, and plain statement of the actions that each named defendant is alleged to have taken." (*Id.* (emphasis in original) (citing *Twombly*, 550 U.S. at 570; *McHenry*, 84 F.3d at 1177).)

Plaintiff's SAC fails to remedy any of the deficiencies discussed in the Order Dismissing First Amended Complaint With Leave to Amend. In his third attempt to state a claim, plaintiff once again has filed a pleading that altogether fails to set forth a separate, short, and plain statement of any claim alleging how the actions a particular official took (or failed to take) caused plaintiff to suffer a specific violation of a right guaranteed under federal law or the federal Constitution. Further, in the SAC, plaintiff seeks only monetary damages, but the only defendant he names in the

SAC is either a state agency or a state official in his or her official capacity. The Court previously has admonished plaintiff that the Court lacks jurisdiction over such a claim. Additionally, plaintiff was informed that he appeared to be raising allegations concerning his medical care, but he had failed to name any defendant at a facility where he had received medical care. (ECF No. 16 at 8-9.) In the SAC, plaintiff again alleges that he: suffers from "serious ... [and] ailing injury's [sic]"; experiences "severe lower back pain"; suffers "severe migraine headaches ... for days"; "can't sleep without anxiety / depression night medication"; has been subjected to "discrimination" that has caused "serious mental / physical deficiencies"; and he seeks monetary damages for "the severity of the mental / physical abuse [he has] had to encounter / still encountered with [sic] to this day." (*See* ECF No. 18.) The SAC, however, fails to name any medical provider at CSP-LAC, does not allege that plaintiff was ever denied medical care at CSP-LAC, and does not purport to raise a claim against any CDCR official for constitutionally inadequate medical care.

Rather than adding specific factual allegations, the SAC alleges fewer facts, fails to name any individual defendant, does not appear to allege any claims against any official at his present place of incarceration, and does not purport to link any facts to any particular claim against any CDCR official. Even construing plaintiff's few factual allegations liberally and giving plaintiff the benefit of any doubt, the SAC's factual allegations once again fall far short of raising a right to relief on a claim arising under federal law beyond the speculative level. Nothing in the three pleadings that plaintiff has filed in this action suggests that, if provided with another opportunity to amend, plaintiff could set forth specific factual allegations against a particular CDCR official alleging that such official caused plaintiff to suffer an identified constitutional deprivation sufficient to raise a substantial federal question.

Accordingly, it has become clear that plaintiff would be unable to cure the basic deficiencies in his pleadings if provided with another opportunity for

amendment. Because any further amendment would be futile, the Court recommends that this action be dismissed without further leave to amend. *See, e.g., Gonzalez v. Planned Parenthood of L.A.*, 759 F.3d 1112, 1116 (9th Cir. 2014) (explaining that a "district court's discretion in denying amendment is particularly broad when it has previously given leave to amend"); *Chaset v. Fleer/Skybox Int'l, LP*, 300 F.3d 1083, 1088 (9th Cir. 2002) ("there is no need to prolong the litigation by permitting further amendment" if the "basic flaw" in the underlying facts as alleged cannot be cured by amendment).

IV. RECOMMENDATION

IT THEREFORE IS RECOMMENDED that the District Judge issue an Order: (1) accepting and adopting this Report and Recommendation; (2) dismissing the Second Amended Complaint without further leave to amend; and (3) directing that judgment be entered dismissing this action based on Eleventh Amendment immunity and failure to state a federal civil rights claim.

DATED: 11/15/2022

ALEXANDER F. MacKINNON
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CARL STEVENSON,

Plaintiff,

v.

CHIEF OFFICE OF APPEALS, CALIFORNIA DEPARTMENT OF CORRECTIONS REHABILITATION, et al.,

Defendants.

Case No. 2:22-cv-01791-MWF (AFM)

ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Report and Recommendation of United States Magistrate Judge. Further, the Court has engaged in a de novo review of those portions of the Report to which Petitioner has objected. Specifically, this Court has carefully reviewed the Objection (Docket No. 24) that Petitioner filed on December 9, 2022.

Petitioner's Objection is certainly proper in form; it is addressed to the District Judge and addresses the recommendations contained in the Report. However, the Objection does not present reasons to doubt the persuasiveness of the recommendations. By repeating his demand for money damages, Petitioner if anything strengthens the recommendation based on Eleventh Amendment immunity.

By repeating his vague concerns about the justice of the California penal system, Petitioner if anything strengthens the recommendation that there is no cognizable claim under the Fourteenth Amendment.

The Court gave to Petitioner, a pro se party, every benefit of the doubt and construed his Objection as a proffer in support of a Third Amended Complaint. This Court agrees with the Magistrate Judge that any further amendment would be futile.

Accordingly, the Court accepts and adopts the Magistrate Judge's Report and Recommendation.

IT THEREFORE IS ORDERED that (1) the Second Amended Complaint is dismissed without further leave to amend, and (2) judgment be entered dismissing this action based on Eleventh Amendment immunity and failure to state a federal civil rights claim.

DATED: December 13, 2022

MICHAEL W. FITZGERALD
UNITED STATES DISTRICT JUDGE

FILED

JAN 23 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL DWAYNE STEVENSON, Plaintiff-Appellant, v. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Chief Office of Appeals, Defendant-Appellee.	No. 23-55090 D.C. No. 2:22-cv-01791-MWF-AFM Central District of California, Los Angeles ORDER

Before: S.R. THOMAS, McKEOWN, and HURWITZ, Circuit Judges.

Stevenson's petition for panel rehearing (Docket Entry No. 17) is denied.

No further filings will be entertained in this closed case.

Additional material from this filing is available in the Clerk's Office.