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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EVERTON WHITELEY,
Plaintiff,
v.
D. PIXLEY, et al.,
Defendants.

NO. CV 18-0854-AG (AGR)

ORDER TO SHOW CAUSE WHY
COURT SHOULD NOT
RECOMMEND DENIAL OF
REQUEST TO PROCEED
WITHOUT PREPAYMENT OF
FILING FEES

For the reasons set forth below, the court orders Plaintiff to show cause on or before **March 15, 2018**, why this court should not recommend denial of his request to proceed without prepayment of filing fees.

I.

BACKGROUND

On February 2, 2018, the *pro se* prisoner-plaintiff filed a civil rights complaint along with a Request to Proceed in forma pauperis ("IFP Request"). The Court has screened the complaint to determine whether it fails to state a claim on which relief may be granted.

1 To survive dismissal, "a complaint must contain sufficient factual matter,
2 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft*
3 *v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). "A claim has facial
4 plausibility when the plaintiff pleads factual content that allows the court to draw
5 the reasonable inference that the defendant is liable for the misconduct alleged.
6 The plausibility standard is not akin to a 'probability requirement,' but it asks for
7 more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citations
8 omitted). A pro se complaint is to be liberally construed. *Erickson v. Pardus*, 551
9 U.S. 89, 94 (2007) (per curiam). Before dismissing a pro se civil rights complaint
10 for failure to state a claim, the plaintiff should be given a statement of the
11 complaint's deficiencies and an opportunity to cure them unless it is clear the
12 deficiencies cannot be cured by amendment. *Eldridge v. Block*, 832 F.2d 1132,
13 1135-36 (9th Cir. 1987).

14 II.

15 **ALLEGATIONS IN COMPLAINT**

16 Plaintiff, a state inmate at California State Prison - Los Angeles County
17 (CSP-LAC), alleges as follows:

18 On September 7, 2017, Plaintiff was seated at a meal table with three other
19 inmates for breakfast. Officers A. Ayon and E. Gollette approached. Ayon said
20 that one of the four inmates should get up from his current seat and instead go
21 "[i]n the other table to the end." Plaintiff responded that there was no actual
22 seat at the indicated spot, only an empty space for a wheelchair. Ayon ordered
23 Plaintiff to "cuff up" and placed him in a "cage" in another room, where the two
24 officers searched him and ordered him to "take it back to" his assigned housing.
25 (Compl. at 7-8.¹)

26 When Plaintiff protested that he had not yet eaten, Ayon responded that
27

28 ¹ Page citations are to the page numbers assigned by the CM/ECF system
in the header. Pages 7 and 8 appear to be transposed.

1 Plaintiff had lost his eating privileges and gave Plaintiff two options: "take it back"
2 "to his assign[ed] cell" or remain in the cage "for hours." Plaintiff protested that he
3 needed "to eat because [he] take[s] medication." Over four hours later,
4 defendants returned to the cage and Plaintiff asked for his breakfast and lunch.
5 They ignored the request for food and ordered Plaintiff back to his cell. (*Id.* at 7.)

6 Asserting a single claim of cruel and unusual punishment in violation of the
7 Eighth Amendment, Plaintiff seeks \$10,000 in damages. (*Id.* at 8-9.)

8 III.

9 **PLAINTIFF'S COMPLAINT FAILS TO STATE A VALID CLAIM**

10 A prisoner alleging an Eighth Amendment violation based on prison
11 conditions must demonstrate that prison officials were deliberately indifferent to
12 his health or safety by subjecting him to a substantial risk of serious harm.
13 *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Prison officials display a
14 deliberate indifference to an inmate's well-being when they consciously disregard
15 an excessive risk of harm to the inmate's health or safety. *Id.* at 837-40.

16 First, the deprivation or harm alleged must objectively be sufficiently
17 serious, resulting in a denial of the "minimal civilized measures of life's
18 necessities." *Farmer*, 511 U.S. at 834 (quoting *Rhodes v. Chapman*, 452 U.S.
19 337, 347 (1981)). Second, Plaintiff must allege that each defendant acted or
20 failed to act with "deliberate indifference to inmate health and safety." *Farmer*,
21 511 U.S. at 834-36. A prison official is not liable "unless the official knows of and
22 disregards an excessive risk to inmate health or safety; the official must both be
23 aware of facts from which the inference could be drawn that a substantial risk of
24 serious harm exists, and he must also draw the inference." *Id.* at 837.

25 To state a claim based on food deprivation, Plaintiff must allege facts
26 showing that the deprivation of food was sufficiently serious. "The Eighth
27 Amendment requires only that prisoners receive food that is adequate to maintain
28 health." *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993). "The sustained

1 deprivation of food can be cruel and unusual punishment when it results in pain
2 without any penological purpose.” See *Foster v. Runnels*, 554 F.3d 807, 812,
3 814 (9th Cir. 2009) (finding allegations that prisoner was denied 16 meals in 23
4 days was “serious deprivation”).

5 Plaintiff alleges only denial of breakfast and lunch on one day. *Garrett v.*
6 *Gonzalez*, 588 Fed. Appx. 692, 692 (9th Cir. 2014) (affirming dismissal of food
7 deprivation claim based on denial of three consecutive meals as punishment for
8 failing to cuff up where prisoner failed to allege injury to health);² see also *Hoever*
9 *v. Belleis*, 703 Fed. Appx. 908, 911 (11th Cir. 2017) (affirming dismissal of Eighth
10 Amendment claim based on denial of one meal absent allegation of facts showing
11 worsening health); compare *Dearman v. Woodson*, 429 F.2d 1288, 1289 (10th
12 Cir. 1970) (allegations that prisoner was denied food for over two days may state
13 sufficiently serious deprivation).

14 Plaintiff does not allege facts indicating that denial of two meals injured his
15 health. Although Plaintiff alleges that he told defendants that he needed to eat
16 because he took medication, Plaintiff alleges no facts from which one reasonably
17 could infer (1) that the denial of breakfast and lunch on one day injured his health
18 and (2) that defendants were subjectively aware of the risk of harm and chose to
19 ignore it. Accordingly, he does not state an Eighth Amendment claim.

20 IV.

21 ORDER

22 For the foregoing reasons, IT IS ORDERED THAT Plaintiff shall show
23 cause in writing, by no later than **March 15, 2018**, why the court should not
24 recommend that the request to proceed without prepayment of fees be denied.

25 Instead of filing a response to this order to show cause, Plaintiff may file a
26 First Amended Complaint that cures the deficiencies identified in this order. If

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28 ² See *Garrett v. Gonzalez*, 2014 U.S. Dist. LEXIS 30126, *8 (E.D. Cal. Mar. 7, 2014).

1 Plaintiff chooses to file a First Amended Complaint, it must be filed no later than
2 **March 15, 2018**; bear the docket number assigned in this case; be labeled "First
3 Amended Complaint"; and be complete in and of itself, without reference to the
4 original complaint, or any other pleading, attachment or document. Plaintiff is
5 free to attach additional pages to the form.

6 The Clerk is directed to provide Plaintiff with a blank Central District civil
7 rights complaint form.

8 If Plaintiff fails to file a response to this order to show cause or a First
9 Amended Complaint on or before **March 15, 2018**, this court may recommend
10 that his request to proceed without prepayment of fees be denied.

11
12 DATED: February 13, 2018

Alicia G. Rosenberg

ALICIA G. ROSENBERG
United States Magistrate Judge