

1

KM

2

3

4

5

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

15 Plaintiff Alfred C. Lombardelli, who is confined in the Pleasant Valley State Prison,
16 filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and subsequently filed a
17 First Amended Complaint. On February 11, 2009, the Court screened the First Amended
18 Complaint and ordered Defendants Halsey and Vogel to answer Count Three and the
19 “snitch” claim in Count Four of the Amended Complaint and dismissed the remaining claims
20 and Defendants without prejudice (Doc. #11). On March 6, 2009, Plaintiff filed a Motion
21 to Amend (Doc. #14) and lodged a Second Amended Complaint (Doc. #15).

22 The Court will grant the Motion to Amend and direct the Clerk of Court to file the
23 Second Amended Complaint. The Court will order Defendants Halsey, Vogel, Hebron,
24 Smyth, Castro, Ortiz, Carter, Sanchez, and Anderson to answer the First Amendment
25 retaliation claims in Count One, and Counts Two and Three of the Second Complaint and
26 will dismiss the remaining claims without prejudice.

27

1 **I. Statutory Screening of Prisoner Complaints**

2 The Court is required to screen complaints brought by prisoners seeking relief against
3 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
5 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
6 be granted, or that seek monetary relief from a defendant who is immune from such relief.
7 28 U.S.C. § 1915A(b)(1), (2).

8 **II. Second Amended Complaint**

9 Plaintiff names the following Defendants in the Second Amended Complaint:
10 Correctional Officer Kelvin Halsey; Correctional Officer Ronald Vogel; Correctional Officer
11 T. Hebron; Correctional Officer Sydney Smyth; Correctional Officer A. Castro; Correctional
12 Officer E. Ortiz; Correctional Officer K. Carter; Correctional Officer I. Sanchez;
13 Correctional Sergeant M. K. Anderson; and Correctional Lieutenant M. Melo.

14 Plaintiff raises three grounds for relief in the Second Amended Complaint:

- 15 (1) Plaintiffs First, Fifth, and Fourteenth Amendment rights were violated when
16 Defendants Halsey, Vogel, Hebron, Smyth, Castro, Ortiz, Carter, Sanchez, and
17 Anderson engaged in retaliatory acts against Plaintiff, including removing
18 Plaintiff from his job, filing false disciplinary reports against Plaintiff, and
19 naming Plaintiff as a “snitch” in front of other inmates, in retaliation for
20 Plaintiff filing grievances and civil rights actions against staff;
- 21 (2) Defendant Halsey violated Plaintiff’s Eighth Amendment rights when he used
22 excessive force on Plaintiff by knowingly, maliciously, and sadistically
23 inflicted pain on Plaintiff by placing Plaintiff in handcuffs that were so tight
24 they cut into Plaintiff’s skin and then leaving Plaintiff in the handcuffs for a
25 long period of time; and
- 26 (3) Defendant Halsey violated Plaintiff’s Eighth Amendment rights when he
27 placed Plaintiff in danger by “spreading the word that plaintiff is a rat and
28 snitch.”

1 Plaintiff seeks declaratory relief and monetary damages.

2 **III. Failure to State a Claim**

3 **A. Due Process**

4 In analyzing a due process claim, the Court must first decide whether Plaintiff was
5 entitled to any process, and if so, whether he was denied any constitutionally required
6 procedural safeguard.

7 Liberty interests which entitle an inmate to due process are “generally limited to
8 freedom from restraint which, while not exceeding the sentence in such an unexpected
9 manner as to give rise to protection by the Due Process Clause of its own force, nonetheless
10 imposes atypical and significant hardship on the inmate in relation to the ordinary incidents
11 of prison life.” Sandin v. Conner, 515 U.S. 472, 484 (1995) (internal citations omitted).

12 Therefore, to determine whether an inmate is entitled to the procedural protections
13 afforded by the Due Process Clause, the Court must look to the particular restrictions
14 imposed and ask whether they ““present the type of atypical, significant deprivation in which
15 a state might conceivably create a liberty interest.”” Mujahid v. Meyer, 59 F.3d 931, 932 (9th
16 Cir. 1995) (quoting Sandin, 515 U.S. at 486).

17 To determine whether the sanctions are atypical and a significant hardship, courts look
18 to prisoner’s conditions of confinement, the duration of the sanction, and whether the
19 sanction will affect the duration of the prisoner’s sentence. See Keenan v. Hall, 83 F.3d
20 1083, 1088-89 (9th Cir. 1996). “Atypicality” requires not merely an empirical comparison,
21 but turns on the importance of the right taken away from the prisoner. See Carlo v. City of
22 Chino, 105 F.3d 493, 499 (9th Cir. 1997). See, e.g., Sandin, 515 U.S. at 472 (30 days’
23 disciplinary segregation is not atypical and significant); Torres v. Fauver, 292 F.3d 141, 151
24 (3d Cir. 2002) (four months in administrative segregation is not atypical and significant);
25 Jacks v. Crabtree, 114 F.3d 983 (9th Cir. 1997) (denial of year sentence reduction is not an
26 atypical and significant hardship); Jones v. Baker, 155 F.3d 810 (6th Cir. 1998) (two and
27 one-half years of administrative segregation is not atypical and significant); Griffin v.
28 Vaughn, 112 F.3d 703, 706-708 (3d Cir.1997) (fifteen months’ administrative segregation

1 is not atypical and significant); Beverati v. Smith, 120 F.3d 500, 504 (4th Cir. 1997) (six
2 months of confinement in especially disgusting conditions that were “more burdensome than
3 those imposed on the general prison population were not “atypical . . . in relation to the
4 ordinary incidents of prison life.”).

5 To the extent that Plaintiff alleges violations of his due process rights in Count One,
6 plaintiff has failed to state a claim. Plaintiff alleges he was falsely charged with disciplinary
7 violations and placed in administrative segregation pending investigation and resolution of
8 the charges against him. Plaintiff also states that the allegations against him were eventually
9 found to be untrue. Plaintiff does not allege that he received sanctions that are atypical or
10 significant in the context of the ordinary incidents of prison life and Plaintiff’s time in
11 administrative segregation is not atypical or significant. Accordingly, Plaintiff has failed to
12 allege a due process violation in Count One.

13 **B. Conspiracy Claims**

14 In Count One, Plaintiff also alleges that several of the named Defendants conspired
15 to retaliate against him by filing false disciplinary reports. In the absence of a specific
16 allegation of “an agreement or meeting of the minds,” a plaintiff’s conclusory allegations that
17 persons conspired against him will “not support a claim for violation of his constitutional
18 rights under § 1983.” Woodrum v. Woodward County, Okla., 866 F.2d 1121, 1126 (9th Cir.
19 1989). Plaintiff fails to state a claim because he has presented no specific facts to support
20 his claim that Defendants entered into a conspiracy. See Karim-Panahi v. Los Angeles
21 Police Dept., 839 F.2d 621, 626 (9th Cir. 1988) (the mere allegation of conspiracy without
22 factual specificity is insufficient). Allegations of conspiracy must be supported by material
23 facts, not mere conclusory statements. Fonda v. Gray, 707 F.2d 435, 438 (9th Cir. 1983); see
24 also, Aldabe v. Aldabe, 616 F.2d 1089 (9th Cir. 1980); Manis v. Sterling, 862 F.2d 679, 681
25 (8th Cir. 1988) (allegations of conspiracy must be pled with sufficient specificity and factual
26 support to suggest a “meeting of the minds”).

27 Although *pro se* pleadings are liberally construed, Haines v. Kerner, 404 U.S. 519
28 (1972), conclusory and vague allegations will not support a cause of action. Ivey v. Board

1 of Regents of the Univ. of Alaska, 673 F.2d 266 (9th Cir. 1982). Even a liberal interpretation
2 of a civil rights complaint may not supply essential elements of the claim that were not
3 initially pled. Id. at 268. Accordingly, the Court will dismiss Plaintiff's conspiracy claims
4 in Count One.

5 **IV. Claims for Which an Answer Will be Required**

6 Liberally construed, Plaintiff's First Amendment retaliation claims in Count One, and
7 Counts Two and Three adequately state a claim. The Court will require Defendants to
8 answer those claims.

9 **V. No Further Amendments**

10 Because Plaintiff has now been permitted two opportunities to amend his claims, and
11 because of the age of this action, the Court will not permit any further amendment of
12 Plaintiff's claims.

13 **VI. Warnings**

14 **A. Address Changes**

15 Plaintiff must file and serve a notice of a change of address in accordance with Rule
16 83-182(f) and 83-183(b) of the Local Rules of Civil Procedure. Plaintiff must not include
17 a motion for other relief with a notice of change of address. Failure to comply may result in
18 dismissal of this action.

19 **B. Copies**

20 Plaintiff must submit an additional copy of every filing for use by the Court. See
21 LRCiv 5-133(d)(2). Failure to comply may result in the filing being stricken without further
22 notice to Plaintiff.

23 **C. Possible Dismissal**

24 If Plaintiff fails to timely comply with every provision of this Order, including these
25 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
26 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
27 comply with any order of the Court).

28 ...

1 **IT IS ORDERED:**

2 (1) Plaintiff's March 6, 2009 Motion to Amend (Doc. #14) is **granted**; the Clerk
3 of Court must file the Second Amended Complaint (lodged at Doc. #15).

4 (2) The due process and conspiracy claims in Count One are **dismissed** without
5 prejudice.

6 (3) Defendants Halsey, Vogel, Hebron, Smyth, Castro, Ortiz, Carter, Sanchez, and
7 Anderson must answer the First Amendment retaliation claims in Count One, and Counts
8 Two and Three of the Second Amended Complaint (lodged at Doc. #15).

9 (4) The Clerk of Court must send Plaintiff a service packet including the Second
10 Amended Complaint (lodged at Doc. #15), this Order, a Notice of Submission of Documents
11 form, an instruction sheet, and copies of summons and USM-285 forms for Defendants
12 Halsey, Vogel, Hebron, Smyth, Castro, Ortiz, Carter, Sanchez, and Anderson.

13 (5) Within **30 days** of the date of filing of this Order, Plaintiff must complete and
14 return to the Clerk of Court the Notice of Submission of Documents. Plaintiff must submit
15 with the Notice of Submission of Documents: a copy of the Second Amended Complaint for
16 each Defendant, a copy of this Order for each Defendant, a completed summons for each
17 Defendant, and a completed USM-285 for each Defendant.

18 (6) Plaintiff must not attempt service on Defendants and must not request waiver
19 of service. Once the Clerk of Court has received the Notice of Submission of Documents and
20 the required documents, the Court will direct the United States Marshal to seek waiver of
21 service from each Defendant or serve each Defendant.

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

5 DATED this 7th day of April, 2009.


John M. Roll
Chief United States District Judge