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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

JAMES E. BRYANT,
CDCR #C-48302,

Plaintiff,

vs.

A.L. PINEDA, Correctional Lieutenant,

Defendant.

Civil No. 1:08cv1239-BTM (CAB)

**ORDER SUA SPONTE DISMISSING
FIRST AMENDED COMPLAINT
WITHOUT PREJUDICE FOR FAILING
TO STATE A CLAIM PURSUANT TO
28 U.S.C. §§ 1915(e)(2) and 1915A(b)**

Plaintiff, an inmate currently incarcerated at the California Substance Abuse Treatment Facility in Corcoran, California, is proceeding pro se and in forma pauperis with a First Amended civil rights Complaint pursuant to 42 U.S.C. § 1983. (Doc. No. 11.) Plaintiff alleges that he has been deprived of his personal property and classified as a sexual predator without due process of law in violation of the federal Constitution and state law. This matter has been assigned to Southern District of California District Judge Barry Ted Moskowitz.

The Prison Litigation Reform Act (“PLRA”) obligates the Court to review complaints filed by all persons proceeding IFP and by those incarcerated in state prison “as soon as

1 practicable after docketing.” See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). The Court must sua
2 sponte dismiss any such complaint, or any portion thereof, which is frivolous, malicious, fails
3 to state a claim, or seeks damages from defendants who are immune. See 28 U.S.C.
4 §§ 1915(e)(2)(B) and 1915A; Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
5 (§ 1915(e)(2)); Resnick v. Hayes, 213 F.3d 443, 446 (9th Cir. 2000) (§ 1915A).

6 “[W]hen determining whether a complaint states a claim, a court must accept as true all
7 allegations of material fact and must construe those facts in the light most favorable to the
8 plaintiff.” Resnick, 213 F.3d at 447. In addition, the Court’s duty to liberally construe a pro se
9 litigant’s pleading, see Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 623 (9th Cir.
10 1988), is “particularly important in civil rights cases.” Ferdik v. Bonzelet, 963 F.2d 1258, 1261
11 (9th Cir. 1992). Section 1983 imposes two essential proof requirements upon a claimant: (1)
12 that a person acting under color of state law committed the conduct at issue, and (2) that the
13 conduct deprived the claimant of some right, privilege, or immunity protected by the
14 Constitution or laws of the United States. See 42 U.S.C. § 1983; Parratt v. Taylor, 451 U.S. 527,
15 535 (1981), overruled on other grounds by Daniels v. Williams, 474 U.S. 327, 328 (1986);
16 Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc).

17 The Due Process Clause of the Fourteenth Amendment prohibits states from depriving
18 “any person of life, liberty, or property, without due process of law.” U.S. CONST. AMEND. XIV,
19 § 1. The procedural guarantees of federal due process apply only when a constitutionally-
20 protected liberty or property interest is at stake. See Ingraham v. Wright, 430 U.S. 651, 672
21 (1977); Board of Regents v. Roth, 408 U.S. 564, 569 (1972); Schroeder v. McDonald, 55 F.3d
22 454, 462 (9th Cir. 1995). Liberty interests can arise from the federal Constitution or may be
23 created by state laws or regulations. See Hewitt v. Helms, 459 U.S. 460, 466 (1983); Meachum
24 v. Fano, 427 U.S. 215, 224-27 (1976); Wolff v. McDonnell, 418 U.S. 539, 557-58 (1974); Smith
25 v. Sumner, 994 F.2d 1401, 1405-06 (9th Cir. 1993). However, a state prisoner can generally
26 show a liberty interest under the Due Process Clause of the Fourteenth Amendment only if he
27 alleges a change in confinement that imposes an “atypical and significant hardship on the inmate
28 in relation to the ordinary incidents of prison life.” Sandin v. Conner, 515 U.S. 472, 484 (1995).

1 Plaintiff alleges that two inmates named Matthew Fields and “H” stole Plaintiff’s radio,
2 and ordered inmate Jones, an enemy of Plaintiff, to start a fight with Plaintiff in order to have
3 him removed from the yard, and to invent a story to tell staff which would prevent Plaintiff’s
4 return to the yard. (First Amended Complaint “FAC” at 5-6.) Jones did just that, inventing a
5 story involving coercive sexual conduct, and Plaintiff was placed in Administrative Segregation
6 for mutual combat with Jones. (Id. at 6.) Plaintiff alleges that Defendant A.L. Pineda, a
7 correctional officer, violated prison regulations by writing a confidential report which included
8 Jones’ sexual allegations without interviewing Plaintiff and without developing evidence
9 substantiating Jones’ allegations. (Id. at 6-7.)

10 Plaintiff stated in his Original Complaint that during his disciplinary hearing for the
11 mutual combat charge the presiding officer made a finding that the confidential memorandum
12 had no “relevance to the charge of mutual combat” and “elected not to use it in the adjudication
13 of the disciplinary hearing.” (Compl. at 3.) Nevertheless, Plaintiff claims that the false
14 allegations by Jones contained in Defendant Pineda’s confidential memorandum remain in his
15 prison file, which has caused Plaintiff “to be housed alone and classified as a danger to others
16 or a sexual predator . . .” (FAC at 11.) Plaintiff seeks declaratory and injunctive relief,
17 including the replacement of his radio, and damages. (FAC at 13-14.)

18 Plaintiff is unable to demonstrate the existence of a liberty interest arising from the
19 alleged violation of prison regulations by Defendant Pineda. The Supreme Court in Sandin
20 “refocused the test for determining the existence of a liberty interest away from the wording of
21 prison regulations and toward an examination of the hardship caused by the prison’s challenged
22 action relative to the ‘basic conditions’ of life as a prisoner.” Mitchell v. Dupnik, 75 F.3d 517,
23 522 (9th Cir. 1996) (citing Sandin, 515 U.S. at 484). Rather, after Sandin, a state-created liberty
24 interest under the Due Process Clause of the Fourteenth Amendment arises only if Plaintiff
25 alleges facts which show a change in his confinement that imposes an “atypical and significant
26 hardship . . . in relation to the ordinary incidents of prison life.” Sandin, 515 U.S. at 484
27 (citations omitted); Neal v. Shimoda, 131 F.3d 818, 827-28 (9th Cir. 1997). Plaintiff must allege
28 facts to show “a dramatic departure from the basic conditions” of his confinement before he can

1 state a procedural due process claim. Id. at 485.

2 The Ninth Circuit has applied Sandin's procedural due process analysis to a claim
3 somewhat similar to Plaintiff's. In Neal, the Court considered a due process challenge to
4 Hawaii's Sex Offender Treatment Program which labeled all persons in state custody convicted
5 of specified sex crimes as "sex offenders" and compelled their participation in a psycho-
6 educational treatment program as a pre-requisite to parole eligibility. Neal, 131 F.3d at 821-22.
7 The Ninth Circuit found that the "stigmatizing consequences of the attachment of the 'sex
8 offender' label coupled with the subjection of the targeted inmate to a mandatory treatment
9 program whose successful completion is a precondition for parole eligibility create the kind of
10 deprivations of liberty that require procedural protections." Id. at 830. The Ninth Circuit then
11 concluded that, under these circumstances, procedural safeguards similar to those set forth in
12 Wolff v. McDonnell, 418 U.S. 539 (1974) were required. Id. at 830-31.

13 Unlike the prisoner in Neal, Plaintiff has not alleged facts which constitute a "dramatic
14 departure" from the basic conditions of prison life sufficient to create a protected liberty interest.
15 Sandin, 515 U.S. at 486. Rather, Plaintiff merely alleges that he is subject to being housed in
16 a single cell, and is informally classified as a sexual predator. There are no allegations that he
17 is subject to sex offender classification such as the prisoner in Neal, or that the information
18 contained in his prison file will result in his having to complete prison programs before
19 becoming eligible for parole release as in Neal. The vague allegations regarding the effect on
20 Plaintiff's conditions of confinement are insufficient to allege the deprivation of a liberty interest
21 under Sandin. Unless Plaintiff alleges specific facts showing that he is subject to "a dramatic
22 departure from the basic conditions" of his confinement, no liberty interest exists, and the
23 procedural protections of the Fourteenth Amendment do not apply. Sandin, 515 U.S. at 485; see
24 also Keenan v. Hall, 83 F.3d 1083, 1088-89 (9th Cir. 1996), as amended 135 F.3d 1318 (9th Cir.
25 1998).

26 To the extent Plaintiff intended to present a claim that he was deprived of his radio
27 without due process of law in violation of the Fourteenth Amendment, such a claim does not
28 state a federal cause of action under section 1983 where Plaintiff has an adequate post-

1 deprivation state remedy. See Hudson v. Palmer, 468 U.S. 517, 533 (1984). The California Tort
2 Claims Act provides an adequate post-deprivation state remedy for the random and unauthorized
3 taking of property. Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994). There are no
4 allegations in the First Amended Complaint which would support a due process claim based on
5 the loss of Plaintiff's radio.

6 Accordingly, the Court finds that Plaintiff's First Amended Complaint fails to state a
7 section 1983 claim upon which relief may be granted, and is therefore subject to dismissal
8 pursuant to 28 U.S.C. §§ 1915(e)(2)(b) & 1915A(b). The Court will provide Plaintiff with an
9 opportunity to amend his pleading to cure the defects set forth above. To the extent Plaintiff
10 purports to bring claims under state law, the Court has power to hear and decide supplemental
11 state law claims as long as Plaintiff has stated a valid section 1983 claim. Acri v. Varian
12 Associates, 114 F.3d 999, 1000 (9th Cir. 1998) (en banc). The Court is under no duty at this
13 time to sua sponte consider whether to accept or decline supplemental jurisdiction over any state
14 law claims which may be included in the First Amended Complaint. Id. The Court will make
15 the determination whether or not to accept supplemental jurisdiction over such claims, if at all,
16 at a later stage of these proceedings, and only if Plaintiff successfully amends his pleading to
17 state a federal claim.

18 CONCLUSION AND ORDER

19 **IT IS HEREBY ORDERED** that:

20 Plaintiff's First Amended Complaint is **DISMISSED** without prejudice pursuant to 28
21 U.S.C. §§ 1915(e)(2)(b) and 1915A(b) for failing to state a claim upon which relief may be
22 granted. Plaintiff is **GRANTED** forty-five (45) days leave from the date this Order is "Filed"
23 in which to file a Second Amended Complaint which cures all the deficiencies of pleading noted
24 above. Defendants not named and all claims not re-alleged in the Amended Complaint will be
25 deemed to have been waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

26 DATED: April 9, 2009

27 
28 Honorable Barry Ted Moskowitz
United States District Judge