UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL LENOIR SMITH,

Plaintiff,

v.

GREEN, et al.,

Defendants.

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CASE NO. 1:09-cv-00600-AWI-DLB PC

ORDER DISMISSING CERTAIN CLAIMS WITHOUT PREJUDICE

FINDINGS AND RECOMMENDATIONS RECOMMENDING DISMISSAL OF CERTAIN CLAIMS AND DEFENDANTS

(Doc. 13)

OBJECTIONS, IF ANY, DUE WITHIN 30 DAYS

Findings and Recommendations

I. Background

A. Procedural History

Plaintiff Michael Lenoir Smith ("Plaintiff") is a prisoner in the custody of the California Department of Corrections and Rehabilitation ("CDCR"). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action by filing his complaint on April 3, 2009. On October 15, 2009, the Court dismissed Plaintiff's complaint with leave to amend for failure to state any cognizable claims. On November 3, 2009, Plaintiff filed his amended complaint.

B. Screening Requirement

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The

Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim that is plausible on its face.'" *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are not. *Id.* at 1949.

II. Summary of Amended Complaint

Plaintiff was previously incarcerated at Pleasant Valley State Prison ("PVSP") where the events giving rise to this action occurred. Plaintiff names as defendants: sergeant Green, sergeant Navarro, correctional officer T. Lee, appeals coordinator H. Martinez, correctional officer Hopkins, and correctional officer Cerda, Jr.

A. Federal Rule of Civil Procedure 18(a)

Plaintiff has two claims: (1) allegations against Defendants Green, Navarro, T. Lee, and H. Martinez regarding a rules violation report and confinement to quarters, and (2) Defendants Hopkins and Cerda, Jr. for actions taken during a transport. These actions are distinct, and would violate the purpose of Federal Rule of Civil Procedure 18(a). "The controlling principle appears in Fed. R. Civ. P. 18(a): 'A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as claims, legal, equitable, or maritime, as the party has against an opposing party.' Thus multiple

claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2." *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). The purpose of splitting such claims into different actions is to avoid the morass that a multiple claim, multiple defendant will cause, and to ensure that prisoners pay the required filing fees pursuant to the PLRA. *Id.*

Here, Plaintiff's allegations against Defendants Green, Navarro, T. Lee and H. Martinez are distinct and unrelated from his claims against Defendants Hopkins and Cerda, Jr. This violates Rule 18(a). Accordingly, Plaintiff's claims against Defendants Hopkins and Cerda Jr. are dismissed from this action without prejudice to filing in a separate action. The Court now turns to Plaintiff's claims against Defendants Green, Navarro, T. Lee, and H. Martinez.

B. Claims Against Green, Navarro, T. Lee, and H. Martinez

Plaintiff contends that he was placed on confinement to quarters ("CTQ") by defendant Navaro due to a bogus allegation made by Defendant T. Lee. (Doc. 13, Am. Compl. p. 3.)[1] All inmates in the unit had been placed on lockdown because a note threatening to assault medical staff had been found. (*Id.*) Plaintiff was singled out, even though he did not write the note, because he is a known inmate litigator. (*Id.*) Plaintiff was prohibited from visits, outdoor and indoor recreation, use of the law library, work assignment, telephone calls, and other privileges typically received by inmates. (*Id.* at 4-5.) Plaintiff received a CDC 115 serious Rules Violation Report ("RVR") for inciting, and was taken to a disciplinary hearing before Defendant Green. (*Id.* at 5.) Plaintiff contended to Defendant Green that prior to be CTQ'd for three days, Plaintiff should have received the protections of due process listed in *Wolff v. McDonell*. (*Id.* at 5-6.) Defendant Green found Plaintiff guilty and instituted a sentence of 30 days loss of outdoor recreation. (*Id.* at 6.) Plaintiff appealed the decision, but the appeal was screened out by Defendant Martinez, for reasons that "are outside of the rejection criteria detailed in the CCR § 3084.4(c)(1)-(8)." (*Id.*)

Plaintiff seeks monetary damages.

[1] All references to page numbers refer to the court docket's page numbering.

III. Analysis

A. First Amendment Retaliation

Plaintiff contends that he was made an example of when he was placed on CTQ and found guilty of a RVR for inciting because he is a litigator. Allegations of retaliation against a prisoner's First Amendment rights to speech or to petition the government may support a § 1983 claim. *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir. 1985); *see also Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989); *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995). "Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005).

Plaintiff's allegations are sufficient to state a cognizable retaliation claim against Defendants Navarro, Green, and T. Lee.

B. Eighth Amendment

The Eighth Amendment protects prisoners from inhumane methods of punishment and from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006). Extreme deprivations are required to make out a conditions of confinement claim, and only those deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*, 503 U.S. 1, 9, 112 S. Ct. 995 (1992) (citations and quotations omitted). In order to state a claim for violation of the Eighth Amendment, the plaintiff must allege facts sufficient to support a claim that prison officials knew of and disregarded a substantial risk of serious harm to the plaintiff. *E.g.*, *Farmer v. Brennan*, 511 U.S. 825, 847, 114 S. Ct. 1970 (1994); *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998).

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1. Confinement To Quarters

Plaintiff contends that confinement to quarters is cruel and unusual punishment. Three days of no outdoor or indoor recreation is insufficient to demonstrate cruel and unusual punishment in violation of the Eighth Amendment. *See May v. Baldwin*, 109 F.3d 557, 565 (9th Cir. 1997) (finding "a temporary denial of outdoor exercise with no medical effects is not a substantial deprivation"). Deprivation of work does not violate the Eighth Amendment. *Hoptowit v. Ray*, 682 F.2d 1237, 1254-55 (9th Cir. 1982).

2. Loss of Yard Privileges

Under some circumstances, the denial of outdoor exercise may rise to the level of cruel and unusual punishment. *Allen v. Sakai*, 48 F.3d 1082, 1087 (9th Cir. 1995). However, the right to outdoor exercise is not absolute or unyielding to other considerations. *Norwood v. Vance*, 572 F.3d 626, 631-32 (9th Cir. 2009). Whether the denial of outdoor exercise constitutes a constitutional violation is dependent upon the circumstances leading to the denial. *Id.* "Although exercise is one of the basic human necessities protected by the Eighth Amendment, a temporary denial of outdoor exercise with no medical effects is not a substantial deprivation." *Id.* at 633 (internal quotations and citations omitted).

Here, Plaintiff alleges that he was assessed a thirty day loss of yard privileges following the finding of guilt on a rules violation report and thus deprived of outdoor recreation. However, Plaintiff has not alleged any facts showing that a one month restriction on outdoor activities was a substantial deprivation, or that any defendant knew of and disregarded an excessive risk of harm to him. Plaintiff fails to state a claim for relief for violation of the Eighth Amendment relating to the deprivation of outdoor recreation.

C. Due Process

The Due Process Clause protects against the deprivation of liberty without due process of law. *Wilkinson v. Austin*, 545 U. S. 209, 221, 125 S. Ct. 2384, 2393 (2005). In order to invoke the protection of the Due Process Clause, a plaintiff must first establish the existence of a liberty interest for which the protection is sought. *Id.* Liberty interests may arise from the Due Process Clause itself or from state law. *Id.* The Due Process Clause itself does not confer on inmates a

liberty interest in avoiding "more adverse conditions of confinement." *Id.* Under state law, the existence of a liberty interest created by prison regulations is determined by focusing on the nature of the deprivation. *Sandin v. Conner*, 515 U.S. 472, 481-84, 115 S. Ct. 2293 (1995). Liberty interests created by state law are "generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 484; *Myron v. Terhune*, 476 F.3d 716, 718 (9th Cir. 2007).

1. Confinement to Quarters

Plaintiff argues that pursuant to *Wolff v. McDonnell*, 418 U.S. 539 (1974), due process requires a hearing before any punishment is imposed upon a prison inmate by prison staff. Plaintiff contends that the imposition of a confinement to quarters restriction violated due process because Plaintiff was not afforded a hearing. Plaintiff is not entitled to procedural due process protections in a vacuum. In order to be entitled under federal law to any procedural due process protections, Plaintiff must first have a liberty interest at stake. Plaintiff has alleged no facts that establish the existence of a liberty interest in remaining free from confinement in his quarters. *See May v. Baldwin*, 109 F.3d 557, 565 (9th Cir. 1997) (convicted inmate's due process claim fails because he has no liberty interest in freedom from state action taken within sentence imposed and administrative segregation falls within the terms of confinement ordinarily contemplated by a sentence) (quotations omitted); *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (plaintiff's placement and retention in the SHU was within range of confinement normally expected by inmates in relation to ordinary incidents of prison life and, therefore, plaintiff had no protected liberty interest in being free from confinement in the SHU) (quotations omitted).

Plaintiff's allegations that he was confined to his cell for three days is not an atypical and significant deprivation giving rise to a liberty interest. *See Sandin*, 515 U.S. at 483-84. Plaintiff thus fails to state a due process claim.

2. Disciplinary Hearing

Plaintiff alleges he was found guilty of disciplinary rules violation report by Defendant Green. It is unclear whether Plaintiff is alleging a separate due process violation against Defendant Green based on procedural deficiencies with the hearing. To the extent that Plaintiff

is pursuing such a claim, Plaintiff again fails to allege any liberty interest that would invoke due process concerns. There is no liberty interest in avoiding more adverse conditions of confinement, and a thirty day loss of outdoor yard privileges does not establish the existence of a liberty interest. Plaintiff fails to state a viable claim for violation of due process.[2]

D. Inmate Appeals

Plaintiff alleges that Defendant Martinez violated due process by improperly screening out Plaintiff's grievance. "[A prison] grievance procedure is a procedural right only, it does not confer any substantive right upon the inmates." *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993) (citing *Azeez v. DeRobertis*, 568 F. Supp. 8, 10 (N.D. Ill. 1982)); *see also Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in processing of appeals because no entitlement to a specific grievance procedure); *Massey v. Helman*, 259 F.3d 641, 647 (7th Cir. 2001) (existence of grievance procedure confers no liberty interest on prisoner); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). Defendant Martinez's actions in screening out Plaintiff's appeal does not give rise to any claims for relief under section 1983. Plaintiff's claim fails as a matter of law.

III. Conclusion

Based on the foregoing, the Court DISMISSES Plaintiff's claims against Defendants Hopkins and Cerda, Jr. without prejudice, for failure to comply with Rule 18(a) of the Federal Rules of Civil Procedure.

The Court HEREBY RECOMMENDS the following:

1) This action proceed against Defendants Green, Navarro, and T. Lee for retaliation in violation of the First Amendment;

2) Plaintiff's Eighth Amendment and due process claims are dismissed for failure to state a claim upon which relief may be granted under 42 U.S.C. § 1983; and

[2] Plaintiff contended to Defendant Green that if Plaintiff was found guilty during a disciplinary hearing, that would constitute Double Jeopardy in violation of the Fifth Amendment. This argument is without merit. Prison disciplinary proceedings are not part of a criminal prosecution, *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974), and therefore do not implicate double jeopardy, *see Breed v. Jones*, (finding application of the double jeopardy clause limited to proceedings which are "essentially criminal").

3) Defendant Martinez is dismissed from this action.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after being served with these Findings and Recommendations, the plaintiff may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: **May 11, 2010** **/s/ Dennis L. Beck**
UNITED STATES MAGISTRATE JUDGE