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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN FRATUS,

Plaintiff,

v.

CALIFORNIA DEPT. OF
CORRECTIONS, et al.,

Defendants.

Case No. 1:12-cv-00906-LJO-SKO (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING IN
PART AND DENYING IN PART
PLAINTIFF’S MOTION FOR SUMMARY
JUDGMENT, AND REFERRING MATTER
BACK TO MAGISTRATE JUDGE TO
ISSUE AMENDED SCHEDULING ORDER

(Docs. 38 and 67)

I. Background

Plaintiff John Fratus, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 4, 2012. This action is proceeding on Plaintiff’s second amended complaint against Defendants Callow and Beard for violation of Plaintiff’s Fourteenth Amendment right to procedural due process. Defendant Callow, a correctional lieutenant, is sued in his individual capacity for damages; and Defendant Beard, Secretary of the California Department of Corrections and Rehabilitation (“CDCR”), is sued in his official capacity for injunctive relief. Plaintiff filed a motion for partial summary judgment on November 14, 2014.

The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302, and on July 13, 2015, the Magistrate Judge filed a Findings and Recommendations recommending Plaintiff’s motion be granted in part and denied in part.

1 Plaintiff filed objections on July 28, 2015, Defendants filed objections and a response on August
2 12, 2015, and Plaintiff filed a response on August 26, 2015. Local Rule 304(b), (d).

3 **II. Parties' Objections**

4 Plaintiff was found guilty in a prison disciplinary hearing of battery on a peace officer, and
5 he was assessed an eighteen-month Security Housing Unit ("SHU") term and a time-credit
6 forfeiture. While serving his SHU term, Plaintiff received additional SHU term assessments,
7 resulting in an almost twenty-year term. Plaintiff litigated the credit loss in state court, and the
8 appellate court found his due process rights had been violated, granted his petition for writ of
9 habeas corpus, and ordered CDCR to either restore Plaintiff's time credits or conduct a new
10 disciplinary hearing. *In re Fratus*, 204 Cal.App.4th 1339, 139 Cal.Rptr.3d 660 (Cal.Ct.App.
11 2012). In this section 1983 action, Plaintiff is pursuing a claim for denial of due process arising
12 out of his SHU term. He seeks damages and the expungement of the disciplinary report and/or
13 release from the SHU.

14 Relying on the doctrine of issue preclusion, the Magistrate Judge found that Plaintiff was
15 entitled to summary adjudication on the issues determined by the appellate court in *In re Fratus*
16 but he was not entitled to summary judgment on his due process claim against Defendant Callow,
17 as such a finding would require Plaintiff to first prove that he was deprived of a protected liberty
18 interest in avoiding SHU confinement. Plaintiff now objects to the finding that he is not entitled
19 to summary judgment on the issue of Defendant Callow's liability for violating his right to due
20 process.

21 To prevail on his motion for summary judgment, Plaintiff must affirmatively demonstrate
22 that no reasonable trier of fact could find other than for him. *Soremekun v. Thrifty Payless, Inc.*,
23 509 F.3d 978, 984 (9th Cir. 2007) (quotation marks omitted); *Southern California Gas Co. v. City*
24 *of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003). To establish a violation of his right to due
25 process under section 1983, Plaintiff must demonstrate that (1) he had a protected liberty interest
26 at stake and (2) he was deprived of that protected interest without the procedures he was due under
27 federal law. *Wilkinson v. Austin*, 545 U.S. 209, 221, 125 S.Ct. 2384 (2005). Plaintiff must prevail
28 on both elements for Defendant Callow to be held liable for a constitutional violation, and Plaintiff

1 offered no argument or evidence regarding the first element. Thus, a finding that Plaintiff is
2 entitled to summary judgment would require the Court to find that, as a matter of law, Plaintiff had
3 a protected liberty interest in remaining free from an eighteen-month SHU term. *See Brown v.*
4 *Oregon Dept. of Corrs.*, 751 F.3d 983, 987 (9th Cir. 2014). The Magistrate Judge did not err in
5 declining to find for Plaintiff on that element as a matter of law, a finding which would have been
6 *sua sponte* given Plaintiff's failure to produce argument or evidence as to that element. Plaintiff's
7 argument that the appellate court ruled his due process rights were violated and he is therefore
8 entitled to summary judgment in this action mischaracterizes the protected liberty interest that was
9 litigated in state court. Plaintiff challenged the loss of his time credits in his habeas petition and
10 he may not rely on a ruling related to his interest in his time credits to establish a protected interest
11 in remaining free from the SHU.

12 Next, Plaintiff's objection relating to Defendants' failure to comply with Local Rule
13 260(b) lacks merit because their failure to comply with a procedural rule does not legally entitle
14 him to prevail on the merits of his claim. Nor is Plaintiff's characterization of his motion as
15 unopposed correct. Defendants filed an opposition, although they failed to comply fully with
16 Local Rule 260(b). However, "[d]istrict courts have broad discretion in interpreting and applying
17 their local rules," *Simmons v. Navajo Cnty., Ariz.*, 609 F.3d 1011, 1017 (9th Cir. 2010), and the
18 Magistrate Judge's consideration of the Plaintiff's motion on its merits despite Defendants'
19 procedural violation provides no basis for a valid objection.

20 Finally, Defendants' objections also lack merit. The Magistrate Judge did not find that the
21 appellate court decided all the elements of a due process claim under section 1983. The
22 Magistrate Judge confined her findings regarding issue preclusion to those issues specifically
23 decided by the appellate court. The Magistrate Judge stated, "In finding that Plaintiff was not
24 allowed to present his defense at his disciplinary hearing, and was thus denied a fair hearing, the
25 state appellate court specifically determined that Defendant Callow's refusal to allow Plaintiff to
26 call inmate Johnson as a witness violated Plaintiff's due process rights under *Wolff* and *Hill*, and it
27 determined that SHO Callow refused to allow Plaintiff to ask more than one question of the
28 adverse officer witnesses. *In re Fratus*, 204 Cal.App.4th at 1350-51. Defendant Callow is not

1 now permitted to relitigate these issues. . . .” (Doc. 67, F&R, 12:6-11.) That Defendants would
2 argue this was error is perplexing given the appellate court’s decision, which unquestionably
3 precludes Defendants from relitigating (1) Defendant Callow’s failure to call inmate Johnson as a
4 witness, which the appellate court found violated one of procedural due process rights Plaintiff
5 was due under federal law, and (2) Callow’s failure to allow Plaintiff to ask more than one
6 question of the adverse officer witnesses, which the appellate court found was a violation of state
7 prison regulations. *In re Fratus*, 204 Cal.App.4th at 1351-52. Both deprivations led the appellate
8 court to conclude that Plaintiff was deprived of a fair hearing, the remedy for which was a credit
9 restoration or a rehearing of the disciplinary violation. *Id.* Defendant Callow is not permitted to
10 relitigate those issues in this case and the Magistrate Judge did not err in so finding.¹ *Gonzales v.*
11 *California Dep’t of Corrs. & Rehab.*, 739 F.3d 1226, 1230 (9th Cir. 2014).

12 **III. Conclusion and Order**

13 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
14 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the Findings
15 and Recommendations to be supported by the record and by proper analysis. Accordingly, IT IS
16 HEREBY ORDERED that:

- 17 1. The Findings and Recommendations, filed on July 13, 2015, is adopted in full;
- 18 2. Issue preclusion is applied to (1) Defendant Callow’s failure to allow Plaintiff to
19 call inmate Johnson to testify on his behalf, in violation of his procedural due
20 process rights under federal law, and (2) his failure to allow Plaintiff to ask the
21 adverse officer witnesses more than one question each, in violation of his
22 procedural due process rights under state prison regulations;

25 ¹ The Magistrate Judge made no findings regarding whether there was “some evidence” supporting the decision, and
26 she made no broader findings regarding Plaintiff’s due process claim or Defendant Callow’s liability. To the extent
27 Defendants raised an objection regarding the issue of “some evidence” because of the reference to the *Hill* case, the
28 citation to the *Hill* case was made by the appellate court. Additionally, Plaintiff was the party moving for relief, and
Defendants have not yet sought summary judgment. Neither the Magistrate Judge nor the undersigned is in a position
to speculate regarding whether they will do so and if so, what arguments will be made. On that basis, the Magistrate
Judge stated that she was not going to reach their argument regarding the existence of “some evidence,” an argument
which was not responsive to any grounds for summary judgment raised by Plaintiff in his motion.

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- 3. Plaintiff's motion for summary adjudication on the issue of Defendant Callow's liability for violating his federal right to due process is DENIED; and
- 4. This matter is referred back to the Magistrate Judge to issue the amended scheduling order.

IT IS SO ORDERED.

Dated: August 31, 2015

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE