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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SAIYEZ AHMED,
Plaintiff,
v.
M. MARTEL, et al.,
Defendants.

Case No. 1:13-cv-00941-LJO-MJS (PC)

**FINDINGS AND RECOMMENDATION
TO GRANT IN PART AND DENY IN
PART DEFENDANTS' MOTION TO
DISMISS**

(ECF No. 17)

**FOURTEEN DAY OBJECTION
DEADLINE**

I. PROCEDURAL HISTORY

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The matter proceeds against Defendants Cano, Combs, Davis, Martel, and Shannon on Plaintiff's First Amendment retaliation claim.

Before the Court is Defendants' November 25, 2014 motion to dismiss. (ECF No. 17.) Plaintiff filed an opposition. (ECF No. 19.) Defendants filed a reply. (ECF No. 20.)

The motion is deemed submitted. Local Rule 230(l).

II. LEGAL STANDARD – MOTION TO DISMISS

A motion to dismiss brought pursuant to Rule 12(b)(6) tests the legal sufficiency

1 of a claim, and dismissal is proper if there is a lack of a cognizable legal theory or the
2 absence of sufficient facts alleged under a cognizable legal theory. Conservation Force
3 v. Salazar, 646 F.3d 1240, 1241-42 (9th Cir. 2011). In resolving a 12(b)(6) motion, a
4 court's review is generally limited to the operative pleading. Daniels-Hall v. Nat'l Educ.
5 Ass'n, 629 F.3d 992, 998 (9th Cir. 2010).

6 To survive a motion to dismiss, a complaint must contain sufficient factual matter,
7 accepted as true, to state a claim to relief that is plausible on its face. Ashcroft v. Iqbal,
8 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570
9 (2007)); Conservation Force, 646 F.3d at 1242; Moss v. U.S. Secret Serv., 572 F.3d
10 962, 969 (9th Cir. 2009). The Court must accept the factual allegations as true and draw
11 all reasonable inferences in favor of the non-moving party. Daniels-Hall, 629 F.3d at
12 998. Pro se litigants are entitled to have their pleadings liberally construed and to have
13 any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir.
14 2012); Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012); Silva v. Di Vittorio, 658
15 F.3d 1090, 1101 (9th Cir. 2011); Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010).

17 **III. PLAINTIFF'S CLAIMS**

18 The relevant allegations in Plaintiff's first amended complaint (ECF No. 11) may
19 be summarized essentially as follows.

20 On February 16, 2012, Plaintiff appeared before an Institutional Classification
21 Committee ("ICC"), at which Defendants Martel, Davis, Shannon, Cano, and Combs
22 agreed to release Plaintiff from solitary confinement to the general population.
23 Defendants told Plaintiff that upon his release he should stop appealing a grievance he
24 had filed regarding the lack of process he received at the prior ICC hearing. Plaintiff
25 continued to pursue his appeal and was transferred to another, more dangerous
26 institution on February 28, 2012. Defendants Martel, Davis, Shannon, Cano and Combs
27 authorized the transfer. These defendants knew there was a risk of harm to Plaintiff at
28 the new institution and transferred him in retaliation for pursuing his appeal and also in

1 retaliation for a hunger strike Plaintiff previously engaged in. There was no legitimate
2 penological reason for the transfer.

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4 **IV. ARGUMENTS**

5 Defendants argue that Plaintiff's allegations fail to state a cognizable First
6 Amendment claim and, alternatively, that they are entitled to qualified immunity on any
7 such claim. They further argue that Plaintiff's claims against them in their official
8 capacities are barred by the Eleventh Amendment. (ECF Nos. 17, 20.) Their arguments
9 are discussed in greater detail below.

10 Plaintiff argues that his allegations state a claim for the reasons set out in the
11 Court's screening order, and that Defendants are not entitled to qualified immunity. He
12 does not address Defendants' argument regarding his official capacity claims. He asks
13 for leave to amend any deficiencies found by the Court. (ECF No. 19.)

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15 **V. ANALYSIS**

16 **A. First Amendment Retaliation**

17 **1. Prior Screening Order**

18 As noted, to survive a Rule 12(b)(6) motion to dismiss, a complaint must contain
19 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its
20 face. Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555); Moss, 572 F.3d at 969.
21 This is the same standard the Court applies in screening a prisoner's complaint to
22 determine whether it states a cognizable claim. Indeed, it is the very standard the Court
23 applied in evaluating Plaintiff's complaint, and which lead to the Court's conclusion that
24 the complaint stated cognizable claims. That is, the Court found that Plaintiff alleged
25 claims which, when accepted as true for pleading purposes, would survive a Rule
26 12(b)(6) motion.

27 Nothing has since changed.

1 Nevertheless, Defendants argue that the very pleading which this Court found
2 stated a cognizable claim does not state a cognizable claim and should be dismissed
3 pursuant to Rule 12(b)(6). The Court would prefer not to duplicate its efforts and explain
4 again why it reached the conclusions it did on screening, but the present motion to
5 dismiss effectively asks it to do so. Accordingly, the Court will herein address the
6 substantive issues presented by Defendants' motion.

7 **2. Legal Standard – Retaliation**

8 “Within the prison context, a viable claim of First Amendment retaliation entails
9 five basic elements: (1) An assertion that a state actor took some adverse action
10 against an inmate (2) because of (3) that prisoner's protected conduct, and that such
11 action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action
12 did not reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408
13 F.3d 559, 567-68 (9th Cir. 2005).

14 The second element focuses on causation and motive. See Brodheim v. Cry, 584
15 F.3d 1262, 1271 (9th Cir. 2009). A plaintiff must show that his protected conduct was a
16 “substantial’ or ‘motivating’ factor behind the defendant's conduct.” Id. (quoting
17 Sorrano's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989). Although it can
18 be difficult to establish the motive or intent of the defendant, a plaintiff may rely on
19 circumstantial evidence. Bruce, 351 F.3d at 1289 (finding that a prisoner established a
20 triable issue of fact regarding prison officials' retaliatory motives by raising issues of
21 suspect timing, evidence, and statements); Hines v. Gomez, 108 F.3d 265, 267-68 (9th
22 Cir. 1997); Pratt v. Rowland, 65 F.3d 802, 808 (9th Cir. 1995) (“timing can properly be
23 considered as circumstantial evidence of retaliatory intent”).

24 In terms of the third prerequisite, filing a grievance is a protected action under the
25 First Amendment. Valandingham v. Bojorquez, 866 F.2d 1135, 1138 (9th Cir. 1989).

26 With respect to the fourth prong, “[it] would be unjust to allow a defendant to
27 escape liability for a First Amendment violation merely because an unusually
28 determined plaintiff persists in his protected activity” Mendocino Env'tl. Ctr. v.

1 Mendocino Cnty., 192 F.3d 1283, 1300 (9th Cir. 1999). The correct inquiry is to
2 determine whether an official's acts would chill or silence a person of ordinary firmness
3 from future First Amendment activities. Rhodes, 408 F.3d at 568-69 (citing Mendocino
4 Envtl. Ctr., 192 F.3d at 1300).

5 With respect to the fifth prong, a prisoner must affirmatively allege that "the
6 prison authorities' retaliatory action did not advance legitimate goals of the correctional
7 institution or was not tailored narrowly enough to achieve such goals." Rizzo v. Dawson,
8 778 F.2d 527, 532 (9th Cir. 1985).

9 **3. Discussion**

10 **a. Adverse Action**

11 Defendants first argue that Plaintiff's transfer from Pleasant Valley State Prison
12 ("PVSP") to California State Prison, Solano ("SOL") did not constitute adverse action.
13 Defendants' primary argument in this regard is that they had discretion to transfer
14 Plaintiff to another institution, and such discretionary transfers generally do not give rise
15 to a constitutional cause of action.

16 Defendants are correct that prison inmates do not have a constitutional right to
17 be incarcerated at a particular correctional facility or to be transferred from one facility to
18 another. Meachum v. Fano, 427 U.S. 215, 224-25 (1976); see also Olim v. Wakinekona,
19 461 U.S. 238, 244-45 (1983). However, it is well settled that prison officials may not
20 "transfer an inmate to another prison in retaliation for the inmate's exercise of his First
21 Amendment right[s.]" Pratt, 65 F.3d at 806. Defendants' arguments to the contrary are
22 without merit.

23 Plaintiff's allegation that he was transferred to an institution housing inmates who
24 intended to cause Plaintiff harm is sufficient to allege adverse action.

25 **b. Causation**

26 Defendants next argue that Plaintiff's transfer was not initiated "because of" his
27 protected conduct. They contend that Plaintiff's protected conduct, i.e., his
28 administrative grievance and hunger strike, occurred after the decision to transfer

1 Plaintiff. Records attached to Plaintiff's first amended complaint do not support
2 Defendants' contentions.

3 Plaintiff appeared before an ICC on January 26, 2012. (ECF No. 11 at 17.)
4 Therein, Plaintiff's transfer was discussed. The committee elected to transfer Plaintiff to
5 California Medical Facility ("CMF"), or alternatively California Medical Center ("CMC").
6 (Id.) This transfer was characterized as an "adverse transfer." (Id.)

7 Plaintiff alleges that he began his hunger strike four days later, on January 30,
8 2012. (Id. at 6, 18.) On February 8, 2012, Plaintiff submitted a grievance contesting the
9 January 26, 2012 ICC decision. (Id. at 21-23.)

10 Plaintiff's exhibits reflect that the decision to transfer him to SOL did not occur
11 until February 14, 2012. (Id. at 22.) Plaintiff was transferred to SOL on February 29,
12 2012. (Id. at 25.)

13 Plaintiff's claim of retaliation is not predicated on the decision to transfer him,
14 generally, but on the decision to transfer him to SOL, an institution which, Plaintiff
15 alleges, houses inmates who are hostile to Plaintiff. Based on the allegations and
16 exhibits contained in the first amended complaint, this decision did not occur until after
17 Plaintiff engaged in protected conduct. Indeed, the decision to change Plaintiff's
18 proposed transfer from CMF or CMC to SOL was made almost immediately following
19 Plaintiff's protected conduct, and therefore is sufficient to give rise to an inference that
20 the decision was retaliatory.

21 Accordingly, Plaintiff's first amended complaint sufficiently alleges a causal nexus
22 between his protected conduct and the adverse action.

23 **c. Chilling Effect**

24 Defendants argue that the decision to transfer Plaintiff would not chill a person of
25 ordinary firmness because (1) Plaintiff consented to the transfer, and (2) the transfer
26 was motivated by concerns for Plaintiff's safety.

27 Defendants' contention that Plaintiff consented to the transfer is founded upon
28 the ICC members' statement, in the January 26, 2012 ICC report, that Plaintiff

1 “acknowledged his understanding of and agreement with committee’s action.” (ECF No.
2 11 at 17.) However, even if this statement by the ICC committee could be construed to
3 accurately reflect Plaintiff’s consent, the transfer at issue at that time was Plaintiff’s
4 transfer to CMF or CMC, not to SOL. In any event, Plaintiff’s appeal of the January 26,
5 2012 ICC decision belies any inference that he agreed with the Committee’s action.

6 Defendants’ contention that the transfer was motivated by concerns for Plaintiff’s
7 safety is a matter of some factual dispute. Safety concerns clearly are documented in
8 the ICC records. However, the first amended complaint and attached exhibits reflect
9 Plaintiff’s belief that he safely could remain at PVSP. Plaintiff also clearly believed that a
10 transfer to SOL would not enhance, but instead would impair, his safety. This
11 disagreement cannot be resolved solely on the basis of Plaintiff’s complaint, and
12 therefore it is not proper for resolution on a motion to dismiss.

13 Accordingly, Plaintiff’s allegations are sufficient to allege a chilling effect on future
14 First Amendment activities.

15 **d. Legitimate Correctional Goal**

16 Finally, Defendants contend that the decision to transfer Plaintiff was supported
17 by the legitimate correctional goal of improving safety for Plaintiff and the institution.

18 Maintaining the safety of inmates and the institution is unquestionably a
19 legitimate correctional goal. However, as stated above, Plaintiff has alleged that no such
20 safety concerns were present in his case and, in any event, safety was diminished by
21 his transfer to SOL. Although the ICC documents attached to Plaintiff’s complaint
22 represent that such safety concerns existed, the statements contained therein are
23 essentially hearsay, and are not sufficient at the pleading stage to refute Plaintiff’s
24 allegations.

25 **4. Conclusion**

26 Plaintiff’s allegations state a cognizable First Amendment retaliation claim, and
27 Defendants’ motion to dismiss for failure to state a claim should be denied.

1 **B. Qualified Immunity**

2 **1. Legal Standard**

3 Government officials enjoy qualified immunity from civil damages unless their
4 conduct violates “clearly established statutory or constitutional rights of which a
5 reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).
6 Resolving a claim of qualified immunity requires courts to determine whether the facts
7 alleged, when taken in the light most favorable to the plaintiff, violated a constitutional
8 right, and if so, whether the right was clearly established. Saucier v. Katz, 533 U.S.
9 194, 201 (2001). While often beneficial to address in that order, courts have discretion
10 to address the two-step inquiry in the order they deem most suitable under the
11 circumstances. Pearson v. Callahan, 555 U.S. 223, 236 (2009).

12 “The principles of qualified immunity shield an officer from personal liability when
13 an officer reasonably believes that his or her conduct complies with the law.” Pearson,
14 555 U.S. at 244. Therefore, “[i]f the [defendant’s] mistake as to what the law requires is
15 reasonable . . . the [defendant] is entitled to the immunity defense.” Saucier v. Katz, 533
16 U.S. at 205. Qualified immunity protects “all but the plainly incompetent or those who
17 knowingly violate the law.” Malley v. Briggs, 475 U.S. 335, 341 (1986).

18 **2. Analysis**

19 In light of the foregoing analysis, Defendants’ argument that they are entitled to
20 qualified immunity cannot stand. Defendants first argue that they are entitled to qualified
21 immunity because Plaintiff’s allegations are insufficient to show that a constitutional right
22 was violated. This argument is without merit because, as discussed above, Plaintiff’s
23 allegations state a cognizable claim.

24 Defendants next argue that they are entitled to qualified immunity because their
25 conduct was reasonable in light of established law. However, as stated, Plaintiff had a
26 clearly established constitutional right to be free from retaliatory prison transfers. Pratt,
27 65 F.3d at 806. Whether Plaintiff’s transfer was retaliatory or motivated by legitimate
28

1 security concerns is a factual issue that cannot be determined on a motion to dismiss.¹

2 Accordingly, the Court cannot determine at this stage of the proceedings that
3 Defendants are entitled to summary judgment.

4 **C. Official Capacity Claims**

5 Plaintiff's complaint names Defendants in their official and individual capacities.
6 (ECF No. 11.) The Court's screening order did not address Plaintiff's official capacity
7 claims. (ECF No. 13.)

8 Plaintiff cannot recover money damages from state officials in their official
9 capacities. Aholelei v. Dept. of Public Safety, 488 F.3d 1144, 1147 (9th Cir. 2007)
10 (citations omitted). Official capacity suits may seek only prospective relief. See Wolfson
11 v. Brammer, 616 F.3d 1045, 1065-66 (9th Cir. 2010).

12 Here, although Plaintiff's complaint sought injunctive relief, his claims for such
13 relief do not appear related to his cognizable First Amendment retaliation claim. The
14 Court's screening order stated that the instant action properly proceeds as one for
15 damages only. (ECF No. 13.) Because Plaintiff may not seek money damages against
16 state officials in their official capacities, his official capacity claims should be dismissed.

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18 **VI. CONCLUSION AND RECOMMENDATION**

19 Based on the foregoing, the Court HEREBY RECOMMENDS that Defendant's
20 motion to dismiss (ECF No. 17) be GRANTED IN PART AND DENIED IN PART.
21 Specifically, the Court recommends that Plaintiff's claims against Defendants in their
22 official capacities be dismissed. Defendants' motion otherwise should be denied.

23 The findings and recommendation will be submitted to the United States District
24 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
25 Within fourteen (14) days after being served with the findings and recommendation, the

26 _____
27 ¹ Defendants also argue that Defendant Cano is entitled to qualified immunity because his involvement
28 was limited to documenting security concerns involving Plaintiff and he did not participate in the transfer
decision. However, support for this assertion is not found in the first amended complaint or attached
exhibits.

1 parties may file written objections with the Court. The document should be captioned
2 "Objections to Magistrate Judge's Findings and Recommendation." A party may
3 respond to another party's objections by filing a response within fourteen (14) days after
4 being served with a copy of that party's objections. The parties are advised that failure
5 to file objections within the specified time may result in the waiver of rights on appeal.
6 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
7 F.2d 1391, 1394 (9th Cir. 1991)).

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10 IT IS SO ORDERED.

11 Dated: June 28, 2015

12 /s/ Michael J. Seng
13 UNITED STATES MAGISTRATE JUDGE
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