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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANDRE UNDERWOOD,
Plaintiff,
v.
R. COX, et al.,
Defendants.

1:16-cv-00597-EPG (PC)

ORDER SCREENING PLAINTIFF’S FIRST AMENDED COMPLAINT AND FINDING NON-FRIVOLOUS CLAIM AGAINST DEFENDANTS COX AND STANLEY FOR VIOLATION OF THE EIGHTH AMENDMENT AND DISMISSING ALL OTHER ASSERTED CLAIMS AND DEFENDANTS; WITH LEAVE TO AMEND

ORDER FOR PLAINTIFF TO EITHER: (1) NOTIFY THE COURT THAT HE IS WILLING TO PROCEED ONLY ON THE EIGHTH AMENDMENT CLAIM AGAINST DEFENDANTS COX AND STANLEY; OR (2) FILE A SECOND AMENDED COMPLAINT

(ECF NO. 9)

THIRTY DAY DEADLINE

I. BACKGROUND

Andre Underwood (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on April 28, 2016. (ECF No. 1). The Court screened Plaintiff’s complaint on December 7, 2016. (ECF No. 8). The Court found a non-frivolous claim against Defendants Cox and Stanley for violation of the Eighth Amendment, dismissed

1 all other asserted claims and defendants, and provided Plaintiff the opportunity to file an
2 amended complaint. (Id.). Plaintiff filed a First Amended Complaint on January 9, 2017.
3 (ECF No. 9). The First Amended Complaint largely repeats the factual allegations in Plaintiff’s
4 complaint that Plaintiff was twice subjected to discipline that included loss of outdoor exercise
5 privileges for 90 days each time. Plaintiff also asserts that the prison improperly denied his
6 grievances concerning this disciplinary action. The Court reaches the same conclusion as it did
7 in its December 7, 2016, order, and upholds the same claim in this order and dismisses the rest.

8 However, in light of certain claims in the First Amended complaint, the Court provides
9 certain legal guidance, as well as leave to amend, in order to provide Plaintiff an opportunity to
10 set forth additional allegations supporting those claims if he so chooses. Otherwise, the Court
11 is prepared to proceed on the claim already upheld against Defendants Cox and Stanley and to
12 dismiss the remaining defendants and claims.¹

13 **II. SCREENING REQUIREMENT**

14 The Court is required to screen complaints brought by prisoners seeking relief against a
15 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
16 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
17 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
18 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
19 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
20 paid, the court shall dismiss the case at any time if the court determines that the action or
21 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

22 A complaint must contain “a short and plain statement of the claim showing that the
23 pleader is entitled to relief....” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
24 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
25

26 ¹ Plaintiff has consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c)
27 (ECF No. 7), and no other parties have made an appearance. Therefore, pursuant to Appendix A(k)(4) of the
28 Local Rules of the Eastern District of California, the undersigned shall conduct any and all proceedings in the case
until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

1 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
2 Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff
3 must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
4 plausible on its face.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570). While
5 factual allegations are accepted as true, legal conclusions are not. Id.

6 In determining whether a complaint states an actionable claim, the Court must accept
7 the allegations in the complaint as true, Hospital Bldg. Co. v. Trs. of Rex Hospital, 425 U.S.
8 738, 740 (1976), construe *pro se* pleadings liberally in the light most favorable to the plaintiff,
9 Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the plaintiff’s
10 favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). Pleadings of *pro se* plaintiffs “must
11 be held to less stringent standards than formal pleadings drafted by lawyers.” Hebbe v. Pliler,
12 627 F.3d 338, 342 (9th Cir. 2010) (holding that *pro se* complaints should continue to be
13 liberally construed after Iqbal).

14 **III. SUMMARY OF PLAINTIFF’S FIRST AMENDED COMPLAINT**

15 As Plaintiff did in his original complaint, Plaintiff alleges that on September 8, 2014,
16 while confined at Kern Valley State Prison (“KVSP”) in the custody of the California
17 Department of Corrections and Rehabilitation (“CDCR”), Plaintiff gave a urine sample, which
18 tested positive for THC. Plaintiff was issued a Rules Violation Report (“RVR”) on September
19 22, 2014. Plaintiff entered a plea of guilty and was found guilty.

20 For this violation, Plaintiff was assessed 90 days’ loss of privileges to include
21 placement on temporary C-status, no family visits, no dayroom, no telephone, no yard, no
22 access to any other recreational or entertainment activities, and one fourth the maximum
23 monthly canteen draw as authorized by the secretary.

24 Plaintiff appealed this disposition, specifically the denial of yard and exercise. Plaintiff
25 requested that yard privileges be reinstated. Much of Plaintiff’s complaint discusses his
26 correspondence with the appeals offices, as the various prison grievance officials repeatedly
27 denied his appeals for various procedural and other reasons. Plaintiff alleges that these bases
28 were improper and violated CDCR rules for processing grievances.

1 On November 12, 2014, KVSP Facility B was on lock down status and all inmates were
2 being escorted in mechanical restraints, i.e., handcuffs connected to chains. Correctional
3 Officer S. Pittman approached Plaintiff's cell and ordered plaintiff to submit to a urinalysis
4 sample. Plaintiff asked Pittman if he had to do it while handcuffed and Pittman said yes. Upon
5 hearing Pittman's answer, Plaintiff refused.

6 On November 20, 2014, Plaintiff was issued an RVR for refusing to submit to a
7 urinalysis sample. Plaintiff was found guilty. Defendant C. Stanley assessed Plaintiff 90 days'
8 loss of privileges to include placement on temporary C-status, no family visits, no dayroom, no
9 telephone, no yard/exercise, no access to any other recreational or entertainment activities, and
10 one fourth the maximum monthly canteen draw as authorized by the secretary. Defendant
11 Stanley also assessed and imposed loss of visiting for 180 days to be followed by non-contact
12 visiting status for 180 days. Defendant Stanley also placed Plaintiff on disciplinary detention
13 for 90 days. Plaintiff remained on disciplinary detention the full 90 days without any outdoor
14 exercise opportunities.

15 Plaintiff again filed repeated grievances throughout the prison appeal system, which
16 were denied. Plaintiff alleges that such denials were improper.

17 **IV. EVALUATION OF CLAIMS IN PLAINTIFF'S FIRST AMENDED**
18 **COMPLAINT**

19 For the reasons set forth in the Court's Order dated December 7, 2016 (ECF No. 8), the
20 Court finds that Plaintiff's First Amended Complaint sets forth a non-frivolous claim for
21 violation of the Eighth Amendment based on conditions of confinement, specifically the lack of
22 outdoor exercise, against Defendants R. Cox and C. Stanley. Also for the reasons set forth in
23 the Court's prior order, Plaintiff First Amended Complaint fails to state a claim against
24 defendants involved in the grievance process.

25 Plaintiff's legal claims as asserted in Plaintiff's First Amended complaint appear to
26 assert two somewhat different legal claims, which were not addressed in the Court's prior
27 order: a violation of the Due Process Cause based on a failure to provide due process in the
28 original assessment of the Rules Violation, and an equal protection challenge to the

1 punishments. The Court does not find that the First Amended Complaint contains enough facts
2 to sufficiently allege these constitutional violations, but below the Court provides the legal
3 standards for those claims and gives Plaintiff leave to amend if he believes there are additional
4 facts that would set forth a claim under those legal standards.

5 **A. Violation of Due Process During the Rules Violation Proceeding**

6 Prisoners retain their right to due process subject to the restrictions imposed by the
7 nature of the penal system. See Wolff v. McDonnell, 418 U.S. 539, 556 (1974). Prison
8 disciplinary proceedings are not part of a criminal prosecution and the full panoply of rights
9 due a defendant in such proceedings does not apply. See id. But the Due Process Clause
10 requires certain minimum procedural protections where serious rules violations are alleged, the
11 power of prison officials to impose sanctions is narrowly restricted by state statute or
12 regulations, and the sanctions are severe. See id. at 556–57, 571–72 n.19.

13 *Wolff* established five constitutionally mandated procedural requirements for
14 disciplinary proceedings. First, “written notice of the charges must be given to the disciplinary-
15 action defendant in order to inform him of the charges and to enable him to marshal the facts
16 and prepare a defense.” Id. at 564. Second, “at least a brief period of time after the notice, no
17 less than 24 hours, should be allowed to the inmate to prepare for the appearance before the
18 [disciplinary committee].” Id. Third, “there must be a ‘written statement by the factfinders as
19 to the evidence relied on and reasons’ for the disciplinary action.” Id. (quoting Morrissey v.
20 Brewer, 408 U.S. 471, 489 (1972)). Fourth, “the inmate facing disciplinary proceedings should
21 be allowed to call witnesses and present documentary evidence in his defense when permitting
22 him to do so will not be unduly hazardous to institutional safety or correctional goals.” Id. at
23 566. And fifth, “[w]here an illiterate inmate is involved [or] the complexity of the issue makes
24 it unlikely that the inmate will be able to collect and present the evidence necessary for an
25 adequate comprehension of the case, he should be free to seek the aid of a fellow inmate, or ...
26 to have adequate substitute aid ... from the staff or from a [n] ... inmate designated by the staff.”
27 Id. at 570.

28 A prisoner's right to due process is violated “only if he [is] not provided with process

1 sufficient to meet the *Wolff* standard.” Walker v. Sumner, 14 F.3d 1415, 1419–20 (9th Cir.
2 1994).

3 Plaintiff’s First Amended Complaint does not contain a detailed description of the
4 proceedings regarding the Rules Violation Report that resulted in his disciplinary sentence. He
5 describes how Defendants Cox and Stanley were “responsible for conducting the hearings for
6 Plaintiff’s (RVR) Log No. # FB-14-09-056 on October 7, 2014 (RVR) Log No. # FB 14-11-
7 031 on December 11, 2014,” which suggests that hearings were conducted. He alleges that he
8 entered a plea of guilty regarding the October 7, 2014 RVR. He also refers to the December
9 11, 2014 RVR being “adjudicated” but does not say how. These factual allegations do not set
10 forth a claim for a due process violation because there are no allegations that Plaintiff lacked
11 the procedural rights described above.

12 That said, Plaintiff alleges in his legal claims section that “Defendants subjected
13 plaintiff to atypical and significant hardship when they failed to provide plaintiff with some
14 amount of protection or level of process such as a hearing or notice.” (ECF No. 9, at p. 21).
15 That sentence alone is not enough to set forth a due process claim, but it does give the Court
16 pause. The Court will allow Plaintiff to amend his complaint further if he wishes to add factual
17 allegations that would support a due process violation.

18 **B. Violation of Equal Protection in Punishment**

19 Plaintiff’s First Amended Complaint asserts that “Defendants treated plaintiff
20 differently then [sic] other inmates who were found guilty of California Department of
21 Corrections and Rehabilitation Rules Violation Reports, in the general population at Kern
22 Valley State Prison and placed on temporary ‘C’ status.” (Id. at p. 22). The Court reviews the
23 applicable law regarding equal treatment below.

24 To state a § 1983 claim for violation of the Equal Protection Clause, Plaintiff must
25 “show that the defendants acted with an intent or purpose to discriminate against plaintiff based
26 on membership in a protected class.” Thornton v. City of St. Helens, 425 F.3d 1158, 1166 (9th
27 Cir. 2005). To state a claim under § 1981, Plaintiff must allege that he suffered intentional
28 discrimination based on his race. Martin v. Ampco Sys. Parking, 2013 WL 5781311, at *14

1 (D. Haw. Oct. 24, 2013) (citing Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1487 (9th
2 Cir. 1995)); Lowe v. City of Monrovia, 775 F.2d 998, 1010 (9th Cir. 1985). To state a claim
3 under § 1985(3), Plaintiff must allege a conspiracy motivated by race or class-based
4 discriminatory animus. Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 267-68
5 (1993); see Bretz v. Kelman, 773 F.2d 1026, 1028 (9th Cir. 1985) (explaining that an allegation
6 of race or class-based discrimination is required to plead a § 1985(3) claim).

7 Plaintiff has not set forth an equal protection claim based on the facts alleged thus far.
8 He states that he did not receive the same treatment as others, but does not allege that he is part
9 of a protected class or facts indicating that his disparate treatment was as a result of his
10 membership in a protected class. Merely alleging that someone else received a different
11 punishment than Plaintiff based on similar facts does not itself state a violation of the
12 Constitution, even if it seems unfair.

13 **V. CONCLUSION AND ORDER**

14 The Court has screened Plaintiff's complaint and finds that it states a non-frivolous
15 claim against Defendants R. Cox and C. Stanley for violation of the Eighth Amendment based
16 on conditions of confinement, specifically the lack of outdoor exercise. The complaint fails to
17 state any other claim against Defendants R. Cox and C. Stanley, or any claim against any other
18 defendant.

19 The Court will allow Plaintiff to file an amended complaint if he believes that he can
20 plead additional facts that would state a claim under the law explained above. Alternatively,
21 Plaintiff can notify the Court that he is willing to proceed only on the claim found cognizable
22 by this Court—specifically against Defendants R. Cox and C. Stanley for violation of the
23 Eighth Amendment based on conditions of confinement—in which case the Court will
24 authorize the complaint to be served on those defendants.

25 Should Plaintiff choose to amend the complaint, the amended complaint should be brief,
26 Fed. R. Civ. P. 8(a), but must state what each named defendant did that led to the deprivation of
27 Plaintiff's constitutional or other federal rights. Iqbal, 556 U.S. at 678; Jones v. Williams, 297
28 F.3d 930, 934 (9th Cir. 2002). Plaintiff must set forth “sufficient factual matter . . . to ‘state a

1 claim to relief that is plausible on its face.” Iqbal, 556 U.S. at 678 (quoting Twombly, 550
2 U.S. at 570). There is no *respondeat superior* liability, and each defendant is only liable for his
3 or her own misconduct. Id. at 676. Plaintiff must demonstrate that each defendant *personally*
4 participated in the deprivation of his rights. Jones, 297 F.3d at 934 (emphasis added). Plaintiff
5 is advised that a short, concise statement of the allegations in chronological order will assist the
6 court in identifying his claims. Plaintiff should name each defendant and explain what
7 happened, describing personal acts by the individual defendant that resulted in the violation of
8 Plaintiff’s rights. Plaintiff should also describe any harm he suffered as a result of the
9 violation. Plaintiff should note that although he has been given the opportunity to amend, it is
10 not for the purpose of adding new defendants for unrelated issues.

11 If Plaintiff decides to file an amended complaint, he is advised that an amended
12 complaint supersedes the original complaint, Lacey v. Maricopa County, 693 F. 3d 896, 907
13 n.1 (9th Cir. 2012) (*en banc*), and that it must be complete in itself without reference to the
14 prior or superseded pleading, Local Rule 220. Once an amended complaint is filed, the original
15 complaint no longer serves any function in the case. Therefore, in an amended complaint, as in
16 an original complaint, each claim and the involvement of each defendant must be sufficiently
17 alleged. The amended complaint should be clearly and boldly titled “Second Amended
18 Complaint,” refer to the appropriate case number, and be an original signed under penalty of
19 perjury.

20 Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

- 21 1. Plaintiff’s complaint states a non-frivolous claim against Defendants R. Cox and
22 C. Stanley for violation of the Eighth Amendment based on conditions of
23 confinement, specifically the lack of outdoor exercise. All other asserted claims
24 and defendants are dismissed;
- 25 2. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 26 3. Plaintiff has **thirty (30) days** from the date of service of this order to file an
27 amended complaint or notify the Court that he is willing to proceed only on the
28 claim found cognizable by this Court;

