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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

EDDIE YARBROUGH,)	1:17-cv-00185-BAM (PC)
)	
Plaintiff,)	SCREENING ORDER DISMISSING
)	COMPLAINT WITH LEAVE TO AMEND
v.)	
)	(ECF No. 1)
PRISCILLA MARIN, EDWIN GONZALEZ,)	
)	
Defendants.)	THIRTY (30) DAY DEADLINE
)	
)	
)	

Plaintiff Eddie Yarbrough (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to the jurisdiction of the Magistrate Judge. (ECF NO. 6.) Plaintiff initiated this action on February 10, 2017. Plaintiff’s complaint, filed on February 10, 2017 (ECF No. 1), is currently before the Court for screening.

I. Screening Requirement and Standard

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. § 1915(e)(2)(B)(ii).

1 A complaint must contain “a short and plain statement of the claim showing that the
2 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
4 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,
5 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
6 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
7 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
8 (internal quotation marks and citation omitted).

9 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
10 liberally construed and to have any doubt resolved in their favor. Hebbe v. Pliler, 627 F.3d 338,
11 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff’s claims must be facially
12 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each
13 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949
14 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir.
15 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere
16 consistency with liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678,
17 129 S.Ct. at 1949 (quotation marks omitted); Moss, 572 F.3d at 969.

18 **II. Plaintiff’s Allegations**

19 Plaintiff is currently housed at California State Prison at Lancaster. Plaintiff brings suit
20 against Correctional Officer P. Marin and Correctional Officer E. Gonzalez. The events at issue
21 took place at North Kern State Prison.

22 Plaintiff alleges retaliation in Claim I as follows: On January 11, 2015, Defendant
23 Gonzalez retaliated against Plaintiff by placing Plaintiff in administrative segregation without
24 cause after Plaintiff criticized Correctional Officer Mesa as a “stupid C.O.” because Mesa made
25 fun of a mentally ill inmate. Plaintiff told Correctional Officer Mesa that Plaintiff would be a
26 witness if a complaint were filed about his treatment of the inmate. Defendant Marin jointly
27
28

1 collaborated and participated in the violation by signing a fraudulent RVR (indecent exposure)
2 that Gonzalez prepared.¹

3 In Claim II, Plaintiff alleges cruel and unusual punishment as follows: Defendant
4 Gonzalez had Plaintiff placed in ad-seg and prepared a fabricated cause in the documents.
5 Defendant Marin signed off on the false documents under oath. Plaintiff alleges that this is a
6 deliberate defamation of character and keeps his life in danger.

7 In Claim III, Plaintiff alleges a due process violation. Plaintiff alleges that due to
8 Defendants Gonzalez and Marin's combined action, he was transferred to another prison and
9 disciplined without witness testimony or being able to present evidence and assessed an
10 additional 90 days which was added to his sentence.

11 Plaintiff alleges he has been harmed because of the rise in his point levels, he is labeled
12 with a sex crime in his file, he has had death threats, has suicidal thoughts, depression and related
13 health problems. Plaintiff seeks \$65,000 against each defendant and punitive damages of
14 \$200,000 against each defendant.

15 **III. Deficiencies in Complaint**

16 As discussed more fully below, Plaintiff's complaint fails to comply with Federal Rule of
17 Civil Procedure 8 and fails to state a cognizable claim. Plaintiff will be given leave to amend his
18 complaint. To assist Plaintiff in amending his complaint, the Court provides the following
19 pleading and legal standards that apply to his claims.

20 **A. Federal Rule of Civil Procedure 8**

21 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain "a short and
22 plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).
23 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause
24 of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678

25
26 ¹ Plaintiff alleges he filed 602 appeals, but Plaintiff believes Defendant Gonzalez intercepted the 602 because he is
27 a sergeant and only sergeants have access to the appeals box. The failure to exhaust is an affirmative defense, and
28 the defendants bear the burden of raising and proving the absence of exhaustion. Jones v. Bock, 549 U.S. 199, 216
(2007); Albino v. Baca, 747 F.3d 1162, 1166 (9th Cir. 2014). "In the rare event that a failure to exhaust is clear on
the face of the complaint, a defendant may move for dismissal under Rule 12(b)(6)." Albino, 747 F.3d at 1166. For
purposes of screening, the Court does not address whether Plaintiff properly exhausted his administrative remedies.

1 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to state a
2 claim to relief that is plausible on its face.” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S.
3 at 555). While factual allegations are accepted as true, legal conclusions are not. *Id.*; see also
4 Twombly, 550 U.S. at 556–557; Moss, 572 F.3d at 969.

5 Plaintiff’s complaint does not clearly set forth the factual allegations underlying his
6 claims. Plaintiff states conclusory allegations. Plaintiff fails to describe specific actions taken by
7 each of the defendants named in his complaint which violated his constitutional rights. Plaintiff
8 will be granted leave to amend his complaint. Plaintiff also omits necessary facts to enable the
9 Court to determine whether Plaintiff states a cognizable claim against any of the named
10 defendants. If Plaintiff elects to amend, he must state in clear and plain language the basis of his
11 claim, including the facts (such as names, dates, and events) concerning what a defendant or
12 defendants did or did not do that violated his constitutional rights. Plaintiff will be granted leave
13 to amend his complaint. If Plaintiff elects to amend his complaint, he must set forth factual
14 allegations against each named defendant sufficient to state a claim.

15 **B. Due Process-Rules Violation Report**

16 **1. Due Process in Disciplinary Hearings**

17 The requirements of due process are flexible and the procedural protections required are
18 as the particular situation demands. Wilkinson v. Austin, 545 U.S. 209, 224 (2005). Inmates are
19 entitled to certain due process considerations when subject to disciplinary sanctions. Brown v.
20 Oregon Dept. of Corrections, 751 F.3d 983, 987 (9th Cir. 2014). If the inmate is subjected to a
21 significantly sufficient hardship, “then the court must determine whether the procedures used to
22 deprive that liberty satisfied Due Process.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir.
23 2003).

24 “Prison disciplinary proceedings are not part of a criminal prosecution, and the full
25 panoply of rights due a defendant in such proceedings does not apply.” Wolff v. McDonnell, 418
26 U.S. 539, 556 (1974). With respect to prison disciplinary proceedings, the minimum procedural
27 requirements that must be met are: (1) written notice of the charges; (2) at least 24 hours between
28 the time the prisoner receives written notice and the time of the hearing, so that the prisoner may

1 prepare his defense; (3) a written statement by the fact finders of the evidence they rely on and
2 reasons for taking disciplinary action; (4) the right of the prisoner to call witnesses in his
3 defense, when permitting him to do so would not be unduly hazardous to institutional safety or
4 correctional goals; and (5) legal assistance to the prisoner where the prisoner is illiterate or the
5 issues presented are legally complex. Wolff, 418 U.S. at 563-71. In addition “[s]ome evidence”
6 must support the decision of the hearing officer. Superintendent v. Hill, 472 U.S. 445, 455
7 (1985). The standard is not particularly stringent and the relevant inquiry is whether “there is any
8 evidence in the record that could support the conclusion reached....” *Id.* at 455-56 (emphasis
9 added).

10 Plaintiff alleges that he was transferred and his due process hearing was conducted at the
11 transfer prison. It is unclear from Plaintiff’s allegations whether he asked for the opportunity to
12 call witnesses or present evidence and was denied or what kind of hearing was provided on the
13 RVR. Leave to amend will be granted.

14 **2. Claim Possibly Heck Barred**

15 Plaintiff alleges that as a result of the RVR, an additional 90 days was added to his
16 sentence. Plaintiff is informed that it has long been established that state prisoners cannot
17 challenge the fact or duration of their confinement in a section 1983 action and their sole remedy
18 lies in habeas corpus relief. Wilkinson v. Dotson, 544 U.S. 74, 78 (2005). Often referred to as the
19 favorable termination rule or the Heck bar, this exception to section 1983’s otherwise broad
20 scope applies whenever state prisoners “seek to invalidate the duration of their confinement-
21 either directly through an injunction compelling speedier release or indirectly through a judicial
22 determination that necessarily implies the unlawfulness of the State’s custody.” Wilkinson, 544
23 U.S. at 81; Heck v. Humphrey, 512 U.S. 477, 482, 486-487 (1994); Edwards v. Balisok, 520
24 U.S. 641, 644 (1997). Thus, “a state prisoner’s [section] 1983 action is barred (absent prior
25 invalidation)-no matter the relief sought (damages or equitable relief), no matter the target of the
26 prisoner’s suit (state conduct leading to conviction or internal prison proceedings)-if success in
27 that action would necessarily demonstrate the invalidity of confinement or its duration.” *Id.* at
28 81-82.

1 It is unclear if Plaintiff's seeks invalidation of the 90-days added to Plaintiff's sentence.
2 It is possible that this particular claim may be barred by Heck v. Humpreys, 512 U.S. 477 (1994).
3 Compare Edwards v. Balisok, 520 U.S. 641, 646 (1987) (holding that § 1983 claim is not
4 cognizable because allegations of procedural defects and a biased hearing officer implied the
5 invalidity of the underlying prison disciplinary sanction of loss of good-time credits) with
6 Ramirez v. Galaza, 334 F.3d 850, 858 (9th. Cir. 2003) (holding that the favorable termination
7 rule of Heck and Edwards does not apply to challenges to prison disciplinary hearings where the
8 administrative sanction imposed does not affect the overall length of confinement and, thus, does
9 not go to the heart of habeas). Plaintiff alleges that he was subjected to a disciplinary proceeding
10 that was based on false information, and that he was subjected to a hearing in which proper
11 procedures were not followed, resulting in the three months added toward his sentence. A
12 judgment in favor of plaintiff on his claim will necessarily imply the invalidity of the
13 disciplinary action, and plaintiff has not demonstrated that the disciplinary action has been
14 "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal
15 authorized to make such determination, or called into question by a federal court's issuance of a
16 writ of habeas corpus." See e.g., Cox v. Clark, 321 Fed.Appx. 673, 676 (9th Cir. 2009)
17 (affirming dismissal of due process claim pursuant to Balisok to the extent that plaintiff sought
18 restoration of good-time credits and the reversal of a disciplinary decision); McCoy v. Spidle,
19 2009 WL 1287872, *7-*8 (E.D. Cal. May 6, 2009) ("A challenge under section 1983, seeking
20 only damages and declaratory relief for procedural due process violations is also barred if the
21 nature of the challenge would necessarily imply the invalidity of the deprivation of good-time
22 credits."). Plaintiff will be granted leave to amend the claim and remedy he is seeking.

23 **3. False Evidence/False RVR**

24 To the extent Plaintiff contends that the rules violation report for indecent exposure was
25 false, such claims likewise fails to give rise to a due process violation. Plaintiff is advised that
26 the issuance of a false RVR or false crime report does not, in and of itself, support a claim under
27 section 1983. See, e.g., Ellis v. Foulk, No. 14-cv-0802 AC P, 2014 WL 4676530, at *2 (E.D. Cal.
28 Sept. 18, 2014) ("Plaintiff's protection from the arbitrary action of prison officials lies in 'the

1 procedural due process requirements as set forth in Wolff v. McDonnell.’ ”) (citing Hanrahan v.
2 Lane, 747 F.2d 1137, 1140 (7th Cir. 1984)); Solomon v. Meyer, No. 11-cv-02827-JST (PR),
3 2014 WL 294576, at *2 (N.D. Cal. Jan. 27, 2014) (“[T]here is no constitutionally protected right
4 to be free from false disciplinary charges.”) (citing Chavira v. Rankin, No. C 11-5730 CW (PR),
5 2012 WL 5914913, at *1 (N.D. Cal. Nov. 26, 2012) (“The Constitution demands due process,
6 not error-free decision-making.”)); Johnson v. Felker, No. 1:12-cv-02719 GEB KJN (PC), 2013
7 WL 6243280, at *6 (E.D. Cal. Dec. 3, 2013) (“Prisoners have no constitutionally guaranteed
8 right to be free from false accusations of misconduct, so the mere falsification of a [rules
9 violation] report does not give rise to a claim under section 1983.”) (citing Sprouse v. Babcock,
10 870 F.2d 450, 452 (8th Cir. 1989) and Freeman v. Rideout, 808 F.2d 949, 951-53 (2d. Cir.
11 1986)). Accordingly, Plaintiff fails to state a cognizable due process claim.

12 **C. Conditions of Confinement**

13 The Eighth Amendment “embodies broad and idealistic concepts of dignity, civilized
14 standards, humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102 (1976). Conditions of
15 confinement may, however, be harsh and restrictive. See Rhodes v. Chapman, 452 U.S. 337, 347
16 (1981). Nonetheless, prison officials must provide prisoners with “food, clothing, shelter,
17 sanitation, medical care, and personal safety.” Toussaint v. McCarthy, 801 F.2d 1080, 1107 (9th
18 Cir. 1986). A prison official violates the Eighth Amendment only when two requirements are
19 met: (1) objectively, the official's act or omission must be so serious such that it results in the
20 denial of the minimal civilized measure of life's necessities; and (2) subjectively, the prison
21 official must have acted unnecessarily and wantonly for the purpose of inflicting harm. See
22 Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison official must have a
23 “sufficiently culpable mind.” See *id.* Mere verbal harassment or abuse alone is not sufficient to
24 state a constitutional deprivation under 42 U.S.C. § 1983. Oltarzewski v. Ruggiero, 830 F.2d
25 136, 139 (9th Cir. 1987).

26 It is unclear from the allegations whether Plaintiff is seeking to allege an Eighth
27 Amendment conditions of confinement claim. Plaintiff will be granted leave to amend.
28

1 **D. First Amendment - Retaliation**

2 The First Amendment prohibits government officials from “abridging the freedom of
3 speech...or the right of the people peaceably to assemble.” Prisoners retain those First
4 Amendment rights not inconsistent with their status as prisoners or with legitimate penological
5 objectives of the corrections system. See Pell v. Procunier, 417 U.S. 817, 822 (1974). Although a
6 prisoner does not lose all First Amendment protections when he enters prison, *id.*, the “inmate's
7 'status as a prisoner' and the operational realities of a prison dictate restrictions on the
8 associational rights among inmates.” Jones v. North Carolina Prisoners' Labor Union, Inc., 433
9 U.S. 119, 125-26 (1977).

10 Allegations of retaliation against a prisoner's First Amendment rights to speech or to
11 petition the government may support a section 1983 claim. Rizzo v. Dawson, 778 F.2d 527, 532
12 (9th Cir. 1985); see also Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v.
13 Rowland, 65 F.3d 802, 807 (9th Cir. 1995). “Within the prison context, a viable claim of First
14 Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some
15 adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that
16 such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did
17 not reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567–
18 68 (9th Cir. 2005).

19 Plaintiff fails to allege he was engaged in constitutionally protected conduct. To the
20 extent Plaintiff alleges that he was engaged in protected activity when he told Officer Mesa that
21 Plaintiff would be a witness against him, it is unclear from the allegations if Defendant Gonzales
22 or Marin knew of his statement. Further, Plaintiff does not allege that he was chilled in exercise
23 of First Amendment rights.

24 Plaintiff also seems to allege that he was transferred to a different prison for some
25 protected conduct based on Defendants Gonzalez's and Marin's decision to transfer Plaintiff
26 following asserted misconduct by Plaintiff. Plaintiff's conclusory allegation is not sufficient to
27 demonstrate that Defendants initiated Plaintiff's transfer because of any constitutionally
28 protected conduct. Plaintiff also fails to adequately allege that the transfer did not reasonably

1 advance a legitimate correctional goal. Plaintiff will be given leave to cure the deficiencies in
2 this claim to the extent he is able to do so in good faith.

3 Plaintiff is informed that he does not have a constitutional right to be housed in or
4 transferred to a particular prison. The U.S. Supreme Court has specifically held that a transfer to
5 a different prison does not implicate a liberty interest, and thus does not implicate the Due
6 Process clause. Meachum v. Fano, 427 U.S. 215, 224–25 (1976); Anderson v. Deleon, Case No.
7 C 12–6055 SI PR, 2013 WL 892276, at *5 (N.D. Cal. Mar. 8, 2013) (“Loss of a prison job,
8 assigning an inmate to a prison far from his family and friends, and the like, which result from
9 interprison transfers, are not constitutionally protected interests.”), citing Olim v. Wakinekona,
10 461 U.S. 238, 247 (1983); Rizzo v. Dawson, 778 F.2d 527, 530 (9th Cir.1985) (“An inmate's
11 liberty interests are sufficiently extinguished by his conviction so that the state may change his
12 place of confinement even though the degree of confinement may be different and prison life
13 may be more disagreeable in one institution than in another.”) Plaintiff cannot state a first
14 amendment claim merely because he was transferred to a less desirable prison without any
15 hearing.

16 **IV. State Claims**

17 Pursuant to 28 U.S.C. § 1367(a), in any civil action in which the district court has original
18 jurisdiction, the district court “shall have supplemental jurisdiction over all other claims in the
19 action within such original jurisdiction that they form part of the same case or controversy under
20 Article III,” except as provided in subsections (b) and (c). The Supreme Court has cautioned that
21 “if the federal claims are dismissed before trial, ... the state claims should be dismissed as well.”
22 United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966). Although the court may
23 exercise supplemental jurisdiction over state law claims, Plaintiff must first have a cognizable
24 claim for relief under federal law. See 28 U.S.C. § 1367.

25 In this instance, Plaintiff fails to state a claim for relief on his federal claims for
26 violations of 42 U.S.C. § 1983. Liberally construing the claims in the complaint, it appears that
27 Plaintiff is bringing state law claims for defamation. As Plaintiff has failed to state any
28 cognizable federal claims in this action, the Court declines to exercise supplemental jurisdiction

1 over Plaintiff's state law causes of action. See 28 U.S.C. § 1367(c)(3). The Court recommends
2 that Plaintiff's state law claims be dismissed without prejudice.

3 **Conclusion and Order**

4 For the above reasons, Plaintiff's complaint fails state a claim upon which relief may be
5 granted under section 1983. The Court will provide Plaintiff with an opportunity to amend his
6 complaint to cure the identified deficiencies to the extent he is able to do so in good faith. Lopez
7 v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

8 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what
9 each named defendant did that led to the deprivation of Plaintiff's constitutional or other federal
10 rights. Iqbal, 556 U.S. at 676. Plaintiff also must set forth "sufficient factual matter . . . to 'state a
11 claim that is plausible on its face.'" Id. at 678 (quoting Twombly, 550 U.S. at 555).

12 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated
13 claims in his second amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no
14 "buckshot" complaints).

15 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.
16 Lacey, 693 F.3d at 927. Therefore, Plaintiff's second amended complaint must be "complete in
17 itself without reference to the prior or superseded pleading." Local Rule 220.

18 Based on the foregoing, it is HEREBY ORDERED that:

- 19 1. The Clerk's Office shall send Plaintiff a complaint form;
- 20 2. Plaintiff's amended complaint, filed February 10, 2017 (ECF No. 1), is dismissed
21 for failure to state a claim;
- 22 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a
23 first amended complaint or a notice of voluntary dismissal; and

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