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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,
Plaintiff,
v.
S. SAVOIE,
Defendant.

Case No. 1:17-cv-01474-DAD-BAM (PC)
FINDINGS AND RECOMMENDATIONS TO
DISMISS CERTAIN CLAIMS
(ECF No. 11)
FOURTEEN-DAY DEADLINE

Plaintiff Guillermo Trujillo Cruz (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action under 42 U.S.C. § 1983. On May 11, 2018, the Court screened Plaintiff’s complaint and granted him leave to amend. (ECF No. 10.) Plaintiff’s first amended complaint, filed on May 21, 2018, is currently before the Court for screening. (ECF No. 11.)

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

1 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b);
2 1915(e)(2)(B)(ii).

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

10 To survive screening, Plaintiff’s claims must be facially plausible, which requires
11 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
12 for the misconduct alleged. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. U.S.
13 Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted
14 unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the
15 plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572 F.3d at 969.

16 **II. Plaintiff’s Allegations**

17 Plaintiff is currently housed at Pelican Bay State Prison in Crescent City, California. The
18 events in the complaint are alleged to have occurred while Plaintiff was housed at Kern Valley
19 State Prison (“KVSP”). Plaintiff names Correctional Officer S. Savoie, a KVSP employee, as the
20 sole defendant in this action.

21 Claim I

22 In Claim I, Plaintiff alleges that on April 7, 2016, Officer Savoie verbally sexually
23 harassed him during third watch security bunk checks and mail pass out. Officer Savoie
24 reportedly tried to get Plaintiff to expose his genitals. On the following day, April 8, 2016,
25 Officer Savoie again tried to get Plaintiff to expose himself to her during afternoon showers,
26 telling Plaintiff that she wanted to see his penis and to take off his boxer shorts. Once Officer
27 Savoie knew that Plaintiff was not complying with her requests, she started to foment false
28 rumors to her co-worker, Officer I. Ruiz, that Plaintiff exposed himself to her. Plaintiff believes

1 that Officer Savoie’s request to expose himself was for the purpose of blackmailing him and
2 manipulating his program.

3 On April 22, 2016, Plaintiff filed a grievance against Officer Savoie for sexual
4 misconduct. At the 602 hearing, Officer Savoie denied all allegations against her. Plaintiff then
5 made a formal request to the I.S.U. unit at KVSP to conduct a polygraph examination of Officer
6 Savoie. Plaintiff also became aware that Lt. Moreno and Sgt. J. Melvin, who were designated to
7 investigate the complaint, did not report the incident or information to the office of Inspector
8 General or the Office of Internal Affairs.

9 Claim II

10 In Claim II, Plaintiff alleges retaliation in violation of his First Amendment rights. In
11 relevant part, Plaintiff contends that on April 27, 2016, Officer Savoie retaliated against him for
12 filing a 602 grievance against her for staff sexual harassment. On that date, Officer Savoie
13 allegedly filed a false Rule Violation Report against Plaintiff for overfamiliarity with staff.
14 Plaintiff asserts that Officer Savoie knew that if a Southern Hispanic inmate was falsely accused
15 of any sex crime or similar infraction, then that inmate could be considered a “no good” Southern
16 Hispanic and could be targeted in any general population. Plaintiff further asserts he was
17 immediately transferred from KVSP to High Desert State Prison because of Officer Savoie’s
18 request for Plaintiff’s and assertions that Plaintiff’s behavior and statements made her feel unsafe
19 with Plaintiff on the facility. Plaintiff was assaulted at High Desert State Prison with deadly
20 weapons. Plaintiff alleges that Officer Savoie reportedly knew that the Rule Violation Report
21 would get Plaintiff targeted and assaulted.

22 Claim III

23 In Claim III, Plaintiff contends that Officer Savoie used excessive force against him in
24 violation of the Eighth Amendment. In relevant part, Plaintiff alleges that on July 24, 2016, he
25 was transferred from KVSP to North Kern Valley State Prison due to Officer Savoie’s allegedly
26 false statements in the Rule Violation Report.

27 On August 1, 2016, Plaintiff arrived at High Desert State Prison. On August 11, 2016,
28 Plaintiff was the target of an assault with deadly weapons “behind Officer Savoie’s false written

1 statements” in Rule Violation Report. Plaintiff was stabbed multiple times to the facial area, the
2 right side of the neck area and his hands and arms. After the assault, Plaintiff was air lifted via
3 helicopter to an outside hospital. Plaintiff believes that Officer Savoie should be held liable for
4 the injuries he sustained as she falsely accused him of a sex crime or similar infraction that got
5 him targeted for an assault with deadly weapons. Plaintiff alleges that Officer Savoie knew the
6 substantial risk of serious harm she had placed him in and acted with deliberate indifference.

7 Requested Relief

8 Plaintiff seeks injunctive relief, along with compensatory and punitive damages.

9 **III. Discussion**

10 **A. Eighth Amendment – Verbal Sexual Harassment**

11 Plaintiff’s allegations regarding sexual harassment implicate the Eighth Amendment to the
12 United States Constitution, not the Fourth Amendment. Sexual harassment or abuse of an inmate
13 by a prison official is a violation of the Eighth Amendment. Wood v. Beauclair, 692 F.3d 1041,
14 1046 (9th Cir. 2012). However, the Eighth Amendment’s protections do not generally extend to
15 mere verbal sexual harassment. See Austin v. Terhune, 367 F.3d 1167, 1171 (9th Cir. 2004);
16 Blueford v. Prunty, 108 F.3d 251, 256 (9th Cir. 1997) (affirming summary judgement in favor of
17 prison officials where “the only arguably sexually harassing conduct... was verbal”); Blacher v.
18 Johnson, 517 Fed.Appx. 564 (9th Cir. 2013) (finding that Eighth Amendment’s protections did
19 not extend to mere verbal sexual harassment) (citation omitted).

20 Plaintiff has failed to state a cognizable Eighth Amendment claim based on allegations of
21 verbal sexual harassment. Plaintiff has been unable to cure this deficiency by amendment.

22 **B. Retaliation – False Report**

23 Generally, a prisoner’s claims based on allegations that prison officials filed false
24 disciplinary charges, standing alone, does not state a constitutional claim. See Sprouse v.
25 Babcock, 870 F.2d 450, 452 (8th Cir. 1989). However, the Ninth Circuit has held that the filing
26 of a disciplinary charge against a prisoner, although otherwise not actionable under section 1983,
27 is “actionable under section 1983 if done in retaliation for [the prisoner] having filed a grievance
28 pursuant to established procedures. Id.

1 Plaintiff alleges that he filed a 602 grievance against Officer Savoie for sexual misconduct
2 on April 22, 2016, and that Officer Savoie denied all allegations against her in the 602 hearing.
3 After Plaintiff filed his grievance, Officer Savoie then filed a false Rule Violation Report against
4 Plaintiff on April 27, 2016, in retaliation for filing the 602 grievance against her. At the pleading
5 stage, Plaintiff states a cognizable section 1983 claim based on the issuance of an allegedly false
6 disciplinary report in retaliation for his filing of a 602 against her.

7 **C. Excessive Force**

8 Plaintiff attempts to assert an excessive force claim against Officer Savoie based on an
9 attack Plaintiff suffered at the hands of other inmates at High Desert State Prison. However, the
10 Court instead construes Plaintiff's excessive force claim as one for failure to protect him from
11 violence at the hands of other inmates in violation of the Eighth Amendment.

12 The Eighth Amendment protects prisoners from inhumane methods of punishment and
13 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.
14 2006). Prison officials must provide prisoners with food, clothing, shelter, sanitation, medical
15 care and personal safety. Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir.2000). Prison officials
16 have a duty under the Eighth Amendment to protect prisoners from violence at the hands of other
17 prisoners because being violently assaulted in prison is simply not part of the penalty that
18 criminal offenders pay for their offenses against society. Farmer v. Brennan, 511 U.S. 825,
19 83334, 114 S.Ct. 1970, 28 L.Ed.2d 811 (1994); Clem v. Lomeli, 566 F.3d 1177, 1181 (9th
20 Cir.2009); Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir.2005). However, prison officials are
21 liable under the Eighth Amendment only if they demonstrate deliberate indifference to conditions
22 posing a substantial risk of serious harm to an inmate; and it is well settled that deliberate
23 indifference occurs when an official acted or failed to act despite his knowledge of a substantial
24 risk of serious harm. Farmer, 511 U.S. at 834, 841; Clem, 566 F.3d at 1181; Hearns, 413 F.3d at
25 1040.

26 Here, Plaintiff fails to adequately allege that Officer Savoie knew of any specific risk of
27 harm to Plaintiff from an assault by other prisoners at High Desert State Prison. Plaintiff's
28 conclusory assertions are not sufficient to state a cognizable claim. Further, there is no indication

1 that prisoners at High Desert State Prison knew that Plaintiff had received a Rules Violation
2 Report for overfamiliarity with staff or that the assault was a result of such information. Plaintiff
3 has been unable to cure the deficiencies of this claim.

4 **D. Injunctive Relief**

5 In addition to monetary damages, Plaintiff seeks injunctive relief. However, any request
6 for such relief is now moot. Plaintiff is no longer housed at Kern Valley State Prison (or High
7 Desert State Prison), where he alleges the incidents at issue occurred. Therefore, any injunctive
8 relief he seeks against Officer Savoie at Kern Valley State Prison is moot. See Andrews v.
9 Cervantes, 493 F.3d 1047, 1053 n.5 (9th Cir. 2007) (prisoner’s claims for injunctive relief
10 generally become moot upon transfer) (citing Johnson v. Moore, 948 F.2d 517, 519 (9th Cir.
11 1991) (per curiam) (holding claims for injunctive relief “relating to [a prison's] policies are moot”
12 when the prisoner has been moved and “he has demonstrated no reasonable expectation of
13 returning to [the prison]”)).

14 **IV. Conclusion and Recommendation**

15 The Court finds that Plaintiff has stated a cognizable First Amendment retaliation claim
16 against Defendant Savoie, but has failed to state any other cognizable claims. Despite being
17 provided with the relevant legal and pleading standards, Plaintiff has been unable to cure the
18 remaining deficiencies in his complaint, and further leave to amend is not warranted. Lopez v.
19 Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

20 Accordingly, it is HEREBY RECOMMENDED as follows:

- 21 1. This action proceed on Plaintiff’s First Amendment retaliation claim against
22 Defendant Savoie;
- 23 2. Plaintiff’s request for injunctive relief be denied; and
- 24 3. All other claims be dismissed from this action.

25 These Findings and Recommendations will be submitted to the United States District
26 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
27 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
28 file written objections with the Court. The document should be captioned “Objections to

1 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
2 objections within the specified time may result in the waiver of the “right to challenge the
3 magistrate’s factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
4 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

5
6 IT IS SO ORDERED.

7 Dated: May 24, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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