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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER LIPSEY, JR,  
  
                                Plaintiff,  
  
                                v.  
  
MEDINA, et al.,  
  
                                Defendants.

**Case No. 1:17-cv-01705-LJO-JLT (PC)**  
  
**ORDER ADOPTING IN PART FINDINGS  
AND RECOMMENDATIONS TO DISMISS  
FIRST AMENDED COMPLAINT WITHOUT  
LEAVE TO AMEND**  
  
**(Docs. 18, 20)**  
  
**THIRTY-DAY DEADLINE**

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 21, 2018, the magistrate judge filed findings and recommendations herein which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to the findings and recommendations.

**I. Discussion**

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a de novo review of this case, including plaintiff’s objections. Overall, the magistrate judge’s findings and recommendations are supported by the record and by proper analysis. Nonetheless, based on additional allegations made in plaintiff’s objections, the Court

1 finds it necessary to consider whether leave to amend should be granted as to three specific  
2 claims: First Amendment retaliation, Eighth Amendment conditions of confinement, and First  
3 Amendment free exercise.

4 **A. First Amendment Retaliation**

5 Plaintiff objects to the magistrate judge's determination that plaintiff fails to state a First  
6 Amendment retaliation claim against Goree for this defendant's alleged threat to restrict  
7 plaintiff's ability to file inmate grievances purportedly because of plaintiff's history of filing such  
8 grievances.

9 Plaintiff is correct that the filing of an inmate grievance is a protected activity. See  
10 Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005). But in order for a defendant's conduct  
11 to amount to retaliation, plaintiff must include allegations showing that the conduct was *because*  
12 *of* this protected activity. Plaintiff has twice failed to meet that requirement. That Goree rejected  
13 plaintiff's grievances and threatened him with appeal restriction for violating Cal. Regs., tit. 15, §  
14 3084.4(a)(1)'s limit of one non-emergency appeal every 14 days does not, standing alone, suggest  
15 retaliation for previously-filed grievances. Nor does it suggest that Goree intended to impede  
16 plaintiff's ability to ensure the timely transfer of his personal property when plaintiff himself is  
17 transferred to another institution. In fact, any motive ascribed to this defendant appears to be  
18 based solely on speculation. Plaintiff, of course, was required to provide direct or circumstantial  
19 evidence of defendant's alleged retaliatory motive, not speculation. See McCollum v. CDCR, 647  
20 F.3d 870, 882–83 (9th Cir. 2011). At best, plaintiff's allegations suggest that Goree improperly  
21 screened plaintiff's grievances, but as the magistrate judge noted, plaintiff is not entitled to a  
22 specific grievance procedure or outcome. Therefore, plaintiff's objections as to his retaliation  
23 claim are overruled. Since he has asserted no new facts in his objections that would suggest that  
24 this claim can be amended, it will be dismissed with prejudice.

25 **B. Conditions of Confinement**

26 Turning next to plaintiff's conditions of confinement claim, the magistrate judge found  
27 that plaintiff again failed to include enough specificity such that it was impossible to determine  
28 whether his rights were violated. For example, while he claimed that he is deprived of his own

1 shower shoes and deodorant following a transfer, it was unclear if Corcoran State Prison had  
2 provided plaintiff any items in the interim or whether plaintiff was forced to forego other  
3 necessities to purchase replacements for the missing items from the prison. In addition, plaintiff  
4 failed to adequately link his allegations to any defendant.

5 The Court agrees with the magistrate judge’s assessment. Plaintiff takes issue generally  
6 with the “average” delay of “6-8 weeks” of an inmate’s personal property following transfer.  
7 These allegations suggest that, following his recent transfer to Corcoran State Prison, his personal  
8 property had similarly been delayed, but plaintiff does not state when he arrived at Corcoran State  
9 Prison, when (if ever) he received his personal property, whether he was unable to purchase  
10 certain items from the prison during the interim, and what role, if any, the individual defendants  
11 played. While a pro se plaintiff’s complaint must be liberally construed, the Court is not required  
12 to supply critical facts.

13 Furthermore, to the extent plaintiff is challenging a CDCR practice or custom of  
14 significantly delaying the transfer of personal property, he was previously informed that a  
15 temporary denial of personal items does not constitute a conditions of confinement claim.  
16 Moreover, his identification of Carter and Lockwood as “Administrator of Law / Division of  
17 Administrative Services Regulation and Policy Management Branch” whose “jobs are to fashion  
18 rules that are tailored to respect inmates constitutional rights and for the safety of both inmates  
19 and staff” fails to inform the Court as to whether they can properly respond to an order for  
20 injunctive relief. As the Ninth Circuit Court of Appeals explained in Hartmann v. CDCR, 707  
21 F.3d 1114, 1127 (9th Cir. 2013):

22 A plaintiff seeking injunctive relief against the State is not required  
23 to allege a named official's personal involvement in the acts or  
24 omissions constituting the alleged constitutional violation. See id.;  
25 Graham, 473 U.S. at 166. Rather, a plaintiff need only identify the  
26 law or policy challenged as a constitutional violation and name the  
27 official within the entity who can appropriately respond to  
28 injunctive relief. See L.A. Cnty. v. Humphries, 562 U.S. 29 (2010);  
Hafer v. Melo, 502 U.S. [21] at 25 [1991].

1 In his objections, plaintiff argues that he can remedy the above-identified problems. He  
2 claims that from 2010 to 2018, he has been transferred approximately 20 times, and in half of  
3 those transfers, he has not been provided deodorant because of his custody class. Instead, the  
4 prisons have provided him with one bar of soap weekly that he claims must be used to clean his  
5 body, wash his cell, and wash his clothes. Plaintiff also claim that some of his food was returned  
6 to him stale and unsafe to eat. On review, the Court finds that the temporary deprivation of  
7 deodorant does not amount to a constitutional violation. Nor does the fact that plaintiff’s food  
8 became stale or inedible. Plaintiff is reminded that only “extreme deprivations” can make out a  
9 conditions-of-confinement claim. Hudson v. McMillian, 503 U.S. 1, 9 (1992) (internal citations  
10 omitted). “[R]outine discomfort is ‘part of the penalty that criminal offenders pay for their  
11 offenses against society,’” and “‘only those deprivations denying ‘the minimal civilized measure  
12 of life's necessities' are sufficiently grave to form the basis of an Eighth Amendment violation.”  
13 Id.

14 Notwithstanding the foregoing, two allegations in the objections give the Court pause.  
15 Plaintiff asserts that while he awaited his personal property, he has been provided baking soda  
16 instead of toothpaste, which burns and cuts into his gums and thereby affects his ability to eat,  
17 and that he has never been provided shower shoes, forcing him to forego showers for fear of  
18 contracting an illness. These allegations suggest that plaintiff may be able to amend his  
19 complaint, but again, plaintiff’s allegations are too vague to determine the viability of his claim.  
20 As noted supra, plaintiff does not state when he arrived at Corcoran State Prison, when (if ever)  
21 he received his personal property, whether either the baking soda or shower shoes were an issue  
22 at that institution, to whom he complained, and what role, if any, the individual defendants  
23 played.

24 In an abundance of caution, plaintiff will be granted **one final opportunity** to state a  
25 conditions of confinement claim based on the baking soda and shower shoes. Plaintiff is  
26 forewarned that, because he references a ten-year period in his objections, any specific  
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1 instance(s) identified in the second amended complaint must not run afoul of the applicable  
2 statute of limitations for a Section 1983 claim.<sup>1</sup>

### 3 **C. Free Exercise Clause**

4 Lastly, plaintiff argues that the magistrate judge erred in finding that plaintiff failed to  
5 state a free exercise claim. He claims that his allegations are sufficient to proceed and likens this  
6 case to an unpublished out-of-circuit district court case, Harris v. Adams County Sheriff's Dep't,  
7 1:16-cv-0574-RED-MEH (D. Colo.). There, the plaintiff, a Muslim inmate, alleged that prison  
8 officials confiscated his Qur'an upon his transfer to the Adams County Detention Facility  
9 pursuant to a policy that requires the confiscation of the Muslim holy book when booked into the  
10 facility. When the plaintiff then submitted an inmate request for a copy of Qur'an, his request was  
11 denied because of a second policy that prohibits inmates housed in the Intake Units from  
12 possessing religious items or other property pending review by the Jail Classification unit. The  
13 plaintiff claimed these policies interfered with his ability to practice his faith during the month of  
14 Ramadan.

15 Plaintiff's reliance on Harris is misplaced. Here, while plaintiff first claims that the delay  
16 in transferring his personal property, which included a Torah, violated his religious rights, he fails  
17 to allege that his Torah was singled out and confiscated due to an institutional policy affecting  
18 only Jewish inmates, and the Court declines to find that the mere delay in receipt of personal  
19 property, which happens to include a religious book, can serve as the basis of a free exercise  
20 claim.

21 Plaintiff next contends that his multiple requests for a Torah were denied. But plaintiff's  
22 first amended complaint does not include facts to support this claim or sufficiently link it to any  
23 defendant. He alleges only that he submitted inmate request forms to "the captain" that were  
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25 <sup>1</sup> For actions under 42 U.S.C. § 1983, courts apply the forum state's statute of limitations for personal injury actions,  
26 along with the forum state's law regarding tolling, including equitable tolling, except to the extent any of these laws  
27 is inconsistent with federal law." Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004). In California, the statute of  
28 limitations for personal injury actions is two years. See Cal. Code Civ. Proc. § 335.1; Maldonado v. Harris, 370 F.3d  
945, 954-55 (9th Cir. 2004). However, this limitations period is statutorily tolled for a period of two years for a  
person who is, "at the time the cause of action accrued, imprisoned on a criminal charge, or in execution under the  
sentence of a criminal court for a term less than for life." See Cal. Code Civ. Proc. § 352.1(a); Johnson v. State of  
California, 207 F.3d 650, 654 (9th Cir. 2000).

1 never responded to; he submitted an inmate grievance regarding the delayed receipt of his  
2 personal property, the outcome of which remains unclear; and he “informed” Godwin and “put J.  
3 Perez on notice” that he had been waiting for over a year to receive a Torah. In none of these  
4 allegations is there a specific link to a request for a Torah and a denial of that request.

5 Again, in an abundance of caution, the Court will provide plaintiff **one final opportunity**  
6 to provide sufficient factual detail in support of this claim.

7 **II. Conclusion**

8 Based on the foregoing, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff’s motion for screening of case (Doc. 20) is GRANTED;
- 10 2. The findings and recommendations filed November 21, 2018 (Doc. 18), are  
11 adopted in part. All of plaintiff’s claims are dismissed with prejudice except his  
12 Eighth Amendment conditions of confinement and First Amendment free  
13 exercise claims; and
- 14 3. Plaintiff is granted thirty days from the date of this Order to file a second  
15 amended complaint consistent with this Order. Failure to file a timely pleading  
16 will result in the dismissal of this action for failure to prosecute and failure to  
17 comply with a court order.

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19 IT IS SO ORDERED.

20 Dated: May 16, 2019

/s/ Lawrence J. O’Neill  
UNITED STATES CHIEF DISTRICT JUDGE

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