UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY LEE ALLEN JR, Plaintiff, v. A.W. HARRIS, et al., Defendants.	Case No. 1:22-cv-00688-HBK (PC) ORDER TO ASSIGN A DISTRICT JUDGE FINDINGS AND RECOMMENDATIONS TO DISMISS CASE[1] (Doc. No. 26) FOURTEEN-DAY OBJECTION PERIOD

Pending before the Court for screening under 28 U.S.C. § 1915A is Plaintiff's Third Amended Complaint. (Doc. No. 26, "TAC"). For the reasons set forth below, the undersigned recommends that the district court dismiss the TAC because it fails to state any cognizable constitutional claim.

SCREENING REQUIREMENT

Plaintiff commenced this action while in prison and is subject to the Prison Litigation Reform Act ("PLRA"), which requires, *inter alia*, the court to screen any complaint that seeks relief against a governmental entity, its officers, or its employees before directing service upon any defendant. 28 U.S.C. § 1915A. This requires the Court to identify any cognizable claims and dismiss the complaint, or any portion, if is frivolous or malicious, that fails to state a claim upon

[1]This matter was referred to the undersigned pursuant to 28 U.S.C. §636(b)(1)(B) and Eastern District of California Local Rule 302 (E.D. Cal. 2022).

which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

At the screening stage, the Court accepts the factual allegations in the complaint as true, construes the complaint liberally, and resolves all doubts in the Plaintiff's favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Bernhardt v. L.A. County*, 339 F.3d 920, 925 (9th Cir. 2003). A court does not have to accept as true conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Critical to evaluating a constitutional claim is whether it has an arguable legal and factual basis. *See Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989); *Franklin*, 745 F.2d at 1227.

The Federal Rules of Civil Procedure require only that the complaint include "a short and plain statement of the claim showing the pleader is entitled to relief . . . ." Fed. R. Civ. P. 8(a)(2). Nonetheless, a claim must be facially plausible to survive screening. This requires sufficient factual detail to allow the court to reasonably infer that each named defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969. Although detailed factual allegations are not required, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice," *Iqbal*, 556 U.S. at 678 (citations omitted), and courts "are not required to indulge unwarranted inferences," *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

If an otherwise deficient pleading could be cured by the allegation of other facts, the *pro se* litigant is entitled to an opportunity to amend their complaint before dismissal of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc); *Lucas v. Department of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). However, it is not the role of the Court to advise a *pro se* litigant on how to cure the defects. Such advice "would undermine district judges' role as impartial decisionmakers." *Pliler v. Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131 n.13.

BACKGROUND AND SUMMARY OF OPERATIVE PLEADING

Plaintiff, a state prisoner proceeding pro se, initiated this action by filing a civil rights complaint under 42 U.S.C. § 1983. (Doc. No. 1). Before the initial complaint was screened, Plaintiff filed a first amended complaint. (Doc. No. 5, "FAC"). The undersigned screened Plaintiff's FAC and found it failed to state any cognizable claim. (*See* Doc. No. 10). Plaintiff timely filed a SAC, which he improperly designated as a "First Amended Complaint." (Doc. No. 12 at 1). Plaintiff also filed additional pleadings, including an Amended Complaint (Doc. No. 14), a Motion to Amend (Doc. No. 18), and a Supplemental Complaint (Doc. No. 19). The undersigned addressed these pleadings in a prior order, (Doc. No. 20), and deemed the improperly designated First Amended Complaint as a Second Amended Complaint ("SAC") and the operative complaint for screening. The Court screened the SAC, found it failed to state any cognizable claim, and afforded Plaintiff one final opportunity to amend his complaint before the Court recommended his case be dismissed. (Doc. No. 21 at 1).

Plaintiff timely filed a Third Amended Complaint ("TAC"). (Doc. No. 26). Plaintiff attaches to the TAC copies of five inmate requests for interview, submitted between November 16, 2021 and April 14, 2022. (*Id*. at 6-11).[2] The incidents giving rise to the TAC occurred at Sierra Conservation Center ("SCC"). (*See generally id*.). The TAC names as Defendants (1) A.W. Harris, Assistant Warden of SCC, (2) Correctional Counselor Montgomery/Wetenkamp, (3) Correctional Counselor Anda, (4) Correctional Counselor Aldava, and (5) Correctional Counselor Amescua. (*Id*. at 2, 4).

Plaintiff's TAC consists essentially of two paragraphs, which the Court quotes in full below. The first paragraph, under the section of the complaint form titled "Defendants" states:

> In the Title 15, And that was documented in the Courts and Anda basicly [sic] assisted As well as Aldava And Amescua. They all

[2] The Court's review is limited to the complaint, exhibits attached, and materials incorporated into the complaint by reference, and matters of which the court may take judicial notice. *Petrie v. Elec. Game Card, Inc.*, 761 F.3d 959, 966 (9th Cir. 2014); *see also* Fed. R. Civ. P. 10(c). While the Court accepts the factual allegations in the TAC as true, it need not accept as true allegations that contradict matters properly subject to judicial notice or by exhibit. *See Mullis v. United States Bankr.Ct.*, 828 F.2d 1385, 1388 (9th Cir.1987); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.), *opinion amended on denial of reh'g*, 275 F.3d 1187 (9th Cir. 2001).

> had intentions on violateing [sic] my civil rights and basicly [sic] not leting [sic] me go to fire camp stateing [sic] I was to [sic] violent without fact, I had one write up for a mutual combat that was not my fault but that did not give them the right to violate my rights. And now indirect retaliation is being imployed [sic] because of this complaint. Everywhere I go. I enclosed certian [sic] request to show the process of discrimination as well as the 602's I submitted.

(*Id*. at 3). Under the section for "Supporting Facts" the TAC states as follows:

> I was discriminated against. My due process rights were violated by Mr. Harris and CCI Montgomery/Wetenkamp. Montgomery which was not even my consolor [sic] at the time went in my file and conducted a premature hearing without me knowing or present and Mr. Harris Denide [sic] my gate pass without following any guideline.

(*Id*. at 4). As relief, Plaintiff seeks $100,000 from each Defendant for lost wages he claims he would have earned from participating in fire camp, plus $50,000 in compensatory damages for "mental and physical suffering." (*Id*. at 5).

APPLICABLE LAW AND ANALYSIS

A. Rule 8

To be plausible, a complaint must provide sufficient factual detail for the Court to infer that each Defendant is liable for the alleged constitutional violations. *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969. A court does not have to accept as true conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. *Western Mining Council*, 643 F.2d at 624. Here, although Plaintiff's TAC is relatively short, it is not a plain statement of his claims. As a basic matter, the TAC does not clearly state what happened, when it happened or who was involved. Plaintiff's allegations must be based on facts as to what happened and not conclusions, such as claiming that "all [Defendants] had intentions on violating [Plaintiff's] civil rights . . ." (Doc. No. 26 at 3).

Further, Plaintiff attaches six pages of exhibits to the TAC in an apparent attempt to bolster his claims without specifying how they support his claims. Plaintiff states only, "I enclosed certain request [sic] to show the process of discrimination as well as the 602's I submitted." (*Id*.). The Court will not sift through Plaintiff's exhibits to identify instances of

purported discrimination or determine what role each Defendant played in the alleged violation of Plaintiff's rights. *See, e.g., Chiprez v. Warden*, 2021 WL 11491547, at *2 (E.D. Cal. July 14, 2021) ("Plaintiff must refer to the exhibits specifically for allegations he seeks the court to review. Plaintiff must set forth what each defendant did or failed to do that led to the violation of his constitutional rights. The Court will not scour Plaintiff's exhibits . . . to find a constitutional claim.").

Plaintiff's allegations are rambling and conclusory. He does not state any facts or connect any alleged claims or acts of wrongdoing to any listed Defendant. No Defendant could be reasonably expected to understand from the TAC how he or she is alleged to have violated Plaintiff's rights. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) (observing that the purpose of the complaint is to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests") (internal quotation marks and citations omitted).

Because Plaintiff's TAC fails to set forth in short and plain statements facts plausibly entitling him to relief, it violates Rule 8 and thus fails to state a claim.

B. Due Process Violation

The Due Process Clause of the Fourteenth Amendment protects persons against deprivations of life, liberty or property. *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Those who seek to invoke the procedural protections of the Due Process Clause must establish that one of these interests is at stake. *Id.* "A liberty interest may arise from the Constitution itself . . ., or it may arise from an expectation or interest created by state laws or policies." *Id.*

It is well settled that prisoners have no constitutional right to a particular classification status, even if the classification status results in a loss of privileges. *Moody v. Daggett*, 429 U.S. 78, 88 n. 9 (1976) (expressly rejecting claim that prisoner classification and rehabilitative programs invoked due process protections); *Hernandez v. Johnston*, 833 F.2d 1316, 1318 (9th Cir. 1987) (agreeing inmate had no constitutional right to particular classification status and further finding no independent right under state law). This is because decisions regarding an inmate's classification level or where to house inmates are at the core of prison administrators' expertise. *McKune v. Lile*, 536 U.S. 24, 39 (2002) (citing *Meachum v. Fano*, 427 U.S. 215, 225

(1976)); *see also Frost v. Agnos*, 152 F.3d 1124, 1130 (9th Cir. 1998).

In 2002, the California Legislature enacted Penal Code section 2933.3, which permits inmates assigned to fire camps to "earn two days of worktime credit for every one day of service" for work performed after January 1, 2003. Regulations adopted in the wake of this change established a new work group F, for inmates assigned to "full-time conservation camp work," who "shall be awarded two days credit for each day of qualifying performance." 15 Cal.Code Regs. § 3044(b)(1). "[A]ll assignments or reassignments of an inmate to a work/training incentive group shall be made by a classification committee in accordance with this section." *Id.*; *see also* DOM §§ 51130.8 (Classification Committee evaluates escape potential when considering camp placement), 62010.3.2 (duties of Associate Warden, member of Classification Committee, include approval of camp placement), 62010.8 (duties of Institution Classification Committees include program participation and transfer) & 62010.8.4 (duties of Unit Classification Committee (UCC) include program and transfer); *see also Basque v. Schwartz*, 2010 WL 120764, at *2 (E.D. Cal. Jan. 7, 2010).

Liberally construed, Plaintiff alleges that prison officials violated his due process rights by holding a classification committee hearing without his participation and issuing a decision which resulted in him being denied participation in fire camp and access to a gate pass. (*See* Doc. No. 26). However, it is well-settled that inmates do not have a liberty interest in participation in prison work or rehabilitative programs, such as fire camp. *See Moody*, 429 U.S. at 88 n. 9; *Hernandez*, 833 F.2d at 1318. Therefore, no due process rights attached to a classification committee decision regarding Plaintiff's eligibility for fire camp. Even if prison officials did not fully comply with the procedures set forth in Title 15 regarding classification committee decisions for work camp eligibility, which the TAC has not alleged with any specificity, there is no federal constitutional liberty interest in compliance with state prison regulations. *Solomon v. Felker*, 2013 WL 5375538, at *12 (E.D. Cal. Sept. 24, 2013) ("Plaintiff's allegation that the defendants failed to adhere to the prison's own institutional policies and procedures does not, by itself" give rise to a constitutional violation); *Sandin v. Conner*, 515 U.S. 472, 481–82, (1995) (recognizing prison regulations are "primarily designed to guide correctional officials in the administration of a

prison" and are "not designed to confer rights on inmates"); *Hovater v. Robinson*, 1 F.3d 1063, 1068 n. 4 (10th Cir. 1993) ("[A] failure to adhere to administrative regulations does not equate to a constitutional violation."); *see also Armstrong v. Warden of USP Atwater*, 2011 WL 2553266, at *8 (E.D. Cal. June 24, 2011) (citing same). Thus, Plaintiff cannot establish a liberty interest associated with the classification change denying him participation in Work Group F, and thus the TAC fails to state a Fourteenth Amendment due process violation.

FINDINGS AND RECOMMENDATION

Plaintiff has had multiple opportunities to cure the deficiencies in his initial complaint, including filing four amended complaints (two of which were stricken as procedurally defective). (*See* Doc. Nos. 5, 12, 14, 26). In two prior screening orders, (Doc. No. 10, 21), the Court instructed Plaintiff on the applicable law and pleading requirements. Despite affording Plaintiff multiple opportunities to correct the deficiencies in his original Complaint, the TAC fails to adequately state any plausible § 1983 claim. The undersigned finds any further leave to amend would be futile. This is Plaintiff's third attempt at filing a cognizable complaint and he is no closer to meeting the federal pleading standards. Thus, the undersigned recommends the district court dismiss the TAC without further leave to amend. *McKinney v. Baca*, 250 F. App'x 781 (9th Cir. 2007) *citing Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (noting discretion to deny leave to amend is particularly broad where court has afforded plaintiff one or more opportunities to amend his complaint); *see also Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991) (A district court can deny leave "where the amendment would be futile . . . or where the amended complaint would be subject to dismissal").

Accordingly, it is hereby **ORDERED**:

The Clerk of Court is directed to assign a district judge to this case.

It is further **RECOMMENDED**:

The TAC be dismissed under § 1915A for failure to state a claim and the action be dismissed.

NOTICE TO PARTIES

These findings and recommendations will be submitted to the United States district judge

assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these findings and recommendations, a party may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

Dated: December 1, 2023

HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE