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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WILSON,

Plaintiff,

No. CIV S-07-1192 GEB DAD P

vs.

JAMES TILTON, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. By order filed February 4, 2009, plaintiff’s third amended complaint was dismissed with leave to amend. Plaintiff has filed a fourth amended complaint.

PLAINTIFF’S ALLEGATIONS

Plaintiff names the following individuals as defendants: James Tilton, former director of the California Department of Corrections and Rehabilitation (CDCR); Suzan L. Hubbard, Warden of the California Medical Facility (CMF); California Governor Arnold Schwarzenegger; and CMF employees Fisher, Hall, Benton, Swann, DeMars, Soufi, McGahey, Gross, Pearson, Brida, and Grannis. (Typewritten document entitled “Fourth Amended

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1 Complaint,” attached to form complaint (hereinafter Complaint), at 3.) Plaintiff alleges that all
2 of these defendants have:

3 denied due process Fourteenth Amendment mental health
4 treatment and adequacy for psychological medical care by omitting
5 to halt’ Over-Crowding ‘forced’ double cell living of Plaintiff and
6 other prisoners placing lives in imminent danger of Eighth
7 Amendment conditions and retaliations to appeals Court motions
8 of protected First Amendment right to petition for redress of
9 grievance, and denial of witnesses and statements violating Six and
10 Fourteenth Amendments to transfer taylored (sic) to Plaintiff
11 without State law procedures to deny ‘Liberty interest’ absent of
12 procedures to ‘chill’ protected right that served no penological
13 purpose.

9 (Id.) Plaintiff states in his complaint that all defendants are “sued in their individual and official
10 capacities” and informs the court that he was incarcerated at California Medical Facility-
11 Vacaville (CMF) and California State Prison Los Angeles County (CSP-LAC) during the events
12 described in the complaint. Plaintiff is a member of the Enhanced Outpatient Program (EOP).

13 Plaintiff’s allegations, which are largely contained in the typewritten complaint,
14 are lengthy, rambling, and difficult to decipher. After a careful review of the record, the court
15 has been able to construe plaintiff’s basic allegations as the following:

16 1. On January 9, 2007, plaintiff wrote a letter to Warden Hubbard asking that she
17 forward to the appropriate authorities his grievance wherein he objected to being housed in a
18 double cell unless he received therapy and was allowed to keep his legal material and other
19 personal possessions. Plaintiff alleges that his placement in a double cell was in violation of a
20 department memo which requires staff to take the inmate’s mental/physical disabilities and his
21 fear of being double-celled into consideration when deciding whether to place him in a double
22 cell. (Complaint at 4, Exs. XX, XX(1), 23, 22, 22A.)

23 2. Plaintiff’s single cell status was inappropriately “taken by ICC” without
24 following required procedures, and he was improperly placed in administrative segregation.
25 (Complaint at 4.) Exhibits filed by plaintiff in support of this allegation demonstrate that
26 plaintiff was placed in administrative segregation for the safety and security of the institution

1 after he actively discouraged other inmates from living in his cell, thereby making it “difficult to
2 move another inmate into your cell without leaving them feeling vulnerable to physical attack.”
3 After a hearing, plaintiff was retained in administrative segregation “pending completion of
4 investigation into use of duress and possible disciplinary action.” Plaintiff was retained in a
5 single cell while in administrative segregation. (Complaint, Exs. 1, 2.)

6 3. Plaintiff alleges he appealed prison officials’ refusal to provide him single-cell
7 housing and from his placement in administrative segregation, but he was not satisfied with the
8 results of those appeals. (Complaint at 4-5.) Exhibits filed by plaintiff in support of this
9 allegation demonstrate that he filed an administrative appeal contesting his placement in a double
10 cell but that the appeal was denied “as no basis” and plaintiff was “referred to medical for psych
11 concerns regarding cell status.” (Complaint, Ex. A.) At the director’s level, plaintiff’s requests
12 for a single cell and for a transfer to Atascadero State Hospital were denied, but he was granted
13 psychotherapy once or twice per week. (Complaint, Ex. Y.) Plaintiff also alleges, and his
14 exhibits reflect, that he has received single cell status in the past and that the state trial judge who
15 sentenced him on his crime of conviction recommended “Vacaville facility for psychiatric
16 treatment.” (Complaint, Exs. H(3), H(4), 3, 4A, AB(6)Z.) Plaintiff’s exhibits also reflect that he
17 was ultimately found not to meet the criteria for single cell status and was moved into a double
18 cell. (Complaint, Ex. AB(6)Z1.) Plaintiff subsequently filed a cell compatibility form requesting
19 to be housed with a specific inmate. (Complaint, Exs. 8, L(8).)

20 4. Plaintiff alleges that defendant Brida denied his request to be housed with a
21 specific inmate without first contacting plaintiff’s clinician, and in “reprisal” for plaintiff’s
22 protected First Amendment activities. (Complaint at 5.) Plaintiff further alleges that the denial
23 of his request for a single cell or to a cell assignment to live with a specific inmate violates
24 department policies and memorandums, has resulted in “significant hardship in violation of the
25 Eighth Amendment, and is the result of “deliberate indifference” by prison staff. (See Complaint
26 at 5, Exs. S7, S7(A), S7(B), S7(C), S8, S9, S9(A).)

1 5. Plaintiff alleges that he appealed the denial of his request “that he not be forced
2 to double cell unless himself and the other inmate sign a cell compatibility form, the Appellant
3 receive ‘one on one’ Psychotherapy with a clinician or be sent to Atascadero State Hospital . . .
4 [and] to be allowed to keep Legal material, a typewriter, an AM/FM CD Cassette player and a
5 nine inch television.” (Complaint at 5-6.) He further alleges that his appeal was denied by
6 Warden Hubbard in retaliation for plaintiff’s exercise of his First Amendment rights after he sent
7 the warden a “restraining order” and a letter requesting her intervention in his housing status.
8 (Complaint at 5-6, Ex. 30.) The denial of his grievance constituted deliberate indifference to
9 plaintiff’s mental health needs as a result of “over-crowding,” and violated the Eighth
10 Amendment. (Id.)

11 6. Plaintiff alleges that he received a rules violation report for refusing to accept
12 an assigned cellmate and was improperly denied answers to questions he drafted in advance of
13 the disciplinary hearing. (Complaint at 6, Exs. C(4), C(4)A, 3, 3(A).) In connection with this
14 hearing, defendant Swan “alleged ‘False’ 115 for receiving Restraining Order ‘Single Cell.’”
15 (Complaint at 6.)

16 7. Plaintiff sent a letter to defendant Hubbard requesting her intervention in his
17 attempts to obtain a single cell or to room with the inmate of his choice, after his similar requests
18 were denied by Sergeant Murray. (Complaint at 6, Ex. 25.)

19 8. Plaintiff notified Dr. Bugas and defendant McGahey about his attempts to
20 obtain single cell status or to be housed with a compatible inmate. (Complaint at 6.) Plaintiff’s
21 exhibits reflect that plaintiff wrote letters to Dr. Bugas and defendant McGahey, explaining his
22 continuing problems with being forced to live in a double cell and requesting their “relief &
23 intervention.” (Complaint, Exs. 26, 27, 28.)

24 9. Plaintiff filed a “TRO” in federal court in the Plata and Coleman cases
25 requesting that EOPs not be double celled until the Department of Corrections complied with

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1 court orders to reduce the prison population and/or plaintiff was transferred to Atascadero State
2 Hospital. (Complaint at 6.)

3 10. Plaintiff told defendant Swan that he was not receiving proper psychiatric
4 treatment. Defendant Swan threatened to place plaintiff in administrative segregation and took
5 his TV, in retaliation for “115 dismissed and previous Court motion.” (Complaint at 6-7.) The
6 next day, defendant Swan took plaintiff’s radio in retaliation for “protected First Amendment
7 right” but the radio was later given back to plaintiff after his appeal was granted. (Id. at 7, Exs.
8 S(4).)

9 11. Defendant Swan told plaintiff that he had to accept inmate Turner as a
10 cellmate or be placed in administrative segregation, even though inmate Turner yells in his sleep
11 and keeps plaintiff awake all night. (Complaint at 7.)

12 12. Defendants Soufi and McGahey, and Dr. Bugas, refused to help plaintiff with
13 his problems regarding his cellmate, including the fact that plaintiff was unable to sleep, which
14 denied plaintiff adequate medical care in violation of the Eighth and Fourteenth Amendments.
15 (Id.)

16 13. Plaintiff wrote a letter to correctional officer Smith asking for his help in
17 getting plaintiff’s cellmate removed. (Id. at 8, Ex. UU22.)

18 14. Defendant Swan placed plaintiff in administrative segregation in retaliation
19 for asking correctional officer Smith for help with his cellmate, and threatened plaintiff several
20 times, in retaliation for his actions in filing a grievance against Swan. Plaintiff was denied an
21 investigative employee at the hearing before the ICC to consider his placement in administrative
22 segregation. Defendant Benton ratified defendant Swan’s actions, in retaliation “of protected
23 right.” (Complaint at 8.) An exhibit attached to plaintiff’s complaint, and signed by defendant
24 Benton, reflects that on April 22, 2007, plaintiff was placed in administrative segregation after he
25 told Officer Turner that demons were telling him to hurt his cellmate. (Complaint, Ex. D(1).)
26 The form reflects that plaintiff declined an investigative employee at the subsequent hearing, but

1 plaintiff alleges that this part of the form was filled out after he had already signed the document,
2 which violated plaintiff's right to due process. (Complaint at 8, Ex. D(1).) Plaintiff alleges that
3 he requested a response to certain questions, but the captain and defendant Hubbard denied this
4 request, in violation of his rights under the Fourteenth Amendment. (Complaint at 8.) Plaintiff
5 appealed the decision to place him in administrative segregation and requested a single cell or to
6 be housed with a compatible inmate. (Complaint, Ex. D(7).) This appeal was denied by
7 defendants Benton and Grannis. (Complaint, Exs. D(7), D(11).) The Director's Level Appeal
8 decision, signed on behalf of defendant Grannis who, according to plaintiff, "represents"
9 defendant Tilton, provides the following explanation:

10 On June 1, 2007, the appellant was interviewed by Correctional
11 Lieutenant R. Benton. The reviewer found that the appellant was
12 placed into the ASU on April 22, 2007 on charges of Threatening
13 an Inmate, by writing and signing a note that was given to the M-2
14 officer that stated, in part as it referred to his cellmate, ". . . and
15 disturbs me to the point where I (am) extremely paranoid to where
16 the Demons tell me to hurt my cellmate." Captain Fisher
17 conducted the Administrative Review on April 23, 2007. Captain
18 Fisher retained the appellant in the ASU pending review of
19 staff/inmate safety and the Institution Classification Committee
20 (ICC) review.

21 (Complaint at 8, Ex. D(11).) Plaintiff alleges that the denial of his administrative appeal ratified
22 the retaliatory actions of defendant Swan and violated his Fourteenth Amendment right to due
23 process. (Complaint at 8.)

24 14. On May 8, 2007, plaintiff sent defendants Schwarzenegger and Hubbard
25 notification of his allegations that EOPs should not be double-celled, but the defendants failed to
26 respond. (Complaint at 8-9.)

 15. On May 17, 2007, plaintiff was charged with a disciplinary violation by
defendant DeMars. (Complaint at 9.) Plaintiff "wrote Questions for Witnesses" which were
apparently not answered at the disciplinary hearing. (*Id.*) The proceedings violated his right to
procedural due process, and he was found guilty by defendant Hall, in violation of his right to

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1 due process and in retaliation of his assertion of his First Amendment rights. (Id.) All of his
2 subsequent appeals were denied. (Id.)

3 16. On May 8, 2007, plaintiff filed a complaint against defendant DeMars, which
4 was granted at the second level and denied by the Director. (Complaint at 9.)

5 17. On June 5, 2007, plaintiff received a Director's Level Decision signed on
6 behalf of defendant Grannis, which denied his request that he "be single celled unless he and the
7 perspective cellmate sign a compatibility form, the appellant receives one-on-one psychotherapy
8 at least two times each week, and he goes to the medication line with a psychiatrist to receive
9 mental wellness, or that he be sent to Atascadero State Hospital (ASH)." (Complaint at 9, Ex.
10 39.) This denial violated plaintiff's rights pursuant to the First, Eighth, and Fourteenth
11 Amendments. (Complaint at 9-10.)

12 18. On July 18, 2007, plaintiff was "placed for transfer" to another institution.
13 Plaintiff alleges that this transfer was in violation of prison regulations and in retaliation for
14 exercising his First Amendment rights. (Complaint at 10.) An exhibit filed by plaintiff reflects
15 that he was placed in protective custody due to "enemy concerns." (Complaint, Ex. 56.) Plaintiff
16 was transferred to CSP-LAC on August 29, 2007. (Complaint at 10.)

17 19. Plaintiff alleges that on October 17, 2007, he was "placed for transfer back to
18 CMF-Vacaville for 'error' Conspiracy was found in 'Point Score.'" (Complaint at 10.) Plaintiff
19 alleges that this transfer "served no penological purpose except chilling First Amendment
20 protected rights" and violated state law procedures for "'Point Score' taylored (sic) to Plaintiff
21 Wilson," in violation of his due process rights. Plaintiff alleges that his property was destroyed
22 and "threatened to transfer and assault for exercise his First Amendment rights to file prison
23 grievances and otherwise seek access to the legal process." (Id.)

24 Plaintiff claims that these actions by all of the defendants

25 gives legitimacy to forced double cell living, deliberate
26 indifference to harm and place in imminent danger for mental
health treatment and adequacy, violating due process Fourteenth

1 Amendment for Eighth Amendment conditions with reprisals to
2 protected rights of First Amendment to chill right of court access
3 and to petition, with denial of witnesses for hearing violating Six
4 Amendment, all violating U.S. Constitution.

5 (Complaint at 11.)

6 Plaintiff requests an injunction ordering defendant Hubbard not to house him in a
7 double cell unless both plaintiff and his prospective cellmate sign a cell compatibility form and
8 plaintiff receives “1-on-1 psychotherapy 2-3 times weekly, or other outside mental help.” (Id.)
9 Plaintiff also requests a transfer to Napa State Hospital or Atascadero State Hospital for
10 treatment “and not return unless plaintiff request.” (Id.) Plaintiff further requests a single cell,
11 that alleged enemies be removed from his central file, and that his “CDC 115” be dismissed and
12 vacated and his point score corrected. Finally, plaintiff requests declaratory relief and
13 compensatory and punitive damages against all defendants. (Id. at 11-12.)

14 DISCUSSION

15 Plaintiff’s claims appear to fall into several categories. First, plaintiff objects to
16 being housed in a double cell unless he can choose his cellmate, receive psychotherapy, and keep
17 his appliances and legal materials. Second, plaintiff challenges his placement in administrative
18 segregation when he attempts to obtain single cell housing. Third, plaintiff challenges the
19 conduct of prison disciplinary hearings and hearings involving his placement in administrative
20 segregation. Fourth, plaintiff alleges that he has been retaliated against for requesting single cell
21 status and for asserting his First Amendment rights. Fifth, plaintiff alleges that defendants’
22 refusal to allow him single cell status is arbitrary and capricious and constitutes deliberate
23 indifference to his mental health needs. Sixth, plaintiff challenges his transfer to another prison.

24 1. Supervisory Personnel

25 As noted above, plaintiff has named as defendants Governor Arnold
26 Schwarzenegger and James Tilton, former director of the California Department of Corrections
and Rehabilitation. He alleges that he sent defendant Schwarzenegger documents regarding

1 double-celling of EOP inmates but that the Governor failed to act in response thereto. With
2 respect to defendant Tilton, plaintiff alleges that one of the decisions in response to one of his
3 administrative appeals was signed on behalf of defendant Grannis who, according to plaintiff,
4 “represents” defendant Tilton.

5 As plaintiff has been advised on several occasions, the Civil Rights Act under
6 which this action was filed provides as follows:

7 Every person who, under color of [state law] . . . subjects, or causes
8 to be subjected, any citizen of the United States . . . to the
9 deprivation of any rights, privileges, or immunities secured by the
Constitution . . . shall be liable to the party injured in an action at
law, suit in equity, or other proper proceeding for redress.

10 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
11 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
12 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
13 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
14 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
15 omits to perform an act which he is legally required to do that causes the deprivation of which
16 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

17 Moreover, supervisory personnel are generally not liable under § 1983 for the
18 actions of their employees under a theory of respondeat superior and, therefore, when a named
19 defendant holds a supervisory position, the causal link between him and the claimed
20 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
21 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory
22 allegations concerning the involvement of official personnel in civil rights violations are not
23 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

24 Plaintiff's allegations against defendants Schwarzenegger and Tilton are vague
25 and conclusory and fail to comply with the standards set forth above. Plaintiff has failed to
26 allege facts demonstrating a sufficient link between the actions of these defendants and the

1 claimed federal constitutional violations. Accordingly, the court will not order service of
2 plaintiff's fourth amended the complaint on defendants Schwarzenegger and Tilton.¹

3 2. Transfer to Another Prison or to a Single Cell

4 Plaintiff challenges his transfer from CMF to CSP-LAC and seeks a transfer to
5 either Atascadero State Hospital or Napa State Hospital. He also seeks an order transferring him
6 to a single cell housing assignment. As plaintiff has been advised, inmates do not have a
7 constitutional right to be incarcerated at a particular correctional facility or in a particular cell or
8 unit within a facility. See Meachum v. Fano, 427 U.S. 215, 224-25 (1976). As the Ninth Circuit
9 has explained:

10 An inmate's liberty interests are sufficiently extinguished by his
11 conviction so that the state may change his place of confinement
12 even though the degree of confinement may be different and prison
13 life may be more disagreeable in one institution than in another.
Unless there is some guarantee that transfer will not be effected
except for misbehavior or some other specified reason, due process
protections cannot apply.

14 Rizzo v. Dawson, 778 F.2d 527, 530 (9th Cir. 1985). Thus, plaintiff's alleged deprivations of
15 rights caused by prison officials' decisions regarding his place of confinement or housing
16 assignments do not give rise to a federal constitutional claim under the Fifth and Fourteenth
17 Amendments. See Board of Regents v. Roth, 408 U.S. 564, 569 (1972). In addition, any claim
18 that plaintiff's "point score" was incorrectly calculated prior to his transfer to another prison is a
19 claim based solely on state law and does not state a cognizable federal constitutional claim.

20 3. Injunctive Relief

21 Plaintiff requests injunctive relief against officials of CMF and CSP-LAC,
22 requiring that he be housed in a single cell unless he has signed a cell compatibility form with
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24 ¹ In the "Introduction" section of his complaint, plaintiff alleges that defendants' actions
25 have violated a CDCR policy of forcing all EOPs to be housed in a double cell. (Complaint at
26 1.) These allegations are unexplained, are not repeated in the body of the complaint, and are too
vague and conclusory to state a cognizable claim for relief. Accordingly, the court will not order
service of the complaint on a cause of action for a violation of prison policy.

1 another inmate and receives psychotherapy and his personal property. On August 3, 2009,
2 plaintiff notified the court that he has been transferred to a correctional facility in San Diego,
3 California. When an inmate seeks injunctive or declaratory relief concerning an institution at
4 which he is no longer incarcerated, his claims for such relief become moot. See Weinstein v.
5 Bradford, 423 U.S. 147, 149 (1975); Dilley v. Gunn, 64 F.3d 1365, 1368-69 (9th Cir. 1995).
6 Accordingly, plaintiff's claims for injunctive relief are moot.

7 4. Deprivation of Property

8 Plaintiff may be attempting to allege that he has been deprived of his personal
9 property without due process. Where a prisoner alleges the deprivation of a liberty or property
10 interest caused by the unauthorized action of a prison official, a cognizable claim under 42
11 U.S.C. § 1983 cannot be stated if the state provides an adequate post-deprivation remedy. See
12 Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir. 1994) (“[A] negligent or intentional deprivation of
13 a prisoner’s property fails to state a claim under section 1983 if the state has an adequate post
14 deprivation remedy.”) An available state common law tort claim procedure to recover the value
15 of property is an adequate remedy. See Zinermon v. Burch, 494 U.S. 113, 129-32 (1990).
16 Plaintiff cannot state a due process claim based on confiscation of his property because
17 California’s tort claims procedures provide an adequate post-deprivation remedy. Barnett, 31
18 F.3d at 816-17 (citing Cal. Gov’t Code §§ 810-895).

19 5. Prison Grievance Procedures

20 Plaintiff alleges that his prison grievances were improperly denied. These
21 allegations fail to state a cognizable cause of action. Prisoners do not have a “separate
22 constitutional entitlement to a specific prison grievance procedure.” Ramirez v. Galaza, 334
23 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)). Even
24 the non-existence of, or the failure of prison officials to properly implement, an administrative
25 appeals process within the prison system does not raise constitutional concerns. Mann v. Adams,
26 855 F.2d 639, 640 (9th Cir. 1988); see also, Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir.

1 1993); Flick v. Alba, 932 F.2d 728, 729 (8th Cir. 1991); Azeez v. DeRobertis, 568 F. Supp. 8, 10
2 (N.D. Ill. 1982) (“[A prison] grievance procedure is a procedural right only, it does not confer
3 any substantive right upon the inmates. Hence, it does not give rise to a protected liberty interest
4 requiring the procedural protections envisioned by the fourteenth amendment”). State
5 regulations give rise to a liberty interest protected by the Due Process Clause of the federal
6 constitution only if those regulations pertain to “freedom from restraint” that “imposes atypical
7 and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Sandin
8 v. Conner, 515 U.S. 472, 484 (1995). Further, while prisoners have a First Amendment right to
9 file prison grievances, they do not have a right to any particular response thereto. McDonald v.
10 Smith, 472 U.S. 479, 482 (1985); Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995); Apple v.
11 Glenn, 183 F.3d 477, 479-80 (6th Cir. 1999) (plaintiff who alleged public officials violated his
12 First Amendment right to petition the government by not responding to his letters or taking the
13 actions requested therein failed to state a claim). For these reasons, plaintiff has failed to state a
14 cognizable civil rights claim in alleging that his prison grievances were improperly denied.

15 6. Denial of Due Process/ Prison Hearings

16 Plaintiff also alleges that his right to due process was violated at disciplinary and
17 classification committee hearings. Plaintiff has a liberty interest in state action which imposes
18 some “atypical and significant hardship on the inmate in relation to the ordinary incidents of
19 prison life.” Sandin v. Conner, 515 U.S. at 484. If the hardship is sufficiently significant, the
20 court must determine whether the procedures used to deprive that liberty satisfied Due Process.
21 Id. at 861.

22 Three factors cited in Sandin’s analysis provide a framework for determining
23 whether a prison hardship is atypical and significant: (1) whether the challenged conditions
24 mirrored those conditions imposed upon inmates in administrative segregation and protective
25 custody, and thus comported with the prison’s discretionary authority; (2) the duration of the

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1 condition and the degree of the restraint imposed; and (3) whether the state's action will
2 invariably affect the duration of the prisoner's sentence. Id. at 486-87.

3 Plaintiff argues that as a result of due process violations during classification
4 committee proceedings, he was wrongly held in administrative segregation. In order to succeed
5 on this claim, plaintiff must demonstrate that the conditions of administrative segregation
6 constituted an atypical and significant hardship in relation to the ordinary incidents of prison life.
7 However, plaintiff's complaint contains no allegations suggesting that the conditions of his
8 confinement in administrative segregation were atypical and constituted a significant hardship.
9 Accordingly, the court will not order service of the complaint on any defendant with respect to
10 this claims.

11 7. Retaliation

12 Plaintiff accuses several named defendants of taking retaliatory actions against
13 him. In this regard, plaintiff alleges that defendant Swan retaliated against him for filing a prison
14 grievance by placing him in administrative segregation and taking his possessions. Plaintiff also
15 alleges that defendant Benton ratified defendant Swan's actions in retaliation "of protected
16 right." Plaintiff alleges that defendant Hubbard retaliated against him for sending her an
17 unspecified "restraining order" and a letter requesting her intervention in his housing status, by
18 denying his prison grievance regarding his housing in a double cell. Plaintiff also alleges that
19 defendants Grannis, Benton and Hubbard "ratified" the retaliatory actions of defendant Swan by
20 denying plaintiff's prison grievances. Plaintiff alleges that he was found guilty of a disciplinary
21 violation by defendant Hall in retaliation for his assertion of unspecified First Amendment rights.
22 He also alleges that he was transferred to another prison in retaliation for asserting unspecified
23 First Amendment rights.

24 "Within the prison context, a viable claim of First Amendment retaliation entails
25 five basic elements: "(1) An assertion that a state actor took some adverse action against an
26 inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the

1 inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a
2 legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005). An
3 allegation of harm may be sufficient even if an inmate cannot allege a chilling effect. Id.

4 Plaintiff’s retaliation claims against defendants Benton, Hubbard, Grannis and
5 Hall fail to state a cognizable claim for retaliation under the above-cited standard. Plaintiff’s
6 claims against these defendants are conclusory, factually unsupported and fail to allege that the
7 defendants’ actions were taken in response to protected conduct by plaintiff. Plaintiff has,
8 however, stated a cognizable claim for retaliation against defendant Swan. Accordingly, the
9 court will order service of a retaliation claim only as to defendant Swan.

10 8. Eighth Amendment

11 Plaintiff alleges that defendants’ failure to house him in a single cell, or to allow
12 him to find a suitable cellmate, violates his Eighth Amendment right to be free from cruel and
13 unusual punishment. He alleges and provides proof that he has been placed in administrative
14 segregation after threatening to kill his cellmate, has suffered sleep deprivation and mental health
15 breakdowns because of his housing situation, and has been found suitable for single cell housing
16 status on several occasions.

17 Deliberate indifference to a prisoner’s serious illness or injury, or risk of serious
18 injury or illness, gives rise to a claim under the Eighth Amendment. Estelle v. Gamble, 429 U.S.
19 97, 105 (1976). Inadequate medical care did not constitute cruel and unusual punishment
20 cognizable under § 1983 unless the mistreatment rose to the level of “deliberate indifference to
21 serious medical needs.” Id. at 106. In applying this standard, the Ninth Circuit has held that
22 before it can be said that a prisoner’s civil rights have been abridged, “the indifference to his
23 medical needs must be substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’
24 will not support this cause of action.” Broughton v. Cutter Lab., 622 F.2d 458, 460 (9th Cir.
25 1980) (citing Estelle, 429 U.S. at 105-06). The “deliberate indifference” standard also applies to
26 claims challenging the adequacy of mental health care in prisons. Doty v. County of Lassen, 37

1 F.3d 540, 546 (9th Cir. 1994); Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). A medical
2 need is “serious if the failure to treat a prisoner’s condition could result in further significant
3 injury or the ‘unnecessary and wanton infliction of pain.’” Doty, 37 F.3d at 546 (quoting
4 McGuckin, 974 F.2d at 1059).

5 Plaintiff’s allegations to the effect that prison officials were deliberately
6 indifferent to his mental health needs when they forced him to live in a double cell state a
7 cognizable claim for an Eighth Amendment violation. Plaintiff has alleged a link between the
8 actions of defendants Hubbard, Swan, McGahey, Benton, Brida, and Grannis and the alleged
9 violation of his rights under the Eighth Amendment. Accordingly, the court will order service of
10 the complaint on those defendants with respect to that cause of action.

11 9. Other Defendants

12 Plaintiff has failed to state a cognizable claim against defendants Fisher, Hall,
13 DeMars, Soufi, Gross, and Pearson. Plaintiff’s factual allegations against these defendants are
14 vague, conclusory, and largely unintelligible, and fail to demonstrate a sufficient causal link
15 between their actions and any claimed federal constitutional violations. Accordingly, the court
16 will not order service of the fourth amended complaint on defendants Fisher, Hall, DeMars,
17 Soufi, Gross, or Pearson.

18 In summary, the court will order service of plaintiff’s fourth amended complaint
19 on defendant Swan with respect to plaintiff’s retaliation claim. The court will also order service
20 of plaintiff’s fourth amended complaint on defendants Hubbard, Swan, McGahey, Benton, Brida,
21 and Grannis with respect to plaintiff’s Eighth Amendment claim. The court will not order
22 service of plaintiff’s fourth amended complaint on any of the other named defendants or with
23 respect to plaintiff’s claims for injunctive relief.

24 MOTION FOR INJUNCTIVE RELIEF

25 _____ Plaintiff has also filed a “motion for protection order” in which he requests that
26 the court prevent his placement in a double cell at California State Prison Solano until he has

1 received appropriate medication and/or psychotherapy. Plaintiff also appears to be requesting
2 that his “point score” be adjusted.

3 Plaintiff seeks injunctive relief against officials at California State Prison Solano
4 who are not named as defendants in this action. This court is unable to issue an order against
5 individuals who are not parties to a suit pending before it. See Zenith Radio Corp. v. Hazeltine
6 Research, Inc., 395 U.S. 100, 112 (1969). Accordingly, plaintiff’s motion for injunctive relief
7 will be denied.

8 Moreover, to the extent that plaintiff’s motion for injunction is directed to
9 individuals at CMF, the motion will be denied as moot. As plaintiff has been advised, when an
10 inmate seeks injunctive or declaratory relief concerning the prison where he is incarcerated, his
11 claims for such relief become moot when he is transferred to another institution.

12 Accordingly, IT IS HEREBY ORDERED that:

13 1. Service of the fourth amended complaint is appropriate to the extent noted
14 above with respect to the following defendants: Hubbard, Swan, McGahey, Benton, Brida, and
15 Grannis.

16 2. The Clerk of the Court shall send plaintiff 6 USM-285 forms, one summons,
17 an instruction sheet, and a copy of the fourth amended complaint filed March 9, 2009.

18 3. Within thirty days from the date of this order, plaintiff shall complete the
19 attached Notice of Submission of Documents and submit all of the following documents to the
20 court at the same time:

- 21 a. The completed, signed Notice of Submission of Documents;
- 22 b. One completed summons;
- 23 c. One completed USM-285 form for each defendant listed in number 1
24 above; and
- 25 d. Seven copies of the endorsed fourth amended complaint filed March 9,
26 2009.

1 4. Plaintiff shall not attempt to effect service of the fourth amended complaint on
2 defendants or request a waiver of service of summons from any defendant. Upon receipt of the
3 above-described documents, the court will direct the United States Marshal to serve the above-
4 named defendants pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

5 5. Plaintiff's April 7, 2009 motion "for protection order" (Doc. No. 21) is denied.

6 DATED: October 5, 2009.

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9 _____
DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WILSON,

Plaintiff,

No. CIV S-07-1192 GEB DAD P

vs.

JAMES TILTON, et al.,

Defendants.

ORDER

_____ /

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ one completed summons form;

_____ 6 completed USM-285 forms; and

_____ 6 true and exact copies of the fourth amended complaint filed March 9,
2009.

DATED: _____.

Plaintiff