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

JEFF AIDNIK,	)	2:08-cv-02583-HDM-RAM
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	
	)	
CALIFORNIA MEDICAL FACILITY, et	)	
al.,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff is a state prisoner proceeding pro se in this action asserting civil rights claims under 42 U.S.C. § 1983. In its order dated January 29, 2009, the court found plaintiff's complaint stated a colorable First Amendment retaliation claim against: (1) defendant Grouch; (2) defendant Riley; (3) defendant Lewis; (4) defendant Moreno; (5) defendant Pulsipher; and (6) defendant Hubbard. The court further found that the complaint failed to

1 state a claim against defendants: (1) Wheeler; (2) J. McRenolds;  
2 (3) Guerrero; (4) P. Mirch; (5) V. Motochenbacher; (6) L. Jenson;  
3 (7) P. Mandeville; (8) Swarget; (9) Barkley; (10) Casillas; (11) E.  
4 Smith; (12) R. Perez; and (13) California Medical Facility.  
5 Plaintiff was granted leave to file an amended complaint, which he  
6 did on February 19, 2009.

7 On March 6, 2009, the court in *Aidnik v. Knolls*, 2:08-cv-  
8 02145-SPG, conducted a review of the complaint in that action and  
9 determined that it was in fact a request to file a supplemental  
10 pleading in this action. The court granted the request and  
11 directed that the complaint and its addendum be filed as  
12 supplemental pleadings in this case. Accordingly, in this order  
13 the court will also screen the supplemental pleadings in accordance  
14 with 28 U.S.C. § 1915A(a).

15 I. Amended Complaint filed February 19, 2009

16 In his amended complaint, plaintiff names Lt. Swarget and Sgt.  
17 Barclay<sup>1</sup> along with the six defendants against whom the court found  
18 he had stated a claim. The amended complaint still states a First  
19 Amendment retaliation claim against defendants Grouch, Riley,  
20 Lewis, Moreno, Pulsipher, and Hubbard. This includes plaintiff's  
21 claim that defendant Grouch called plaintiff a "f\*\*\*ing rat" and  
22 searched his locker while stating, "Loose lips sink ships," in  
23 retaliation for plaintiff's complaints about defendant Grouch's  
24 alleged abusive language. See *Valandingham v. Bojorquez*, 866 F.2d  
25 1135, 1137-39 (9th Cir. 1988).

26 Plaintiff adds to his amended complaint allegations that each

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28 <sup>1</sup> It is unclear whether "Sgt. Barclay" is the same as defendant "Sgt.  
Barkley" listed in the original complaint.

1 of the named defendants violated a number of regulations of the  
2 California Department of Corrections, specifically: Cal. Code.  
3 Regs. tit. 15, §§ 3004, 3270, 3271, 3300, 3339, 3390, and 3391.  
4 Plaintiff does not explain how violations of these regulations  
5 resulted in violations of his constitutional rights. Alone, such  
6 violations do not give rise to claim of a constitutional violation.  
7 However, the regulations may be relevant in analyzing a due process  
8 claim under the Fourteenth Amendment.

9       The Due Process Clause of the Fourteenth Amendment protects  
10 prisoners from being deprived of liberty without due process of  
11 law. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). To state a  
12 claim for deprivation of procedural due process, a plaintiff must  
13 first establish the existence of a liberty interest. Liberty  
14 interests may arise from the Due Process Clause itself or from  
15 state law. *Hewitt v. Helms*, 459 U.S. 460, 466-68 (1983). State  
16 law creates a liberty interest deserving protection only when the  
17 deprivation in question (1) restrains the inmate's freedom in a  
18 manner not expected from his or her sentence, and (2) "imposes  
19 atypical and significant hardship on the inmate in relation to the  
20 ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S.  
21 472, 483-84 (1995).

22       Section 3339 mandates procedural safeguards for release and  
23 retention in administrative segregation. When placing an inmate in  
24 administrative segregation prison officials are required to: (1)  
25 conduct an informal nonadversary review of the evidence justifying  
26 the decision to segregate the prisoner within a reasonable time of  
27 placing the prisoner in administrative segregation; (2) provide the  
28 prisoner with some notice of the charges before the review; and (3)

1 give the prisoner an opportunity to respond to the charges. See  
2 *Toussaint v. McCarthy*, 801 F.2d 1080, 1100 (9th Cir. 1986),  
3 *abrogated in part on other grounds by Sandin*, 515 U.S. 472. The  
4 prisoner is not entitled to a "detailed written notice of charges,  
5 representation by counsel or counsel-substitute, an opportunity to  
6 present witnesses, or a written decision describing the reasons for  
7 placing the prisoner in administrative segregation." *Id.* at  
8 1100-01. If a prisoner is to be retained in administrative  
9 segregation, officials must periodically review the initial  
10 placement. *Id.* at 1101.

11 While § 3339 could arguably create a liberty interest such  
12 that plaintiff would be entitled to procedural due process,  
13 plaintiff's complaint does not contain any allegations that he was  
14 deprived of those procedural safeguards mandated by *Toussaint*.  
15 Accordingly, he does not state a constitutional claim based on the  
16 defendants' alleged violations of Cal. Code Regs. tit. 15, § 3339.

17 Defendants' alleged violations of the remaining sections also  
18 do not state a constitutional claim. Section 3004, which generally  
19 governs the interactions between inmates, parolees, and prison  
20 employees, mandates respectful, impartial, and fair treatment and  
21 bars open displays of disrespect or contempt. Section 3270 is the  
22 general policy on security. Section 3271 states that every  
23 employee is responsible for the safe custody of inmates. Section  
24 3300 imposes a duty on employees to do everything possible to avoid  
25 disorders. Section 3390 involves background investigations for  
26 certain employees. Section 3391 requires employees to be courteous  
27 and polite to inmates and parolees and to never refer to either by  
28 slang or derogatory names. These sections do not give rise to

1 protectable liberty or property interests, nor do the violations of  
2 these regulations as described in plaintiff's complaint impose the  
3 "atypical and significant hardship[s] on the inmate in relation to  
4 the ordinary incidents of prison life" contemplated by *Sandin*.  
5 Accordingly, plaintiff fails to state a claim based on the  
6 defendants' alleged violations of the California Department of  
7 Corrections regulations.

8       Plaintiff alleges that following defendant Grouch's use of  
9 abusive language, Lt. Swarget moved plaintiff to several dorms  
10 within the prison where he was placed in imminent danger and  
11 threatened with harm. Plaintiff does not allege that he suffered  
12 any physical harm as a result of his placement. For the same  
13 reasons articulated in the court's prior order, plaintiff does not  
14 state a claim for relief against Lt. Swarget. Accordingly, Lt.  
15 Swarget is dismissed from this action.

16       Plaintiff alleges that Sgt. Barclay failed to intervene when  
17 defendant Grouch called plaintiff a "f\*\*\*king rat" and refused to  
18 investigate the matter. These allegations do not give rise to a  
19 constitutional violation. Plaintiff has alleged no harm resulting  
20 from Sgt. Barclay's failure to intervene or investigate sufficient  
21 to state an Eighth Amendment claim, nor do Sgt. Barclay's alleged  
22 actions violate any other constitutional amendment. Accordingly,  
23 Sgt. Barclay is dismissed from this action.

24       II. Complaint filed September 11, 2008

25       Plaintiff's supplemental complaint states a colorable Eighth  
26 Amendment claim against defendant Maxwell. It does not, however,  
27 state a claim against any other defendant.

28       The Eighth Amendment prohibits the imposition of cruel and

1 unusual punishment. A prison official violates the Eighth  
2 Amendment only if two requirements are met: (1) the deprivation  
3 alleged must be objectively, "sufficiently serious," meaning the  
4 "official's act or omission must result in the denial of the  
5 minimal civilized measure of life's necessities"; and (2) the  
6 "official must have a sufficiently culpable state of mind." *Farmer*  
7 *v. Brennan*, 511 U.S. 825, 834 (1994) (internal quotation marks  
8 omitted). Plaintiff has alleged no objectively, sufficiently  
9 serious deprivation stemming from the conduct of defendants Mike  
10 Knolls, P. Mandeville, Sgt. Wyant, Lance Jenson, and Lt. Shankland.  
11 In fact, he has stated no result of their conduct at all, apart  
12 from his conclusory, unexplained allegation that their failure to  
13 adequately investigate the incident with defendant Maxwell  
14 "allow[ed] this misconduct . . . to go on." (Pl. Supp. Compl. 3).  
15 Accordingly, plaintiff's Eighth Amendment claims against defendants  
16 Mike Knolls, P. Mandeville, Sgt. Wyant, Lance Jenson, and Lt.  
17 Shankland are hereby dismissed.

18 Plaintiff also alleges a Fourteenth Amendment Due Process  
19 Clause violation against all defendants. Plaintiff alleges that  
20 defendants Mike Knolls, P. Mandeville, Sgt. Wyant, Lance Jenson,  
21 and Lt. Shankland in one manner or another contributed to an  
22 inadequate investigation into defendant Maxwell's conduct. It is  
23 clear from the documents attached to plaintiff's complaint that the  
24 investigation he claims was inadequately conducted was the  
25 investigation into the grievance he filed against defendant  
26 Maxwell. Prisoners do not have a liberty interest in a particular  
27 grievance system, and therefore they have no liberty interest in  
28 the processing of their grievances. *Ramirez v. Galaza*, 334 F.3d

1 850, 860 (9th Cir. 2003). Because plaintiff does not have a  
2 liberty interest with respect to the processing and investigation  
3 of his grievance, he does not state a colorable claim for a  
4 Fourteenth Amendment Due Process Clause violation.

5 Accordingly, IT IS HEREBY ORDERED that:


6 1. Plaintiff's claims against defendants Lt. Swarget, Sgt.  
7 Barclay, Mike Knolls, P. Mandeville, Sgt. Wyant, Lance Jenson, and  
8 Lt. Shankland are dismissed for the reasons discussed above.

9 2. This action will go forward on plaintiff's First Amendment  
10 claims against defendants Grouch, Riley, Lewis, Moreno, Pulsipher,  
11 and Hubbard, and his Eighth Amendment claim against defendant  
12 Maxwell.

13 3. Plaintiff is granted leave to file an amended complaint  
14 with respect to the allegations in his supplemental complaint filed  
15 September 11, 2008, only. Plaintiff shall have thirty days from  
16 the date of service of this order in which to file any amended  
17 complaint. Failure to file an amended complaint will result in  
18 dismissal of those defendants from this action.

19 4. Upon filing an amended complaint or expiration of the time  
20 allowed therefor, the court will make further orders for service of  
21 process upon some or all of the defendants.

22 DATED: This 17th day of April, 2009.

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24 UNITED STATES DISTRICT JUDGE

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