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

ROBERT BEARD,

No. CIV S-09-2442-WBS-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

ROMERO,

Defendant.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See *McHenry v. Renne*, 84 F.3d 1172,

1 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the
2 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it
3 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege
4 with at least some degree of particularity overt acts by specific defendants which support the
5 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
6 impossible for the court to conduct the screening required by law when the allegations are vague
7 and conclusory.

8

9 I. PLAINTIFF'S ALLEGATIONS

10 Plaintiff alleges he is being denied his request to transfer to an out of state prison.
11 He claims he requested a classification committee hearing to evaluate his request, but defendant
12 Romero denied his request. He claims defendant Romero has violated his rights under the Equal
13 Protection and Due Process Clause of the Fourteenth Amendment.

14

15 II. DISCUSSION

16 A. DUE PROCESS

17 The Due Process Clause protects prisoners from being deprived of life, liberty, or
18 property without due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to
19 state a claim of deprivation of due process, a plaintiff must allege the existence of a liberty or
20 property interest for which the protection is sought. See Ingraham v. Wright, 430 U.S. 651, 672
21 (1977); Bd. of Regents v. Roth, 408 U.S. 564, 569 (1972). Liberty interests can arise both from
22 the Constitution and from state law. See Hewitt v. Helms, 459 U.S. 460, 466 (1983); Meachum
23 v. Fano, 427 U.S. 215, 224-27 (1976); Smith v. Sumner, 994 F.2d 1401, 1405 (9th Cir. 1993). In
24 determining whether the Constitution itself protects a liberty interest, the court should consider
25 whether the practice in question "is within the normal limits or range of custody which the
26 conviction has authorized the State to impose." Wolff, 418 U.S. at 557-58; Smith, 994 F.2d at

1 1405. Applying this standard, the Supreme Court has concluded that the Constitution itself
2 provides no liberty interest in good-time credits, see Wolff, 418 U.S. at 557; in remaining in the
3 general population, see Sandin v. Conner, 515 U.S. 472, 485-86 (1995); in not losing privileges,
4 see Baxter v. Palmigiano, 425 U.S. 308, 323 (1976); in staying at a particular institution, see
5 Meachum, 427 U.S. at 225-27; or in remaining in a prison in a particular state, see Olim v.
6 Wakinekona, 461 U.S. 238, 245-47 (1983).

7 In determining whether state law confers a liberty interest, the Supreme Court has
8 adopted an approach in which the existence of a liberty interest is determined by focusing on the
9 nature of the deprivation. See Sandin v. Connor, 515 U.S. 472, 481-84 (1995). In doing so, the
10 Court has held that state law creates a liberty interest deserving of protection only where the
11 deprivation in question: (1) restrains the inmate’s freedom in a manner not expected from the
12 sentence; and (2) “imposes atypical and significant hardship on the inmate in relation to the
13 ordinary incidents of prison life.” Id. at 483-84. Prisoners in California have a liberty interest in
14 the procedures used in prison disciplinary hearings where a successful claim would not
15 necessarily shorten the prisoner’s sentence. See Ramirez v. Galaza, 334 F.3d 850, 853, 859 (9th
16 Cir. 2003) (concluding that a due process challenge to a prison disciplinary hearing which did not
17 result in the loss of good-time credits was cognizable under § 1983); see also Wilkinson v.
18 Dotson, 544 U.S. 74, 82 (2005) (concluding that claims which did not seek earlier or immediate
19 release from prison were cognizable under § 1983).

20 Prisoners have no liberty interest in avoiding being transferred to another prison.
21 See Olim v. Wakinekona, 461 U.S. 238, 245 (1983); Meachum v. Fano, 427 U.S. 215, 225-27
22 (1976); United States v. Brown, 59 F.3d 102, 105 (9th Cir. 1995) (per curiam). Inmates have “no
23 justifiable expectation” that they will be incarcerated in any particular prison, and transferring an
24 inmate to another prison does not infringe a protected liberty interest. Olim, 461 U.S. at 245;
25 Vitek v. Jones, 445 U.S. 480, 489 (1980).

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1 Here, Plaintiff's claims that he is being denied due process by the denial of
2 hearing fails to state a claim. As discussed above, prisoners have no liberty interest in avoiding
3 transfers to another prison, even out of state, and therefore cannot have a liberty interest in being
4 transferred to an institution of their choice. As plaintiff has no liberty interest in obtaining such a
5 transfer, he cannot state a claim for deprivation of due process.

6
7 B. EQUAL PROTECTION

8 Equal protection claims arise when a charge is made that similarly situated
9 individuals are treated differently without a rational relationship to a legitimate state purpose.
10 See San Antonio School District v. Rodriguez, 411 U.S. 1 (1972). Prisoners are protected from
11 invidious discrimination based on race. See Wolff v. McDonnell, 418 U.S. 539, 556 (1974).
12 Racial segregation is unconstitutional within prisons save for the necessities of prison security
13 and discipline. See Cruz v. Beto, 405 U.S. 319, 321 (1972) (per curiam). Prisoners are also
14 protected from intentional discrimination on the basis of their religion. See Freeman v. Arpaio,
15 125 F.3d 732, 737 (9th Cir. 1997). Equal protection claims are not necessarily limited to racial
16 and religious discrimination. See Lee v. City of Los Angeles, 250 F.3d 668, 686-67 (9th Cir.
17 2001) (applying minimal scrutiny to equal protection claim by a disabled plaintiff because the
18 disabled do not constitute a suspect class) see also Tatum v. Piler, 2007 WL 1720165 (E.D. Cal.
19 2007) (applying minimal scrutiny to equal protection claim based on denial of in-cell meals
20 where no allegation of race-based discrimination was made); Hightower v. Schwarzenegger,
21 2007 WL 732555 (E.D. Cal. March 19, 2008).

22 In order to state a § 1983 claim based on a violation of the Equal Protection
23 Clause of the Fourteenth Amendment, a plaintiff must allege that defendants acted with
24 intentional discrimination against plaintiff, or against a class of inmates which included plaintiff,
25 and that such conduct did not relate to a legitimate penological purpose. See Village of
26 Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (holding that equal protection claims may be

1 brought by a “class of one”); Reese v. Jefferson Sch. Dist. No. 14J, 208 F.3d 736, 740 (9th Cir.
2 2000); Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998); Federal Deposit Ins. Corp. v.
3 Henderson, 940 F.2d 465, 471 (9th Cir. 1991); Lowe v. City of Monrovia, 775 F.2d 998, 1010
4 (9th Cir. 1985).

5 Here, Plaintiff complains about being denied the opportunity to be heard on his
6 request for an interstate transfer. Plaintiff does not explain how he believes such a decision is
7 based on disparate treatment. His conclusory allegation that Defendant has “repeatedly subjected
8 me to discriminatory treatment, cruel & unusual punishment in that I have been denied adequate
9 access to a law library, adequate clothing, food & personal safety because of my race, age and
10 because I am not a native resident of the State of California” is insufficient. (Comp. at 7).
11 Plaintiff does not allege any facts, nor does he in any way raise a claim under the Eighth
12 Amendment in his complaint. His only claim therein is the failure to allow him to be transferred
13 out of state. There is no allegation that Defendant’s decision to deny him a hearing on his
14 request for transfer was based on any protected classification, nor that the protective class status
15 was the basis for the denial. Accordingly, plaintiff fails to state a claim for violation of his Equal
16 Protection rights.

17 18 **III. CONCLUSION**

19 Because it does not appear possible that the deficiencies identified herein can be
20 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
21 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

22 Based on the foregoing, the undersigned recommends that Plaintiff’s complaint be
23 dismissed for failure to state a claim upon which relief can be granted.

24 These findings and recommendations are submitted to the United States District
25 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days
26 after being served with these findings and recommendations, any party may file written

1 objections with the court. The document should be captioned “Objections to Magistrate Judge's
2 Findings and Recommendations.” Failure to file objections within the specified time may waive
3 the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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5 DATED: May 6, 2010

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7 **CRAIG M. KELLISON**
8 UNITED STATES MAGISTRATE JUDGE
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