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

LAWRENCE CYPRIAN,

Plaintiff,

No. 2:09-cv-2704 JAM JFM (PC)

vs.

DERRICK GIVENS, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. By order filed January 19, 2012, defendants’ motion to dismiss plaintiff’s third amended complaint was granted and plaintiff was granted a period of thirty days to file a fourth amended complaint raising only the equal protection and/or due process claims arising from the alleged issuance of false disciplinary charges previously raised in his third amended complaint. After receiving an extension of time, on April 25, 2012, plaintiff filed a proposed fourth amended complaint, a supplemental statement of facts, a declaration, and a document styled “Plaintiff Lawrence Cyprian, Files Criminal Action Complaint to Redress Criminal Wrong Committed by Two (2) Defendants in this Cause of Action.” The court construes these documents together as plaintiff’s proposed fourth amended complaint.

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1 and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416
2 U.S. 232, 236 (1974).

3 ALLEGATIONS OF THE FOURTH AMENDED COMPLAINT

4 In the proposed fourth amended complaint and associated documents, plaintiff
5 makes the following allegations. On January 14, 2009, defendants Givens and Rogers filed a
6 false prison disciplinary report charging plaintiff with possession of an inmate manufactured
7 weapon. Fourth Amended Complaint, filed April 25, 2012 (FAC), at 3. Defendant Providence
8 was not impartial when adjudicating the disciplinary charges. Id. Defendants Mitchell, Flores
9 and Dickinson failed to fully investigate the charges in spite of contentions raised by plaintiff that
10 the anonymous note on which the charges were based had been forged and the evidence
11 fabricated by defendants Givens and Rogers. Id. at 3-4.

12 Defendant Givens perjured himself by testifying at a criminal trial on the charges
13 that the door stopper in which the weapon was found was five inches in diameter, and then
14 testifying at the disciplinary hearing that it was three inches in diameter. Supplemental
15 Statement of Facts, filed April 25, 2012, at 3-4. At the start of a disciplinary hearing on the
16 charges on February 28, 2009, defendant Providence stated that defendant Givens would not lie.
17 Id. at 4. Defendant Providence also accepted a “contradictory statement” from defendant Rogers.
18 Id. at 5. Defendant Providence also failed to give plaintiff a complete report of the incident
19 leading to the charges, including “the questions asked and responses given.” Id. Moreover,
20 defendant Providence’s final report did not state that the weapon was found in a door stopper but,
21 instead, that the weapon had been found in plaintiff’s property. Id. Plaintiff subsequently raised
22 these issues with defendants Flores and Mitchell, who did nothing to remedy the problem. Id.
23 Plaintiff was found guilty at two disciplinary hearings, but was “finally cleared” at the third
24 hearing, when he was found not guilty and the charge was dismissed. Id. at 8. Plaintiff was also
25 criminally prosecuted for possession of a weapon; the charges were dismissed after the jury
26 returned a verdict 9 to 3 in favor of acquittal. Id.

1 Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439 (1985) (quoting Plyler v. Doe, 457
2 U.S. 202, 216 (1982)). Plaintiff has not alleged any facts in the fourth amended complaint that
3 suggest that he was treated differently from otherwise similarly situated inmates. For this reason,
4 he has failed to state a cognizable equal protection claim. Moreover, plaintiff has twice been
5 granted leave to amend to cure deficiencies in his pleading, including in his equal protection
6 claim, and he has failed to cure the deficiencies in his assertion that the alleged events violated
7 his right to equal protection. For that reason, the court finds plaintiff should not be granted any
8 further opportunity to amend this claim. See McGlinchy v. Shell Chemical Co., 845 F.2d 802,
9 809-10 (9th Cir. 1988) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

10 Finally, as noted above, plaintiff has raised pendent state law claims. Because
11 plaintiff has failed to state a cognizable federal claim for relief, the court should decline to
12 exercise supplemental jurisdiction over plaintiff's pendent state law claims. See 28 U.S.C. §
13 1367(c)(3).

14 For all of the foregoing reasons, this court finds that plaintiff's fourth amended
15 complaint fails to state a federal claim on which relief may be granted, plaintiff's state law claims
16 should be dismissed without prejudice, that this action should be dismissed without leave to
17 amend.

18 In accordance with the above, IT IS HEREBY RECOMMENDED that:

- 19 1. Plaintiff's federal claims be dismissed for failure to state a claim upon which
20 relief may be granted;
- 21 2. Plaintiff's state law claims be dismissed without prejudice; and
- 22 3. This action be dismissed without leave to amend.

23 These findings and recommendations are submitted to the United States District
24 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
25 days after being served with these findings and recommendations, any party may file written
26 objections with the court and serve a copy on all parties. Such a document should be captioned

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
2 objections shall be filed and served within fourteen days after service of the objections. The
3 parties are advised that failure to file objections within the specified time may waive the right to
4 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5 DATED: June 26, 2012.

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8 UNITED STATES MAGISTRATE JUDGE

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