

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

COREY SULLIVAN,

Plaintiff,

V.

JEFF MACOMBER, et al.,

Defendants.

No. 2:16-cv-0526 DB P

ORDER

16 Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C.
17 § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.
18 Plaintiff has consented to the jurisdiction of a magistrate judge. (ECF No. 4.)

I. Application to Proceed In Forma Pauperis

20 Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. §
21 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

22 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§
23 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in
24 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct
25 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and
26 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments
27 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.
28 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §
2 1915(b)(2).

3 **II. Screening Requirement**

4 The in forma pauperis statute provides, "Notwithstanding any filing fee, or any portion
5 thereof, that may have been paid, the court shall dismiss the case at any time if the court
6 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
7 granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

8 **III. Pleading Standard**

9 Section 1983 "provides a cause of action for the deprivation of any rights, privileges, or
10 immunities secured by the Constitution and laws of the United States." Wilder v. Virginia Hosp.
11 Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of
12 substantive rights, but merely provides a method for vindicating federal rights conferred
13 elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

14 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
15 right secured by the Constitution or laws of the United States was violated and (2) that the alleged
16 violation was committed by a person acting under the color of state law. See West v. Atkins, 487
17 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

18 A complaint must contain "a short and plain statement of the claim showing that the
19 pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
20 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
21 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
22 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth "sufficient factual
23 matter, accepted as true, to state a claim to relief that is plausible on its face." Id. Facial
24 plausibility demands more than the mere possibility that a defendant committed misconduct and,
25 while factual allegations are accepted as true, legal conclusions are not. Id. at 677-78.

26 **IV. Plaintiff's Allegations**

27 At all times relevant to this action, plaintiff was a state inmate housed at California State
28 Prison, Sacramento ("CSP-Sac") in Represa, California and later at Folsom State Prison ("FSP")

1 in Folsom, California. He names as defendants CSP Correctional Officers (“CO”) Alex Pizarro,
2 Chad Darling, and Sherman Camp; CSP Sgt. Chris Haring; CSP Warden Jeff Macomber; CSP
3 Education Principal Dr. Homad; and CSP College Coordinator Dr. Evamarie Casperite. He also
4 names FSP Lt. C. Martincek and CO John Doe.

5 Plaintiff’s allegations may be fairly summarized as follows:

6 On September 24, 2015, an incident on the CSP recreation yard involved what plaintiff
7 describes as an unprovoked assault on a Black inmate by CO Chad Darling. As a result of this
8 unprovoked assault and the threatening conduct of CO Darling, CO Pizarro, CO Camp and Sgt.
9 Haring, a melee ensued involving several inmates and correctional staff. In a falsified Rule
10 Violation Report (“RVR”) charging plaintiff with Battery on a Peace Officer, CO Pizarro accused
11 plaintiff of hitting CO Darling. Plaintiff denies that this occurred, claiming that the video
12 surveillance cameras will show that he simply stood up, looked around, and then returned to a
13 crouched position; at no time did he make any contact with CO Darling.

14 At the November 3, 2015, hearing on the RVR, Lt. Martincek served as the hearing
15 officer. Despite plaintiff’s protestations, Lt. Martincek ignored the video evidence and rendered a
16 guilty verdict. Plaintiff was assessed 150 days credit forfeiture, 90 days loss of appliances, and 10
17 days loss of yard. He was also counseled, reprimanded, and referred for segregated housing.

18 Plaintiff filed an inmate grievance to have the RVR and related guilty verdict dismissed.
19 Warden Macomber reviewed the appeal at the Second Level of Review. Following an interview
20 with plaintiff and CO Pizarro and a review of the video surveillance, plaintiff’s guilty verdict was
21 upheld.

22 Plaintiff suffered a number of consequences as a result of this guilty finding. For example,
23 on September 24, 2015, Defendant CO John Doe approached plaintiff aggressively and said, “So
24 you are one of the assholes that think they can put their hands on us, huh!?” Plaintiff denied any
25 involvement in the incident, to which this CO said, “Yeah, ok we will see.” Plaintiff felt anxious
26 and in fear of retaliation.

27 Between September 29, 2015, and November 10, 2015, plaintiff was housed at FSP where
28 two signs were placed outside of his cell door, the first reading “Staff Assault Inmate” and the

1 second reading “Red Light.” Numerous COs read these signs and looked into plaintiff’s cell,
2 causing plaintiff to feel intimidated.

3 In addition, plaintiff was removed from his educational college program, causing him to
4 miss his midterms and final exams. He claims that his removal from these programs had no
5 relationship to the incident and is a form of discrimination by Dr. Homad and Dr. Evamarie
6 Casperite.

7 As a result of this falsified charge and the related consequences, plaintiff has suffered
8 extreme emotional distress, severe headaches, contemplation of suicide, and loss of appetite.

9 Plaintiff brings suit under the Eighth and Fourteenth Amendments. He also asserts state
10 law claims for, *inter alia*, negligence. He seeks compensatory and punitive damages.

11 **V. Discussion**

12 **A. Due Process**

13 **1. Falsified Charges**

14 The gravamen of plaintiff’s complaint is that he was falsely charged by CO Pizarro,
15 resulting in a guilty verdict and a number of related consequences.

16 The Due Process Clause protects against the deprivation of liberty without due process of
17 law. Wilkinson v. Austin, 545 U.S. 209, 221 (2005). In order to invoke the protection of the Due
18 Process Clause, a plaintiff must first establish the existence of a liberty interest for which the
19 protection is sought. Id. Liberty interests may arise from the Due Process Clause itself, or from an
20 expectation or interest created by prison regulations. Id. The Due Process Clause itself does not
21 confer on inmates a liberty interest in avoiding “more adverse conditions of confinement.” Id.
22 The existence of a liberty interest created by prison regulations is determined by focusing on the
23 nature of the deprivation. Sandin v. Conner, 515 U.S. 472, 481-84 (1995). Such liberty interests
24 are “generally limited to freedom from restraint which ... imposes atypical and significant
25 hardship on the inmate in relation to the ordinary incidents of prison life.” Id. at 484; Myron v.
26 Terhune, 476 F.3d 716, 718 (9th Cir. 2007).

27 The claim that plaintiff’s due process rights were violated by CO Pizarro’s falsified charge
28 fails and must be dismissed. Buckley v. Gomez, 36 F. Supp. 2d 1216, 1222 (S.D. Cal. 1997)

1 (prisoners have no constitutional right to be free from wrongfully issued disciplinary reports),
2 aff'd without opinion, 168 F.3d 498 (9th Cir. 1999); Sprouse v. Babcock, 870 F.2d 450, 452 (8th
3 Cir. 1989) (prisoner's claims based on allegedly false charges do not state a constitutional claim);
4 Brown v. CMC, (C.D. Cal. May 18, 2010) ("allegations of a fabricated RVR, alone, do not
5 support a cognizable due process claim").

6 **2. RVR Hearing**

7 Relatedly, plaintiff brings a due process claim against Lt. Martincek for failing to properly
8 investigate the video evidence that plaintiff contends establishes his innocence.

9 "Prisoners are entitled to certain due process protections when subject to disciplinary
10 sanctions." Brown v. Or. Dep't of Corr., 751 F.3d 983, 987 (9th Cir. 2014) (citing Wolff v.
11 McDonnell, 94 S. Ct. 2963, 2978-82 (1974)). However, Due Process protections will not attach in
12 all disciplinary proceedings. "These procedural protections ... only apply when the disciplinary
13 action implicates a protected liberty interest in some 'unexpected matter' or imposes an 'atypical
14 and significant hardship on the inmate in relation to the ordinary incidents of prison life.'" Keel v.
15 Dovey, 459 F. Supp. 2d 946, 952 (C.D. Cal. 2006) (quoting Sandin v. Conner, 115 S. Ct. 2293,
16 2300 (1995), and citing Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003)); see Brown, 751
17 F.3d at 987.

18 Even if sufficient interests are at stake, "the fact that prisoners retain rights under the Due
19 Process Clause in no way implies that these rights are not subject to restrictions imposed by the
20 nature of the regime to which they have been lawfully committed. Prison disciplinary proceedings
21 are not part of a criminal prosecution, and the full panoply of rights due a defendant in such
22 proceedings does not apply." Wolff, 94 S. Ct. at 2975 (citations omitted).

23 As another district court explained,

24 the Supreme Court has held that, in the context of prison
25 disciplinary hearings, due process requires only certain procedural
26 safeguards: (1) the inmate should receive "advance written notice of
27 the claimed violation" so the inmate can marshal the facts and
28 prepare a defense; (2) "[a]t least a brief period of time after the
notice, no less than 24 hours, should be allowed to the inmate to
prepare" for the hearing; (3) the inmate "should be allowed to call
witnesses and present documentary evidence in his defense when
permitting him to do so will not be unduly hazardous to

1 institutional safety or correctional goals"; (4) "[w]here an illiterate
2 inmate is involved, ... or [where] the complexity of the issue makes
3 it unlikely that the inmate will be able to collect and present the
4 evidence necessary for an adequate comprehension of the case," the
5 inmate should be given assistance at the hearing; and (5) the inmate
6 should receive "a written statement by the factfinders as to the
7 evidence relied on and reasons for the disciplinary action taken."
8 Wolff, 418 U.S. at 563–70, 94 S. Ct. at 2978–82 (internal quotation
9 marks omitted). Additionally, inmates are entitled to a fair and
10 impartial decision-maker at disciplinary hearings, see Edwards v.
11 Balisok, 117 S. Ct. 1584, 1588 (1997) ("The due process
12 requirements for a prison disciplinary hearing are in many respects
13 less demanding than those for criminal prosecution, but they are not
14 so lax as to let stand the decision of a biased hearing officer who
15 dishonestly suppresses evidence of innocence."), and "the
16 requirements of due process are satisfied if some evidence supports
17 the [disciplinary] decision." Superintendent, Mass. Corr. Inst. v.
18 Hill, 472 U.S. 445, 455, 105 S. Ct. 2768, 2774, 86 L.Ed. 2d 356
19 (1985); Burnsworth v. Gunderson, 179 F.3d 771, 773 (9th Cir.
20 1999)....

21 Gauthier v. Dexter, 573 F. Supp. 2d 1282, 1287-88 (C.D. Cal. 2008).

22 Plaintiff here does not claim he was not provided advance notice, a time to prepare for the
23 hearing, or the opportunity to call witnesses or present documentary evidence. He also does not
24 claim that he was illiterate or that he did not receive a written statement as to the evidence relied
25 on. The attachments to the complaint establish that these were clearly satisfied. Plaintiff's only
26 claim appears to be based on Lt. Martincek's decision to credit CO Pizarro's RVR as evidence of
27 plaintiff's guilt. There is no due process violation on these facts, and thus plaintiff's claim against
28 Lt. Martincek must also be dismissed.

3. Inmate Appeals Process

29 Plaintiff next claims that Warden Macomber failed to properly investigate his claims of
30 innocence. But a defendant's actions in responding to plaintiff's appeals, alone, cannot give rise
31 to any claims for relief under section 1983 for violation of due process. "[A prison] grievance
32 procedure is a procedural right only, it does not confer any substantive right upon the inmates."
33 Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993) (citing Azeez v. DeRobertis, 568 F. Supp.
34 8, 10 (N.D. Ill. 1982)); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (no liberty
35 interest in processing of appeals because no entitlement to a specific grievance procedure);
36 Massey v. Helman, 259 F.3d 641, 647 (7th Cir. 2001) (existence of grievance procedure confers
37

1 no liberty interest on prisoner); Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988). “Hence, it
2 does not give rise to a protected liberty interest requiring the procedural protections envisioned by
3 the Fourteenth Amendment.” Azeez, 568 F. Supp. at 10. Actions in reviewing a prisoner’s
4 administrative appeal, without more, are not actionable under section 1983. Buckley, 997 F.2d at
5 495.

6 **4. Threats**

7 Plaintiff may be asserting a claim against CO John Doe whose comments can be
8 interpreted as a threat. Plaintiff is informed that verbal harassment or abuse alone is not sufficient
9 to state a claim under section 1983, Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987),
10 and threats do not rise to the level of a constitutional violation, Gaut v. Sunn, 810 F.2d 923, 925
11 (9th Cir. 1987). Therefore, plaintiff fails to state a claim based on verbal harassment or threats.

12 **B. Fourteenth Amendment Discrimination**

13 Plaintiff also brings a discrimination claim against Dr. Homad and Dr. Casperite for his
14 removal from the educational college program.

15 The Equal Protection Clause broadly requires the government to treat similarly situated
16 people equally. Hartman v. California Dep’t of Corr. and Rehabilitation, 707 F.3d 1114, 1123
17 (9th Cir. 2013). To state an equal protection claim, typically a plaintiff must allege that
18 ““defendants acted with an intent or purpose to discriminate against [him] based upon
19 membership in a protected class,”” such as a particular race or religion. Furnace v. Sullivan, 705
20 F.3d 1021, 1030 (9th Cir. 2013) (quoting Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir.
21 1998)). “Intentional discrimination means that a defendant acted at least in part because of a
22 plaintiff’s protected status.” Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003) (internal
23 quotation marks and citation omitted) (emphasis in original); see also Byrd v. Maricopa Cnty.
24 Sheriff’s Dep’t, 565 F.3d 1205, 1212 (9th Cir. 2009) (to state an equal protection claim, plaintiff
25 “must plead intentional unlawful discrimination or allege facts that are at least susceptible of an
26 inference of discriminatory intent”).

27 Where the governmental classification does not involve a suspect or protected class, or
28 impinge upon a fundamental right, the classification will not ““run afoul of the Equal Protection

1 Clause if there is a rational relationship between disparity of treatment and some legitimate
2 governmental purpose.”” Nurre v. Whitehead, 580 F.3d 1067, 1098 (9th Cir. 2009) (quoting Cent.
3 State Univ. v. Am. Ass’n of Univ. Professors, 119 S. Ct. 1162, 1163 (1999)).

4 Here, plaintiff does not claim membership in a protected class and does not assert any
5 facts that would suggest intentional or purposeful discrimination. Accordingly, his claim against
6 these defendants fails.

7 **C. Claims on Behalf of Other Inmates**

8 To the extent plaintiff brings suit against any defendant for conduct related to the assault
9 on the Black inmate on the recreation yard, plaintiff lacks standing to pursue the constitutional
10 rights of other inmates. Plaintiff may only challenge the alleged violations of his own
11 constitutional rights. See e.g., Hamm v. Groose, 15 F.3d 110, 112 (8th Cir. 1994) (“an inmate
12 cannot bring a denial-of-access claim on behalf of another inmate who is able to bring such a
13 claim in his or her own name”); Reynoldson v. Shillinger, 907 F.2d 124, 125 (10th Cir. 1990) (“to
14 the extent a complaint concerns ‘inmates’ rather than the plaintiff himself, it is dismissable for
15 failure to allege the plaintiff’s standing to proceed” (citation omitted)); Newsom v. Norris, 888
16 F.2d 371, 381 (6th Cir. 1989) (“a prisoner who initiates a civil action challenging certain
17 conditions at a prison facility in his individual capacity is limited to asserting alleged violations of
18 his own constitutional rights and, absent a request for class certification, lacks standing to assert
19 the constitutional rights of other prisoners”); Weaver v. Wilcox, 650 F.2d 22, 27 (3rd Cir. 1981)
20 (“[A]n inmate does not have standing to sue on behalf of his fellow prisoners. Rather, the prisoner
21 must allege a personal loss and seek to vindicate a deprivation of his own constitutional rights.”
22 (Citations omitted.)).

23 **D. State Law Claims**

24 Lastly, plaintiff asserts state law claims against the defendants. In the absence of a
25 cognizable federal claim, however, the court will not exercise supplemental jurisdiction over any
26 state law claim. 28 U.S.C. § 1337(a); Herman Family Revocable Trust v. Teddy Bear, 254 F.3d
27 802, 805 (9th Cir. 2001); see also Gini v. Las Vegas Metro. Police Dep’t, 40 F.3d 1041, 1046 (9th
28 Cir. 1994). “When . . . the court dismisses the federal claim leaving only state claims for

1 resolution, the court should decline jurisdiction over the state claims and dismiss them without
2 prejudice.” Les Shockley Racing v. National Hot Rod Ass’n, 884 F.2d 504, 509 (9th Cir. 1989).
3 Plaintiff may amend his state law claims, but if he fails to allege a viable federal claim in his
4 amended complaint, the Court will not exercise supplemental jurisdiction over his state law
5 claims. 28 U.S.C. § 1337(a); Herman Family Revocable Trust, 254 F.3d at 805.

6 **VI. Conclusion**

7 Based on the foregoing, the court finds that plaintiff fails to state a claim against
8 defendant. Plaintiff will, however, be granted leave to amend. If plaintiff files a first amended
9 complaint, it must state what defendant did that led to the deprivation of his constitutional rights.
10 Iqbal, 556 U.S. at 676-77. Plaintiff should carefully read this Screening Order and focus his
11 efforts on curing the deficiencies set forth above.

12 Plaintiff is advised that Local Rule 220 requires that an amended complaint be complete
13 in itself without reference to any prior pleading. As a general rule, an “amended complaint
14 supersedes the original” complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once an
15 amended complaint is filed, the original complaint no longer serves any function in the case.
16 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement
17 of each defendant must be sufficiently alleged. The amended complaint should be clearly and
18 boldly titled “First Amended Complaint,” refer to the appropriate case number, and be an original
19 signed under penalty of perjury. Plaintiff’s amended complaint should be brief. Fed. R. Civ. P.
20 8(a). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to
21 relief above the speculative level” Twombly, 550 U.S. at 555 (citations omitted).

22 In accordance with the above, IT IS HEREBY ORDERED that:

23 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2) is granted.
24 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
25 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §
26 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the
27 Director of the California Department of Corrections and Rehabilitation filed concurrently
28 herewith.

1 3. Plaintiff's complaint is dismissed.

2 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
3 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
4 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
5 assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and
6 two copies of the amended complaint; failure to file an amended complaint in accordance with
7 this order will result in a recommendation that this action be dismissed.

8 Dated: October 19, 2017



9
10 DEBORAH BARNES
11 UNITED STATES MAGISTRATE JUDGE
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