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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAWRENCE GEORGE HASH,
Plaintiff,
v.
T. RALLOS, et al.,
Defendants.

No. 2:17-cv-01721-TLN-AC

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 16, 2020, the magistrate judge filed findings and recommendations herein which were served on Plaintiff and which contained notice to Plaintiff that any objections to the findings and recommendations were to be filed within twenty-one days. (ECF No. 18.) Plaintiff has filed objections to the findings and recommendations. (ECF No. 21.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the findings and recommendations to be supported by the record and by proper analysis.

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1 Plaintiff's objections are thorough and two in particular warrant discussion. First,
2 Plaintiff objects to the magistrate judge's recommendation that Claim Seven be dismissed. Claim
3 Seven asserts Plaintiff's Eighth Amendment rights were violated by the denial of toilet access and
4 failure to summon medical assistance when Plaintiff was vomiting during the period that he was
5 in a holding cell. Plaintiff cites to *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981), noting that
6 whether a prison condition or action by prison officials constitutes cruel and unusual punishment
7 is measured by "evolving standards of decency" and "today's broad and idealistic concepts of
8 dignity, civilized standards, humanity, and decency." Plaintiff seems to indicate his Eighth
9 Amendment claim for the denial of toilet access is a condition of confinement claim and not a
10 claim premised on a deliberate indifference to his medical needs. To the extent that was
11 Plaintiff's intent, his claim nevertheless fails and should be dismissed because although a "lack of
12 sanitation that is severe or prolonged can constitute" an Eighth Amendment violation, Plaintiff
13 here has failed to allege such a prolonged or "objectively serious deprivation." See *Gabarrete v.*
14 *Hazel*, No. 1:11-cv-00324-MJS PC, 2012 WL 1119788, at *6 (E.D. Cal. Apr. 3, 2012). Indeed,
15 the magistrate judge's findings and recommendations acknowledge the same. (See ECF No. 18 at
16 7 n. 1.)

17 Second, Plaintiff objects to the dismissal of Claim 12 as asserted against all Defendants
18 but Perera and Sandi. Specifically, the findings and recommendations conclude that Plaintiff
19 made sufficiently specific allegations against Perera and Sandi but relied solely on timing and
20 general hostility with respect to the other Defendants. The magistrate judge therefore found
21 Plaintiff's allegations with respect to those Defendants to be conclusory. Plaintiff, however, cites
22 to *Pratt v. Rowland*, noting that allegations of a chronology of events from which retaliation can
23 be inferred is sufficient to survive dismissal. 65 F.3d 802, 808 ("timing can properly be
24 considered as circumstantial evidence of retaliatory intent"). While it is true that timing may be
25 considered as circumstantial evidence of retaliatory intent, Plaintiff does not allege a series of
26 events from which timing could be considered — rather, he alleges general hostile treatment and
27 unsanitary conditions, but does not link that treatment (by timing or otherwise) to retaliatory
28 actions by the Defendants. The Court therefore agrees with the magistrate judge's determination

1 that Plaintiff's retaliation allegations against Defendant officers other than Sandi and Perera are
2 conclusory, and Plaintiff's objections do not persuade the Court otherwise.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The findings and recommendations filed April 16, 2020 (ECF No. 18), are ADOPTED
5 IN FULL;

6 2. Claim One, against Defendants Rallos, Pfile, Allen, and Zamora, is severed from this
7 case and the Clerk of Court is directed to:

- 8 a. Open a separate civil action against Defendants Rallos, Pfile, Allen, and Zamora,
9 deemed filed as of August 11, 2017 (subject to adjustment pursuant to the prison
10 mailbox rule);
- 11 b. Assign the new action to the district judge and magistrate judge to whom the
12 instant case is assigned, and make appropriate adjustment in the assignment of
13 civil cases to compensate for such assignment;
- 14 c. File and docket in the newly-opened action a copy of the April 16, 2020 Findings
15 and Recommendations and this Order;
- 16 d. Place a copy of the complaint filed August 11, 2017 (ECF No. 1), and the motion
17 to proceed in forma pauperis filed October 12, 2017 (ECF No. 11), in the newly-
18 opened action;
- 19 e. Send Plaintiff an endorsed copy of his complaint bearing the case number assigned
20 in the newly opened action;

21 3. The instant case proceeds on the following claims against the following Defendants:

- 22 a. Claim Four (retaliation) against Faggianelli, Schwimmer, Silva, Austin, Brida,
23 Shirley, and Thomas;
- 24 b. Claim Six (retaliation) against Johnson, Salorzano, Farinas, Brida, and Mohamed;
- 25 c. Claim Nine (denial of access to the courts) against Salorzano, Farinas, Brida, and
26 Mohamed;
- 27 d. Claim Eleven (unsanitary cell conditions in violation of Eighth Amendment)
28 against Just, Boyd, Lemons, Cruzen, Perera, and Sandi only; and

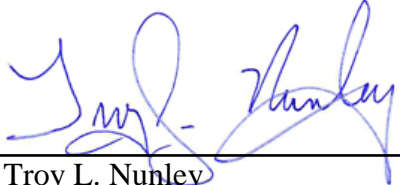
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e. Claim Twelve (retaliation in relation to unsanitary cell) against Sandi and Perera only;

4. The following claims are DISMISSED pursuant to 28 U.S.C. § 1915A(b), without leave to amend: Claims Two (conspiracy), Three (due process), Five (conspiracy), Seven (Eighth Amendment), Eight (conspiracy), Ten (conspiracy), Thirteen (conspiracy), Fourteen (due process), and Fifteen (conspiracy);

5. The following Defendants are terminated from this action: Rallos, Pfile, Allen, and Zamora (named in severed count only); Farinas, Cook, Fanning, Hutcheson, Padilla, Kelly, Lavergne, McClain, Arnold, Jackura, Obegi, Scotland, Darrach, Medina, and Major.

IT IS SO ORDERED.
DATED: June 24, 2020



Troy L. Nunley
United States District Judge