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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

J.P. PARNELL,

Plaintiff,

v.

WHEELER, et al.,

Defendants.

No. 2:21-cv-01182-CKD P

ORDER

Plaintiff is a state inmate proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On August 26, 2021, the court dismissed plaintiff’s complaint, but granted him leave to file an amended complaint. ECF No. 8. Plaintiff’s first amended complaint is now before the court for screening.

I. Screening Requirement

As plaintiff was previously advised, the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon

1 which relief may be granted, or that seek monetary relief from a defendant who is immune from
2 such relief. 28 U.S.C. § 1915A(b)(1), (2).

3 **II. Allegations in the Amended Complaint**

4 At all times relevant to the allegations in the complaint, plaintiff was an inmate at the
5 California Medical Facility. On July 28, 2020, plaintiff was ordered to move to a new housing
6 assignment in the J-Wing due to the ongoing Covid-19 pandemic. Plaintiff asked to speak with
7 numerous correctional staff in order to explain why he should not be moved. Unsuccessful in
8 these efforts, plaintiff informed defendant Wheeler that he would rather go to administrative
9 segregation than to move to the J-Wing. Defendant Wheeler then handcuffed plaintiff. Plaintiff
10 alleges that defendant Wheeler then shoved him head-first into a wall and placed his knee on
11 plaintiff's back. After plaintiff was on the floor, defendant Wheeler lifted plaintiff by the
12 handcuffs and "bounced him two or three times on the floor." ECF No. 13 at 5. Plaintiff was
13 injured as a result.

14 In claim two, plaintiff alleges that a lieutenant identified only as "Doe" reneged on his
15 promise to read the paperwork that plaintiff had in his hand that explained why he did not want to
16 be moved to the J-Wing.

17 In claim three, plaintiff asserts that his Fourteenth Amendment right to equal protection
18 was violated by defendant Toure. Plaintiff asserts that defendant Toure was "duty bound to alert
19 affected staff that the re-housing was [a] direct abrogation of Warden's order" from 2017. ECF
20 No. 13 at 14. Plaintiff also alleges that defendant Toure issued him a rules violation report
21 ("RVR") on July 18, 2020 for refusing a housing assignment. Plaintiff asserts that his reason for
22 refusing the housing assignment precluded the issuance of the RVR and that defendant Toure
23 should have reviewed plaintiff's central file before issuing it. In a conclusory fashion, plaintiff
24 alleges that defendant Toure issued the RVR in retaliation for plaintiff's use of the inmate
25 grievance process.

26 **III. Legal Standards**

27 **A. Linkage Requirement**

28 The civil rights statute requires that there be an actual connection or link between the

1 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
2 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
3 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a
4 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
5 in another’s affirmative acts or omits to perform an act which he is legally required to do that
6 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th
7 Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must
8 link each named defendant with some affirmative act or omission that demonstrates a violation of
9 plaintiff’s federal rights.

10 **B. Retaliation**

11 Prison officials generally cannot retaliate against inmates for exercising First Amendment
12 rights. Rizzo v. Dawson, 778 F.2d 527, 531 (9th Cir. 1985). Because a prisoner’s First
13 Amendment rights are necessarily curtailed, however, a successful retaliation claim requires a
14 finding that “the prison authorities’ retaliatory action did not advance legitimate goals of the
15 correctional institution or was not tailored narrowly enough to achieve such goals.” Id. at 532.
16 The plaintiff bears the burden of pleading and proving the absence of legitimate correctional
17 goals for the conduct of which he complains. Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995).
18 Also, in order to state a claim for retaliation, plaintiff must point to facts indicating a causal
19 connection between the adverse action and the protected conduct. Watison v. Carter, 668 F.3d
20 1108, 1114 (9th Cir. 2012).

21 **C. False Reports**

22 A prisoner has no constitutionally-guaranteed immunity from being falsely or wrongly
23 accused of conduct that may lead to disciplinary sanctions. See Sprouse v. Babcock, 870 F.2d
24 450, 452 (8th Cir. 1989). As long as a prisoner is afforded procedural due process in the
25 disciplinary hearing, allegations of a fabricated charge generally fail to state a claim under section
26 1983. See Hanrahan v. Lane, 747 F.2d 1137, 1140– 41 (7th Cir. 1984). An exception exists
27 when the fabrication of charges infringed on the inmate’s substantive constitutional rights, such as
28 when false charges are made in retaliation for an inmate’s exercise of a constitutionally protected

1 right. See Sprouse, 870 F.2d at 452 (holding that filing of a false disciplinary charge in retaliation
2 for a grievance filed by an inmate is actionable under section 1983).

3 **IV. Analysis**

4 After conducting the required screening, the court finds that plaintiff sufficiently alleges
5 an Eighth Amendment excessive force claim against defendant Wheeler. Plaintiff does not allege
6 a cognizable claim against defendant Toure for issuing the RVR because plaintiff does not allege
7 that it was false. Instead, plaintiff alleges that his refusal to accept the housing assignment was
8 justified by a written statement from the warden in 2017. Accordingly, plaintiff fails to state a
9 cognizable claim based on the issuance of the RVR by defendant Toure. It appears to the court
10 that plaintiff may be attempting to raise a retaliation claim against one or more of the defendants.
11 However, the allegations in the amended complaint indicate that there was a legitimate
12 penological reason for plaintiff's transfer to the J-Wing due to the ongoing Covid-19 pandemic.
13 Therefore, the amended complaint fails to state a retaliation claim against any defendant.

14 Plaintiff may choose to proceed on the claim found cognizable against defendant Wheeler,
15 or he may attempt to cure the defects in his pleading by filing a second amended complaint. If
16 plaintiff chooses to proceed on the Eighth Amendment excessive force claim against defendant
17 Wheeler, the court will construe this as a request to voluntarily dismiss the additional claims and
18 defendants pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure.

19 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
20 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
21 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in
22 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.
23 § 1983 unless there is some affirmative link or connection between a defendant's actions and the
24 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
25 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
26 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

27 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
28 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended

1 complaint be complete in itself without reference to any prior pleading. This is because, as a
2 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
3 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
4 longer serves any function in the case. Therefore, in an amended complaint, as in an original
5 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

6 **V. Plain Language Summary for Pro Se Party**

7 The following information is meant to explain this order in plain English and is not
8 intended as legal advice.

9 Some of the allegations in the amended complaint state claims for relief against the
10 defendants, and some do not. You must decide if you want to (1) proceed immediately on the
11 Eighth Amendment excessive force claim against defendant Wheeler; or, 2) amend the complaint
12 to fix the problems identified in this order with respect to the remaining claims and defendants.

13 **Once you decide, you must complete the attached Notice of Election form by checking only**
14 **one box and returning it to the court.**

15 Once the court receives the Notice of Election, it will issue an order telling you what you
16 need to do next. If you do not return this Notice, the court will order service of the complaint
17 only on the claims found cognizable in this screening order and will recommend dismissing the
18 remaining claims.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Plaintiff has the option to proceed immediately on the Eighth Amendment excessive
21 force claim against defendant Wheeler. In the alternative, plaintiff may choose to
22 amend the complaint to fix the deficiencies identified in this order with respect to the
23 remaining claims and defendants.
- 24 2. Within 21 days from the date of this order, plaintiff shall complete and return the
25 attached Notice of Election form notifying the court whether he wants to proceed on
26 the screened complaint or whether he wants time to file a second amended complaint.


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3. If plaintiff fails to return the attached Notice of Election within the time provided, the court will construe this failure as consent to dismiss the deficient claims and proceed only on the cognizable claims identified above.

Dated: January 7, 2022



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
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No. 2:21-cv-01182-CKD

NOTICE OF ELECTION

Check only one option:

Plaintiff wants to proceed immediately on the Eighth Amendment excessive force claim against defendant Wheeler. Plaintiff voluntarily dismisses the remaining claims and defendants;

or

Plaintiff wants time to file a second amended complaint.

DATED:

Plaintiff