

United States District Court
For the Northern District of California

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

TREMILE SAINT THOMPSON,)	No. C 10-0354 MMC (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL WITH
)	LEAVE TO AMEND
v.)	
)	
CALIFORNIA DEPARTMENT OF)	
CORRECTIONS AND)	
REHABILITATION, et al.,)	
)	
Defendants.)	
_____)	

On January 26, 2010, plaintiff, a California prisoner incarcerated at San Quentin State Prison (“SQSP”) and proceeding pro se, filed the above-titled civil rights action under 42 U.S.C. § 1983. By separate order filed concurrently herewith, plaintiff has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential

1 elements: (1) that a right secured by the Constitution or laws of the United States was
2 violated, and (2) that the alleged violation was committed by a person acting under the color
3 of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

4 B. Plaintiff's Claim

5 Plaintiff makes the following allegations in the complaint: On March 20, 2008
6 plaintiff was returned to custody on a parole violation, with a release date of June 20, 2008.
7 Plaintiff was housed at San Quentin State Prison. Various miscalculations during plaintiff's
8 incarceration resulted in plaintiff's being given a higher custody score than was warranted.
9 Plaintiff attributes the miscalculations to the fact of plaintiff's transgender/transsexual
10 identity. Plaintiff complained to correctional counselor Marshall, who told plaintiff to file an
11 inmate appeal.

12 On August 7, 2008, in Solano County, plaintiff was returned to custody on another
13 parole violation, with a release date of May 7, 2009. On August 25, 2008, plaintiff was
14 transferred to North Kern State Prison. Subsequently, on March 23, 2009, plaintiff was
15 transferred to a level 3 yard at Soledad State Prison, specifically, the North B Yard. Plaintiff
16 alleges the transfer was in retaliation for plaintiff's prior complaints against staff.

17 Plaintiff was advised by another inmate that the North B yard at Soledad was
18 dangerous for transgender/transsexual individuals. Plaintiff was housed on the North B yard
19 for sixteen days without being seen by the classification committee. During that time,
20 plaintiff was "harrassed [sic] and intimidated" by other inmates. (Compl. at 2-B.)

21 Subsequently, after informing staff about the harassment and intimidation, plaintiff
22 was transferred to another building on the same yard. Plaintiff was scheduled to see the
23 classification committee on April 7, 2009. Captain Jordan told Lt. Vahl to be sure that
24 plaintiff's points were reduced to a level 2. Plaintiff currently is incarcerated at San Quentin
25 State Prison.

26 Plaintiff claims that during the time he was housed on the North B Yard, "[his] safety
27 and security had and was compromised intentionally." (Compl. 3-C.) Plaintiff seeks ten
28 million dollars in damages.

1 C. Analysis

2 As noted, plaintiff claims retaliation was the motive behind plaintiff's being housed
3 on the North B yard, where plaintiff was subjected to harassment and intimidation by other
4 inmates.

5 Retaliation by a state actor for the exercise of a constitutional right is actionable under
6 42 U.S.C. § 1983, even if the act, when taken for different reasons, would have been proper.
7 Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 283-84 (1977). "Within the prison
8 context, a viable claim of First Amendment retaliation entails five basic elements: (1) An
9 assertion that a state actor took some adverse action against an inmate (2) because of (3) that
10 prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his
11 First Amendment rights, and (5) the action did not reasonably advance a legitimate
12 correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote
13 omitted).

14 Prisoners may not be retaliated against for exercising their right of access to the
15 courts, see Schroeder v. McDonald, 55 F.3d 454, 461 (9th Cir. 1995), which right extends to
16 access to established prison grievance procedures. See Bradley v. Hall, 64 F.3d 1276, 1279
17 (9th Cir. 1995). Consequently, a prisoner may not be retaliated against for using such
18 procedures. See Rhodes, 408 F.3d at 567.

19 Here, plaintiff alleges that various prison officials retaliated against him because
20 plaintiff had filed complaints against staff. Plaintiff, however, never identifies the subject
21 matter of the relevant complaints, nor specifies how the prison officials responsible for
22 retaliating against plaintiff came to know about those complaints. For example, plaintiff was
23 incarcerated at three different prisons during the relevant time period but does not identify at
24 which prison or against whom the complaints were filed. Additionally, plaintiff does not
25 clearly identify which prison officials were responsible for retaliating against plaintiff. For
26 example, plaintiff does not identify who made the decision to place and retain plaintiff on the
27 North B yard. No claim for retaliation can be stated without allegations that specific
28 individuals took retaliatory action against plaintiff because they knew of plaintiff's protected

1 conduct.

2 Accordingly, plaintiff's retaliation claim will be dismissed. Plaintiff may, however,
3 file an amended complaint if plaintiff can in good faith allege facts, subject to proof, that cure
4 the pleading deficiencies noted above.

5 **CONCLUSION**

6 Within **thirty (30)** days of the date this order is filed, plaintiff may file an AMENDED
7 COMPLAINT, **using the court's form civil rights complaint**, a copy of which is provided
8 herewith, in order to cure the deficiencies noted above. Plaintiff shall complete the form, and
9 include in the caption both the case number of this action, No. C 10-0354 MMC (PR), and
10 the phrase "AMENDED COMPLAINT."


11 An amended complaint supersedes the initial complaint and may not incorporate by
12 reference any parts of the original complaint. London v. Coopers & Lybrand, 644 F.2d 811,
13 814 (9th Cir. 1981). Defendants not named in an amended complaint are no longer
14 defendants. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir.1992). These rules govern
15 actions filed by pro se litigants as well as litigants represented by counsel. See King v.
16 Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Accordingly, if plaintiff wishes to amend the
17 complaint to cure the pleading deficiencies noted above, plaintiff must file an amended
18 complaint that includes any claims from the original complaint plaintiff wishes to preserve.

19 **If plaintiff fails to timely file an amended complaint in conformity with this**
20 **order, the complaint will be dismissed without prejudice.**

21 It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
22 informed of any change of address and must comply with the court's orders in a timely
23 fashion. Failure to do so may result in the dismissal of this action, pursuant to Federal Rule
24 of Civil Procedure 41(b), for failure to prosecute.

25 IT IS SO ORDERED.

26 DATED: April 26, 2010

27 
MAXINE M. CHESNEY
28 United States District Judge