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

JAMES BRIAN HAMILTON,
Plaintiff,

No. C 12-3916 WHA (PR)

**ORDER OF DISMISSAL; DENYING
MOTIONS FOR PHONE CALLS**

v.

D.G. METCALF; SGT.
VERTASOTO; SGT. CORONA;
CORRECTIONAL OFFICER
MORALES; CORRECTIONAL
OFFICER RANGEL; D. SILVA; S.
MAUGHMER; ASSISTANT
WARDEN SPEARMAN;
ASSISTANT WARDEN WHITE; R.
QUINTERA,

(Docket Nos. 12, 15)

Defendants

INTRODUCTION

Plaintiff, a California prisoner proceeding pro se, filed this civil rights action under 42 U.S.C. 1983. The complaint was dismissed with leave to amend. Plaintiff has filed a timely amended complaint (docket number 15). For the reasons discussed below, the case is

DISMISSED.

ANALYSIS

A. STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek

1 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
2 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
3 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
4 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro
5 se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
6 (9th Cir. 1990).

7 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
8 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the
9 statement need only "give the defendant fair notice of what the . . . claim is and the grounds
10 upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted).
11 Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a
12 plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than
13 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
14 do. . . . Factual allegations must be enough to raise a right to relief above the speculative
15 level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A
16 complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.*
17 at 1974.

18 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
19 (1) that a right secured by the Constitution or laws of the United States was violated, and (2)
20 that the alleged deprivation was committed by a person acting under the color of state law.
21 *West v. Atkins*, 487 U.S. 42, 48 (1988).

22 **B. LEGAL CLAIMS**

23 In his amended complaint, plaintiff alleges that defendant Metcalf, a Lieutenant at the
24 California Training Facility ("CTF"), where he was formerly incarcerated, transported and used
25 tobacco on state property in the presence of inmates and other CTF officials. Similar
26 allegations in the original complaint were dismissed because plaintiff did not allege how such
27 conduct affected him. He still does not. He claims in conclusory fashion that this constituted
28 disregard for his "safety" because it violated prison rules and regulations. Plaintiff has not

1 alleged how defendants' breaking of such rules and regulations in and of itself made him
2 unsafe. Consequently, the allegations that Metcalf broke prison rules and regulations, and other
3 defendants' alleged knowledge of this conduct, do not state a cognizable claim for relief.

4 Plaintiff has also alleged that he has been subject to "reprisals," such as improper
5 processing of his administrative appeals, backdating decisions on his classification, and "new
6 lock up orders," because of his knowledge of Metcalf's misconduct. It was explained to
7 plaintiff when the original complaint was dismissed that retaliation for his knowledge of
8 officials' illegal activity is not actionable retaliation because plaintiff's knowing about that
9 activity is not an exercise of his constitutional rights. *See Rhodes v. Robinson*, 408 F.3d 559,
10 567-68 (9th Cir. 2005); *Hines v. Gomez*, 108 F.3d 265, 267-68 (9th Cir. 1997) (retaliation action
11 requires retaliation for exercise of his constitutional rights). Consequently his allegations about
12 reprisals do not state a cognizable claim for retaliation. The alleged delays in processing his
13 administrative grievances and the alleged backdating of classification decisions also do not
14 violate his constitutional rights because there is no constitutional right to an administrative
15 appeal system, *see Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003), or any authority that
16 backdating classification reports violates the federal constitutional right to due process, *see*
17 *Barnett v. Centoni*, 31 F.3d 813, 815 (9th Cir. 1994) (reclassification requires at most only
18 notice and hearing); *Hernandez v. Johnston*, 833 F.2d 1316, 1318 (9th Cir. 1987) .

19 Finally, the proper venue for plaintiff's new allegations about conduct by prison officials
20 at the Wasco State Prison ("Wasco") is the United States District Court for the Eastern District
21 of California, where Wasco is located. Plaintiff's claims pertaining to events occurring there
22 are dismissed without prejudice to his refileing them in the Eastern District.

23 As the amended complaint does not cure the deficiencies from his original complaint
24 that were identified for him, further leave to amend would be futile and will not be granted.
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CONCLUSION

For the foregoing reasons, this case is **DISMISSED**. The motions for phone calls (dkt.12, 15) are **DENIED**. The clerk shall enter judgment and close the file.

IT IS SO ORDERED.

Dated: December 20, 2012.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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