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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GERALD DEAN de CRUZ,
Plaintiff,
v.
A. PANIZZA,
Defendant.

Case No. [15-cv-1930-TEH](#)

ORDER

Dkt. No. 36

Plaintiff, an inmate at San Quentin State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983. The case was dismissed and closed at screening, but Plaintiff filed an appeal. The Ninth Circuit affirmed in part, vacated in part, and remanded the case. The Circuit found that the Court properly dismissed the access to courts claim but remanded the case to consider Plaintiff's allegation that Defendant improperly opened and read his legal mail. The Court reopened the case and ordered service. Plaintiff has filed a second amended complaint with additional claims and Defendants. Defendants have requested the Court screen the second amended complaint.

I

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss

1 the complaint, or any portion of the complaint, if the complaint
2 "is frivolous, malicious, or fails to state a claim upon which
3 relief may be granted," or "seeks monetary relief from a
4 defendant who is immune from such relief." Id. § 1915A(b).
5 Pleadings filed by pro se litigants, however, must be liberally
6 construed. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010);
7 *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir.
8 1990).

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

14 II

15 The Court previously ordered service on Defendant A. Panizza
16 for the claim that he opened and read Plaintiff's confidential
17 legal mail. Plaintiff repeats these allegations and also argues
18 that Defendants Polanco and Mithcell were part of a conspiracy to
19 deny Plaintiff's inmate appeals and Defendant Davis is liable as
20 a supervisor.

21 Plaintiff is informed there is no constitutional right to a
22 prison administrative appeal or grievance system. See *Ramirez v.*
23 *Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855
24 F.2d 639, 640 (9th Cir. 1988). A civil conspiracy is a
25 combination of two or more persons who, by some concerted action,
26 intend to accomplish some unlawful objective for the purpose of
27 harming another which results in damage. *Gilbrook v. City of*
28 *Westminster*, 177 F.3d 839, 856 (9th Cir. 1999). To prove a civil

1 conspiracy, the plaintiff must show that the conspiring parties
2 reached a unity of purpose or common design and understanding, or
3 a meeting of the minds in an unlawful agreement. Id. To be
4 liable, each participant in the conspiracy need not know the
5 exact details of the plan, but each participant must at least
6 share the common objective of the conspiracy. Id.

7 "In a § 1983 or a Bivens action - where masters do not
8 answer for the torts of their servants - the term 'supervisory
9 liability' is a misnomer. Absent vicarious liability, each
10 Government official, his or her title notwithstanding, is only
11 liable for his or her own misconduct." Ashcroft v. Iqbal, 556
12 U.S. 662, 677 (2009) (finding under Bell Atlantic Corp. v.
13 Twombly, 550 U.S. 544 (2007), and Rule 8 of the Federal Rules of
14 Civil Procedure, that complainant-detainee in a Bivens action
15 failed to plead sufficient facts "plausibly showing" that top
16 federal officials "purposely adopted a policy of classifying
17 post-September-11 detainees as 'of high interest' because of
18 their race, religion, or national origin" over more likely and
19 non-discriminatory explanations).

20 A supervisor may be liable under section 1983 upon a showing
21 of (1) personal involvement in the constitutional deprivation or
22 (2) a sufficient causal connection between the supervisor's
23 wrongful conduct and the constitutional violation. Henry A. v.
24 Willden, 678 F.3d 991, 1003-04 (9th Cir. 2012) (citing Starr v.
25 Baca, 652 F.3d 1202, 1207 (9th Cir. 2011)). A plaintiff must
26 also show that the supervisor had the requisite state of mind to
27 establish liability, which turns on the requirement of the
28 particular claim - and, more specifically, on the state of mind

1 required by the particular claim – not on a generally applicable
2 concept of supervisory liability. Oregon State University
3 Student Alliance v. Ray, 699 F.3d 1053, 1071 (9th Cir. 2012).
4 Plaintiff has failed to present sufficient allegations against
5 the supervisor defendants.

6 Plaintiff alleges that Defendant Polanco spoke to him about
7 his inmate appeal and said he would grant it but instead denied
8 the appeal. Plaintiff states that Defendant Mitchell told
9 Plaintiff his appeal was cancelled because Plaintiff previously
10 refused to be interviewed, which Plaintiff states was false.
11 Plaintiff's allegations against Polanco and Mitchell fail to
12 state a claim. There is no constitutional right to a prison
13 administrative appeal system and Plaintiff has failed to
14 demonstrate that there was any conspiracy between these
15 Defendants. Nor has Plaintiff shown that Warden Davis is liable
16 as a supervisor, based on the caselaw set forth above.

17 The new Defendants are dismissed with prejudice from this
18 action. The case continues against Defendant A. Panizza for the
19 claim that he opened and read Plaintiff's confidential legal
20 mail. To the extent that Defendant argues Plaintiff has failed
21 to exhaust this claim, Defendant must file the appropriate
22 motion.

23 III

24 For the foregoing reasons, the Court hereby orders as
25 follows:

- 26 1. Defendant's request for screening (Docket No. 36) is
27 GRANTED.
- 28 2. The action continues on the claim that Defendant Panizza

1 opened and read Plaintiff's confidential legal mail. All other
2 Defendants are DISMISSED. The parties shall review the Order of
3 Service (Docket NO. 29) which remains in effect.

4 3. It is Plaintiff's responsibility to prosecute this case.
5 Plaintiff must keep the court informed of any change of address
6 by filing a separate paper with the clerk headed "Notice of
7 Change of Address." He also must comply with the court's orders
8 in a timely fashion. Failure to do so may result in the
9 dismissal of this action for failure to prosecute pursuant to
10 Federal Rule of Civil Procedure 41(b).

11 IT IS SO ORDERED.

12 Dated: 5/15/2017



THELTON E. HENDERSON
United States District Judge

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