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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MILES O. BONTY,

No. C 09-04358 CW (PR)

Plaintiff,

ORDER OF SERVICE

v.

G. A. NEOTTI, et al.,

Defendants.

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Plaintiff Miles O. Bonty, a state prisoner incarcerated at Salinas Valley State Prison (SVSP), has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983. Thereafter, Plaintiff filed an amended complaint. Plaintiff's motion for leave to proceed in forma pauperis has been granted.

Venue is proper because the events giving rise to the claim are alleged to have occurred at SVSP, which is located in this judicial district. See 28 U.S.C. § 1391(b).

In his amended complaint, Plaintiff names the following SVSP officials as Defendants: Chief Deputy Warden G. A. Neotti and Correctional Lieutenant J. Stevenson. He also names California Department of Corrections and Rehabilitation Chief of the Inmate Appeals Branch N. Grannis. Plaintiff seeks declaratory relief and monetary damages.

## DISCUSSION

## I. 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. 28 U.S.C.

1 § 1915A(a). In its review, the court must identify any cognizable  
2 claims and dismiss any claims that are frivolous, malicious, fail  
3 to state a claim upon which relief may be granted or seek monetary  
4 relief from a defendant who is immune from such relief. Id.  
5 § 1915A(b) (1), (2).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
7 allege two essential elements: (1) that a right secured by the  
8 Constitution or laws of the United States was violated, and  
9 (2) that the alleged violation was committed by a person acting  
10 under the color of state law. West v. Atkins, 487 U.S. 42, 48  
11 (1988). Moreover, pro se pleadings must be liberally construed.  
12 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
13 1988).

#### 14 II. Legal Claims

##### 15 A. Due Process Claim

16 An inmate in California is entitled to due process before  
17 being disciplined when the discipline imposed will inevitably  
18 affect the duration of his sentence or causes an "atypical and  
19 significant hardship on the inmate in relation to the ordinary  
20 incidents of prison life." Sandin v. Conner, 515 U.S. at 484, 484,  
21 487 (1995). The process due in such a prison disciplinary  
22 proceeding includes written notice, time to prepare for the  
23 hearing, a written statement of decision, allowance of witnesses  
24 and documentary evidence when not unduly hazardous, and aid to the  
25 accused where the inmate is illiterate or the issues are complex.  
26 Wolff v. McDonnell, 418 U.S. at 564-7. Due process also requires  
27 that there be "some evidence" to support the disciplinary decision.  
28 Superintendent v. Hill, 472 U.S. 445 at 454. The Due Process

1 Clause only requires that prisoners be afforded those procedures  
2 mandated by Wolff and its progeny; it does not require that a  
3 prison comply with its own, more generous procedures. See Walker  
4 v. Sumner, 14 F.3d 1415, 1419-20 (9th Cir. 1994).

5 In his amended complaint, Plaintiff alleges that he was denied  
6 due process in connection with prison disciplinary proceedings  
7 while he was housed at SVSP. On January 15, 2009, he was issued a  
8 CDC-115 rule violation report for "Refusal to Obey Orders."  
9 Defendant Stevenson was assigned as the hearing officer for the  
10 CDC-115. Plaintiff alleges that Defendant Stevenson refused to  
11 allow him to present certain witnesses at his disciplinary hearing.  
12 Liberally construed, the allegations of the amended complaint state  
13 a § 1983 claim against Defendant Stevenson for violating  
14 Plaintiff's right to due process.

15 B. Claim Relating to Grievance Process

16 Plaintiff claims that Defendants Neotti and Grannis denied his  
17 602 inmate appeal (relating to his due process claim) at the second  
18 level and Director's level, respectively. Plaintiff's amended  
19 complaint does not, however, state a claim for relief against  
20 Defendants Neotti and Grannis, who denied Plaintiff's appeal upon  
21 finding no violation of his due process rights.

22 Any claim based on the simple failure to grant his  
23 administrative appeals or process them properly is not cognizable  
24 in a § 1983 action because there is no constitutional right to a  
25 prison administrative appeal or grievance system for California  
26 inmates. See Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988);  
27 Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7th Cir. 1996). The  
28 State of California has not created a protected interest in an

1 administrative appeal system in prison. California Code of  
2 Regulations, title 15 sections 1073 and 3084 et seq. grant  
3 prisoners in the county jails and state prisons a purely procedural  
4 right: the right to have a prison appeal. The regulations simply  
5 require the establishment of a procedural structure for reviewing  
6 prisoner complaints and set forth no substantive standards;  
7 instead, they provide for flexible appeal time limits, see Cal.  
8 Code Regs. tit. 15, § 3084.6, and, at most, that "no reprisal shall  
9 be taken against an inmate or parolee for filing an appeal," id.  
10 § 3084.1(d). A provision that merely provides procedural  
11 requirements, even if mandatory, cannot form the basis of a  
12 constitutionally cognizable liberty interest. See Smith v. Noonan,  
13 992 F.2d 987, 989 (9th Cir. 1993); see also Antonelli, 81 F.3d at  
14 1430 (prison grievance procedure is procedural right that does not  
15 give rise to protected liberty interest requiring procedural  
16 protections of Due Process Clause).

17 Plaintiff had no federal constitutional right to a properly  
18 functioning appeal system. An incorrect decision on an  
19 administrative appeal does not amount to a due process violation.  
20 Therefore, Plaintiff's claim against Defendants Neotti and Grannis  
21 concerning the handling of his appeal is DISMISSED WITH PREJUDICE.

22 CONCLUSION

23 For the foregoing reasons, the Court orders as follows:

24 1. Plaintiff has stated a cognizable due process claim  
25 against Defendant Stevenson.

26 2. Plaintiff's claim against Defendants Neotti and Grannis  
27 concerning the handling of his appeal is DISMISSED WITH PREJUDICE.

28

1           3.     The Clerk shall mail a Notice of Lawsuit and Request for  
2 Waiver of Service of Summons, two copies of the Waiver of Service  
3 of Summons, a copy of the amended complaint and all attachments  
4 thereto (docket no. 5) and a copy of this Order to SVSP  
5 Correctional Lieutenant J. Stevenson. The Clerk shall also mail a  
6 copy of the amended complaint and a copy of this Order to the State  
7 Attorney General's Office in San Francisco. The Clerk shall mail a  
8 copy of this Order to Plaintiff.

9           4.     Defendant is cautioned that Rule 4 of the Federal Rules  
10 of Civil Procedure requires Defendant to cooperate in saving  
11 unnecessary costs of service of the summons and amended complaint.  
12 Pursuant to Rule 4, if Defendant, after being notified of this  
13 action and asked by the Court, on behalf of Plaintiff, to waive  
14 service of the summons, fails to do so, Defendant will be required  
15 to bear the cost of such service unless good cause be shown for  
16 their failure to sign and return the waiver form. If service is  
17 waived, this action will proceed as if Defendant had been served on  
18 the date that the waiver is filed, except that pursuant to Rule  
19 12(a)(1)(B), Defendant will not be required to serve and file an  
20 answer before sixty (60) days from the date on which the request  
21 for waiver was sent. (This allows a longer time to respond than  
22 would be required if formal service of summons is necessary.)  
23 Defendant is asked to read the statement set forth at the foot of  
24 the waiver form that more completely describes the duties of the  
25 parties with regard to waiver of service of the summons. If  
26 service is waived after the date provided in the Notice but before  
27 Defendant has been personally served, the Answer shall be due sixty  
28 (60) days from the date on which the request for waiver was sent or

1 twenty (20) days from the date the waiver form is filed, whichever  
2 is later.

3 5. Defendant shall answer the amended complaint in  
4 accordance with the Federal Rules of Civil Procedure. The  
5 following briefing schedule shall govern dispositive motions in  
6 this action:

7 a. No later than ninety (90) days from the date  
8 Defendant's answer is due, Defendant shall file a motion for  
9 summary judgment or other dispositive motion. The motion shall be  
10 supported by adequate factual documentation and shall conform in  
11 all respects to Federal Rule of Civil Procedure 56. If Defendant  
12 is of the opinion that this case cannot be resolved by summary  
13 judgment, Defendant shall so inform the Court prior to the date the  
14 summary judgment motion is due. All papers filed with the Court  
15 shall be promptly served on Plaintiff.

16 b. Plaintiff's opposition to the dispositive motion  
17 shall be filed with the Court and served on Defendant no later than  
18 sixty (60) days after the date on which Defendant's motion is  
19 filed. The Ninth Circuit has held that the following notice should  
20 be given to pro se plaintiffs facing a summary judgment motion:

21 The defendant has made a motion for summary  
22 judgment by which they seek to have your case dismissed.  
23 A motion for summary judgment under Rule 56 of the  
Federal Rules of Civil Procedure will, if granted, end  
your case.

24 Rule 56 tells you what you must do in order to  
25 oppose a motion for summary judgment. Generally, summary  
26 judgment must be granted when there is no genuine issue  
27 of material fact -- that is, if there is no real dispute  
28 about any fact that would affect the result of your case,  
the party who asked for summary judgment is entitled to  
judgment as a matter of law, which will end your case.  
When a party you are suing makes a motion for summary  
judgment that is properly supported by declarations (or

1 other sworn testimony), you cannot simply rely on what  
2 your complaint says. Instead, you must set out specific  
3 facts in declarations, depositions, answers to  
4 interrogatories, or authenticated documents, as provided  
5 in Rule 56(e), that contradict the facts shown in the  
6 defendant's declarations and documents and show that  
7 there is a genuine issue of material fact for trial. If  
8 you do not submit your own evidence in opposition,  
9 summary judgment, if appropriate, may be entered against  
10 you. If summary judgment is granted [in favor of the  
11 defendants], your case will be dismissed and there will  
12 be no trial.

13 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en  
14 banc).

15 Plaintiff is advised to read Rule 56 of the Federal Rules of  
16 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)  
17 (party opposing summary judgment must come forward with evidence  
18 showing triable issues of material fact on every essential element  
19 of his claim). Plaintiff is cautioned that because he bears the  
20 burden of proving his allegations in this case, he must be prepared  
21 to produce evidence in support of those allegations when he files  
22 his opposition to Defendant's dispositive motion. Such evidence  
23 may include sworn declarations from himself and other witnesses to  
24 the incident, and copies of documents authenticated by sworn  
25 declaration. Plaintiff will not be able to avoid summary judgment  
26 simply by repeating the allegations of his amended complaint.

27 c. If Defendant wishes to file a reply brief, Defendant  
28 shall do so no later than thirty (30) days after the date  
Plaintiff's opposition is filed.

d. The motion shall be deemed submitted as of the date  
the reply brief is due. No hearing will be held on the motion  
unless the Court so orders at a later date.

6. Discovery may be taken in this action in accordance with

1 the Federal Rules of Civil Procedure. Leave of the Court pursuant  
2 to Rule 30(a)(2) is hereby granted to Defendant to depose Plaintiff  
3 and any other necessary witnesses confined in prison.

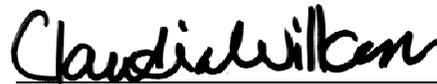
4 7. All communications by Plaintiff with the Court must be  
5 served on Defendant, or Defendant's counsel once counsel has been  
6 designated, by mailing a true copy of the document to Defendant or  
7 Defendant's counsel.

8 8. It is Plaintiff's responsibility to prosecute this case.  
9 Plaintiff must keep the Court informed of any change of address and  
10 must comply with the Court's orders in a timely fashion.

11 9. Extensions of time are not favored, though reasonable  
12 extensions will be granted. Any motion for an extension of time  
13 must be filed no later than fifteen (15) days prior to the deadline  
14 sought to be extended.

15 IT IS SO ORDERED.

16 DATED: 5/7/2010



CLAUDIA WILKEN  
United States District Judge

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 MILES O BONTY,  
5 Plaintiff,

Case Number: CV09-03838 CW

**CERTIFICATE OF SERVICE**

6 v.

7 G.A. NEOTTI et al,  
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,  
10 Northern District of California.

11 That on May 7, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies)  
12 in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in  
13 the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's  
14 office.

15 Miles O. Bonty D-12821  
16 Salinas Valley State Prison  
17 P.O. Box 1050  
18 Soledad, CA 93960

Dated: May 7, 2010

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk