

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

3
4 MANUEL E. SHOTWELL,

5 Plaintiff,

6 v.

7 S. BRANDT, et al.,

8 Defendants.
9

Case No.: C 10-5232 CW (PR)

ORDER GRANTING REQUEST TO
SCREEN COMPLAINT; DISMISSING
CLAIMS WITH PREJUDICE; DENYING
MOTIONS FOR APPOINTMENT OF
COUNSEL, ENTRY OF DEFAULT
JUDGMENT AND LEAVE TO FILE
SUPPLEMENTAL COMPLAINT;
GRANTING LEAVE TO FILE AMENDED
COMPLAINT RAISING NEW CLAIMS

(Docket nos. 40, 42, 43)

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13 Plaintiff, a state prisoner incarcerated at Salinas Valley
14 State Prison (SVSP), filed the instant pro se civil rights action
15 under 42 U.S.C. § 1983, complaining of the violation of his
16 constitutional rights by prison officials at SVSP. Plaintiff
17 paid the full filing fee and attempted to serve Defendants. When
18 his attempts were unsuccessful, the Court directed the Clerk of
19 the Court to mail to Defendants a Notice of Lawsuit and Request
20 for Waiver of Service of Summons.

21 Defendants have waived service and move the Court to screen
22 the complaint pursuant to 28 U.S.C. § 1915A(a).¹

23 STANDARD OF REVIEW

24 A federal court must conduct a preliminary screening in any
25 case in which a prisoner seeks redress from a governmental entity
26

27 ¹ Defendants are not required to respond to the complaint
28 prior to screening by the Court; accordingly, Plaintiff's motion
for the entry of default judgment against Defendants because they
have not responded to the complaint is DENIED.

1 or officer or employee of a governmental entity. 28 U.S.C.
2 § 1915A(a). In its review, the court must identify any
3 cognizable claims and dismiss any claims that are frivolous,
4 malicious, fail to state a claim upon which relief may be granted
5 or seek monetary relief from a defendant who is immune from such
6 relief. Id. § 1915A(b)(1), (2). Pro se pleadings must be
7 liberally construed. Balistreri v. Pacifica Police Dep't, 901
8 F.2d 696, 699 (9th Cir. 1988).

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
12 (2) that the alleged violation was committed by a person acting
13 under the color of state law. West v. Atkins, 487 U.S. 42, 48
14 (1988).

15 DISCUSSION

16 I. Background

17 Plaintiff alleges the following: Defendants found two
18 inmate-manufactured weapons in his cell and issued a rules
19 violation report (RVR) against him even though his cellmate
20 confessed to ownership of the weapons; they held him in
21 administrative segregation pending investigation of the RVR,
22 wrongfully found him guilty of the RVR, sentenced him to a term
23 in the secured housing unit (SHU) and assessed a loss of 360 days
24 of credits; they continued to hold him in administrative
25 segregation after the finding of guilt was overturned for
26 procedural and evidentiary reasons on administrative appeal; they
27 reissued the RVR and held a second disciplinary hearing; and,
28 they did not release him from administrative segregation until

1 after he was found not guilty at the second hearing based on a
2 lack of evidence.

3 Plaintiff claims the above events violated his right to due
4 process under the Fourteenth Amendment and amounted to cruel and
5 unusual punishment in violation of the Eighth Amendment.

6 II. Due Process Violation

7 The requirements of due process apply only to the
8 deprivation of interests encompassed by the Fourteenth
9 Amendment's protection of liberty and property. Board of Regents
10 v. Roth, 408 U.S. 564, 569 (1972). A protected liberty interest
11 may be created either by the Due Process Clause of its own force
12 or by states through statutes or regulations. Sandin v. Connor,
13 515 U.S. 472, 483-84 (1995). A deprivation authorized by state
14 law may amount to deprivation of a protected liberty interest if
15 the deprivation is one of "real substance," that "imposes
16 atypical and significant hardship on the inmate in relation to
17 the ordinary incidents of prison life," Sandin, 515 U.S. at 484,
18 or "will inevitably affect the duration of [a] sentence," id. at
19 487.

20 Plaintiff complains that his right to due process was
21 violated because he was charged with a RVR that was
22 unsubstantiated and ultimately dismissed. A prisoner has no
23 constitutionally guaranteed immunity from being falsely or
24 wrongly accused of conduct which may result in the deprivation of
25 a protected liberty interest. See Sprouse v. Babcock, 870 F.2d
26 450, 452 (8th Cir. 1989); Freeman v. Rideout, 808 F.2d 949, 951
27 (2d Cir. 1986). Consequently, the fact that a prisoner may have
28 been innocent of disciplinary charges brought against him and

1 incorrectly held in administrative segregation does not raise a
2 due process issue. The Constitution demands due process, not
3 error-free decision-making. See Ricker v. Leapley, 25 F.3d 1406,
4 1410 (8th Cir. 1994); McCrae v. Hankins, 720 F.2d 863, 868 (5th
5 Cir. 1983).

6 Plaintiff further maintains that his right to due process
7 was violated because he was held in administrative segregation
8 pending investigation of the unsubstantiated charges against him.
9 The hardship associated with placement in administrative
10 segregation, such as loss of recreational and rehabilitative
11 programs or confinement to one's cell for a lengthy period of
12 time, is not so severe as to violate the Due Process Clause
13 itself. See Toussaint v. McCarthy, 801 F.2d 1080, 1091-92 (9th
14 Cir. 1986) (applying Hewitt v. Helms, 459 U.S. 460 (1983)). An
15 inmate's placement in segregation pending investigation of
16 disciplinary charges does not present a constitutionally
17 cognizable claim unless the deprivation suffered is one of "real
18 substance" as defined in Sandin. See Resnick v. Hayes, 213 F.3d
19 443, 448-49 (9th Cir. 2000).

20 Here, the Court need not decide whether the facts alleged by
21 Plaintiff show that his placement in administrative segregation
22 pending investigation of the disciplinary charges against him
23 amounted to a deprivation of real substance because, even if it
24 did, he does not allege facts that show he was denied due
25 process. The Ninth Circuit holds that when prison officials
26 initially determine whether a prisoner is to be segregated for
27 administrative reasons due process requires that they comply with
28 the following procedures: (1) they must hold an informal non-

1 adversarial hearing within a reasonable time after the prisoner
2 is segregated, (2) the prisoner must be informed of the charges
3 against him or the reasons segregation is being considered, and
4 (3) he must be allowed to present his views. See Toussaint, 801
5 F.2d at 1100. Additionally, "some evidence" must support the
6 decision to place a prisoner in segregation for administrative
7 reasons. Id. at 1104.

8 The facts alleged by Plaintiff show that he was not denied
9 due process when he was placed and retained in administrative
10 segregation pending disposition of the initial RVR.
11 Specifically, he alleges that "immediately" after the two inmate-
12 manufactured weapons were found in his cell on February 18, 2009,
13 both he and his cellmate "were advised of the findings," they
14 were rehoused in administrative segregation, and they were issued
15 CDC Form 114-D "lock-up" orders based on the possession of an
16 inmate manufactured weapon, in violation of California Code of
17 Regulations, Title 15 § 3006(a).² Compl. ¶¶ 8-9. Additionally,
18 he alleges that the next day he was interviewed by Defendant W.

19
20 ² California Code of Regulations, Title 15 § 3336 provides,
21 "The reasons for ordering an inmate's placement in administrative
22 segregation will be clearly documented on a CDC Form 114-D (Order
23 and Hearing on Segregated Housing)." Further, § 3338 provides
24 that a hearing must be held on the segregation order within ten
25 days of the inmate's placement in segregation. When the reason
26 for an inmate's initial placement in administrative segregation
27 is a disciplinary matter and likely to result in a formal report
28 of violation of institution rules on a CDC Form 115, "the hearing
will assume the alleged misconduct or criminal activities to be
factual as reported in the segregation order. The hearing will
not consider evidence or information relating to the guilt or
innocence of the inmate. The only determination to be made is
whether the inmate needs to be retained in administrative
segregation . . . pending resolution or disposition of
disciplinary issues." § 3338(e).

1 Muniz, the facility captain, about the CDC Form 114-D order,
2 "during the CDC 114-D hearing" his cellmate took responsibility
3 for possession of the weapons, and he and his cellmate both were
4 issued RVRs on February 27, 2009. Compl. ¶¶ 10-13. Based on
5 such allegations, the Court finds Plaintiff was provided with the
6 process required by Toussaint.

7 Further, the Court finds no claim for the violation of due
8 process based on Plaintiff's retention in administrative
9 segregation from November 9, 2009 -- the date on which the
10 results of the first disciplinary hearing were vacated -- until
11 December 8, 2009 -- the date on which he was found not guilty of
12 the reissued charges at the second disciplinary hearing.
13 California state prison regulations allow for the reissuance and
14 rehearing of disciplinary charges after a prior hearing is found
15 procedurally inadequate. See Cal. Code Regs., tit. 15
16 § 3312(b)(1). This complies with the demands of federal due
17 process, which requires that a violation of procedural due
18 process be corrected procedurally, not by reinstatement of the
19 substantive right. That is, the remedy for an unfair hearing is
20 another hearing. See Raditch v. United States, 929 F.2d 478, 481
21 (9th Cir. 1991). Here, due process was satisfied when the
22 results of the first disciplinary hearing were vacated, the RVR
23 was ordered reissued and reheard, Plaintiff was found not guilty
24 at the second hearing, and he was released from administrative
25 segregation and not subjected to credit loss or any other form of
26 punishment. Consequently, Plaintiff was provided with all of the
27 process to which he was entitled.³

28 _____
³ No due process claim is alleged for the second hearing.

1 Based on the above, the Court finds that Plaintiff's
2 allegations fail to state a claim upon which relief may be
3 granted for the violation of his right to due process, and that
4 granting him further leave to amend the complaint would be
5 futile. Accordingly, this claim is DISMISSED with prejudice.

6 III. Eighth Amendment Violation

7 Plaintiff alleges that his Eighth Amendment right to be free
8 from cruel and unusual punishment was violated by his placement
9 in administrative segregation for more than six months because of
10 the above events. Plaintiff's allegations fail to state a claim
11 upon which relief may be granted, however, because an inmate's
12 transfer to administrative segregation pending the investigation
13 and resolution of disciplinary charges against him does not
14 constitute punishment: "[T]he transfer of an inmate to less
15 amenable and more restrictive quarters for nonpunitive reasons is
16 well within the terms of confinement ordinarily contemplated by a
17 prison sentence." Hewitt v. Helms, 459 U.S. 460, 468 (1983); cf.
18 Neal v. Shimoda, 131 F.3d 818, 833 (9th Cir. 1997) (contemporary
19 standards of decency are not violated by classification programs
20 which pursue "important and laudable" goals and are instituted
21 under the state's authority to operate correctional facilities).
22 Further, the usual hardships associated with administrative
23 segregation do not violate the Eighth Amendment. Toussaint v.
24 Yockey, 722 F.2d 1490, 1494 n.6 (9th Cir. 1984); see Anderson v.
25 County of Kern, 45 F.3d 1310, 1315-16 (9th Cir. 1995) (no contact
26 with any other inmate in administrative segregation, either for
27 exercise, day room access or otherwise not cruel and unusual
28 punishment).

1 Based on the above, the Court finds that Plaintiff's
2 allegations fail to state a claim upon which relief may be
3 granted for the violation of his Eighth Amendment right to be
4 free from cruel and unusual punishment, and that granting him
5 further leave to amend the complaint would be futile.
6 Accordingly, this claim is DISMISSED with prejudice.

7 IV. Supplemental Complaint

8 Plaintiff has submitted a supplemental complaint for the
9 Court's review. Docket no. 49.

10 The district court may permit a party to serve supplemental
11 pleadings "setting forth transactions or occurrences or events
12 which have happened since the date of the pleading sought to be
13 supplemented." Fed. R. Civ. P. 15(d). The power to allow
14 supplemental pleadings is discretionary, to be exercised "upon
15 such terms as are just." Id. Matters newly alleged in a
16 supplemental complaint must have some relation to the claim set
17 forth in the original pleading. See Keith v. Volpe, 858 F.2d
18 467, 474 (9th Cir. 1988). Supplemental pleadings cannot be used
19 to introduce a separate, distinct and new cause of action. See
20 Planned Parenthood of So. Arizona v. Neely, 130 F.3d 400, 402
21 (9th Cir. 1997).

22 Here, Plaintiff's proposed supplemental complaint alleges
23 that, from September 2010 to the present, prison officials have
24 improperly processed and denied his administrative appeals and
25 mishandled and tampered with his incoming and outgoing mail. He
26 maintains that such actions are in retaliation for his having
27 filed the instant lawsuit and for filing administrative appeals.
28 He describes numerous incidents and names several alleged

1 responsible individuals.

2 Although Plaintiff alleges that the instant lawsuit was, in
3 part, the genesis of the actions complained of in the
4 supplemental complaint, the allegations are conclusory and
5 introduce a separate, distinct and new cause of action for
6 retaliation that is not related to the due process and Eighth
7 Amendment claims raised in the original complaint. Accordingly,
8 the claims are not properly raised in a supplemental complaint
9 and leave to file a supplemental complaint is DENIED. Plaintiff,
10 however, may raise these claims in an amended complaint, which
11 will supersede the original complaint in its entirety. The
12 amended complaint will be screened by the Court under 28 U.S.C.
13 § 1915A. Plaintiff must identify all Defendants and allege facts
14 (1) that are sufficient for the Court to determine whether he
15 states a claim for the violation of his constitutional rights,
16 (2) that link each Defendant to the injury for which that
17 Defendant is alleged to be responsible, and (3) that specify and
18 link the relief he seeks to a particular Defendant or
19 Defendants.⁴

20 V. Appointment of Counsel

21 Plaintiff has moved for the appointment of counsel to assist
22 him with the prosecution of this action. Because there is no
23 pending claim at this time, the request is DENIED as premature.

24 CONCLUSION

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

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27 ⁴ While Plaintiff is not required to plead the exhaustion of
28 administrative remedies in his amended complaint, he is informed
that any claim that has not been exhausted prior to the filing of
the amended complaint will be subject to dismissal.

1 1. Defendants' request to screen the complaint is GRANTED.

2 2. Plaintiff's request for the entry of default judgment
3 is DENIED.

4 3. All claims in the original complaint are DISMISSED with
5 prejudice and without leave to amend.

6 4. Leave to file a supplemental complaint is DENIED.

7 5. Plaintiff may file an amended complaint no later than
8 thirty days from the date of this Order. He shall use the
9 court's civil rights complaint form, a copy of which is provided
10 herewith, and include in the caption both the case number of this
11 action, No. C 10-5232 CW (PR), and the heading, "AMENDED
12 COMPLAINT."

13 If Plaintiff fails to timely file an amended complaint in
14 conformity with this Order, the case will be dismissed with
15 prejudice and closed.

16 6. Plaintiff's motion for the appointment of counsel is
17 DENIED.

18 This Order terminates Docket nos. 40, 42 and 43.

19 IT IS SO ORDERED.

20 Dated: 12/17/2012

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CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE