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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CHRISTOPHER CARREA, JR.,

Plaintiff,

vs.

JEFFERY BEARD, et. al.,

Defendants.

No. C 13-3762 PJH (PR)

ORDER OF DISMISSAL

Plaintiff, an inmate at California Men's Colony, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. Plaintiff's original complaint was dismissed with leave to amend and he has filed an amended complaint.

DISCUSSION

A. Standard of Review

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). In its review the court must identify any cognizable claims, and dismiss any claims which 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. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
8 framework of a complaint, they must be supported by factual allegations. When there are
9 well-pleaded factual allegations, a court should assume their veracity and then determine
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,
11 679 (2009).

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

16 **B. Legal Claims**

17 Plaintiff alleges that he has been improperly classified as a gang member and that
18 the inmate grievance system is ineffective.

19 The process constitutionally due to an inmate placed in segregation depends on
20 whether the placement is disciplinary or administrative. *Toussaint v. McCarthy*, 801 F.2d
21 1080, 1099 (9th Cir. 1986), overruled in part on other grounds by *Sandin v. Conner*, 515
22 U.S. 472 (1995). In *Bruce v. Ylst*, 351 F.3d 1283, 1287 (9th Cir. 2003), the Ninth Circuit
23 determined that California's policy of placing suspected gang members in segregation is an
24 administrative decision, undertaken to preserve order in the prison. When an inmate is
25 placed in segregation for administrative purposes, due process requires only the following
26 procedures:

27 Prison officials must hold an informal nonadversary hearing within a
28 reasonable time after the prisoner is segregated. The prison officials must
inform the prisoner of the charges against the prisoner or their reasons for

1 considering segregation. Prison officials must allow the prisoner to present
2 his views.... [D]ue process [] does not require detailed written notice of
3 charges, representation by counsel or counsel-substitute, an opportunity to
present witnesses, or a written decision describing the reasons for placing the
prisoner in administrative segregation.

4 *Toussaint*, 801 F.2d at 1100-01 (footnote omitted).

5 Prisoners are entitled to the minimal procedural protections of adequate notice and
6 an opportunity to be heard. *Bruce*, 351 F.3d at 1287. In addition to these minimal
7 protections, there must be "some evidence" supporting the decision to place a prisoner in
8 segregated housing. *Id.* (citing *Superintendent v. Hill*, 472 U.S. 445, 454 (1985)). The
9 "some evidence" standard sets a low bar, consistent with the recognition that assignment of
10 inmates within prisons is "essentially a matter of administrative discretion," subject to
11 "minimal legal limitations." *Bruce*, 351 F.3d at 1287 (citing *Toussaint*, 801 F.2d 1080, with
12 respect to the minimal limitations). A single piece of evidence may be sufficient to meet the
13 "some evidence" requirement, if that evidence has "sufficient indicia of reliability." *Id.* at
14 1288.

15 In addition, there is no constitutional right to a prison administrative appeal or
16 grievance system. See *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann v.*
17 *Adams*, 855 F.2d 639, 640 (9th Cir. 1988); accord *Wolff v. McDonnell*, 418 U.S. 539, 565
18 (1974) (accepting Nebraska system wherein no provision made for administrative review of
19 disciplinary decisions).

20 Plaintiff only sets forth general allegations against the entire prison system. He
21 states that the entire state prison system has a history of improperly classifying African-
22 Americans as gang members and he himself was improperly classified as a gang member.
23 He provides no details regarding when or where he was classified as a gang member or
24 the evidence that was used. He also states that the inmate grievance system is ineffective,
25 but provides no specific examples.¹ In addition, plaintiff is currently incarcerated at

27 ¹ Plaintiff also feels that prisoners are not given enough money by the prison system
28 when they are released though he has failed to describe how this represents a violation of a
constitutional right against him.

1 California Men's Colony which lies within the Central District of California and he describes
2 events that occurred there but does not discuss events in this district.

3 All of these deficiencies were discussed in the court's initial review and plaintiff was
4 instructed to address these issues in the amended complaint. Plaintiff has again failed to
5 present specific allegations or address what events occurred in this district. "Under Ninth
6 Circuit case law, district courts are only required to grant leave to amend if a complaint can
7 possibly be saved. Courts are not required to grant leave to amend if a complaint lacks
8 merit entirely." *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000); see also, *Smith v.*
9 *Pacific Properties and Development Corp.*, 358 F.3d 1097, 1106 (9th Cir. 2004), citing *Doe*
10 *v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) ("a district court should grant leave to
11 amend even if no request to amend the pleading was made, unless it determines that the
12 pleading could not be cured by the allegation of other facts."). As plaintiff was already
13 granted leave to amend, this appears to be one of those relatively rare cases when to grant
14 plaintiff leave to amend again would be patently futile based on the discussion above.

15 **CONCLUSION**

16 1. Plaintiff's motion for an extension of time to file the amended complaint (Docket
17 No. 16) is **GRANTED** and the amended complaint is deemed timely filed.

18 2. The amended complaint is **DISMISSED** with prejudice for the reasons set forth
19 above.

20 **IT IS SO ORDERED.**

21 Dated: January 31, 2014.



PHILLIS J. HAMILTON
United States District Judge

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