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2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA

4 GREGORY L. FLETCHER,
5 Plaintiff,
6 v.
7 CORRECTIONAL OFFICER MENDEZ,
8 Defendant.
9

Case No. [16-cv-03110-YGR](#) (PR)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

10 **I. INTRODUCTION**

11 Plaintiff, a state prisoner currently incarcerated at Salinas Valley State Prison (“SVSP”),
12 filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s complaint is now before
13 the Court for review pursuant to 28 U.S.C. §1915A, along with his motion for leave to proceed *in*
14 *forma pauperis*, which will be granted in a separate Order. Plaintiff seeks monetary damages as
15 well as injunctive relief.

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

18 The Court now reviews Plaintiff’s complaint pursuant to 28 U.S.C. §1915. For the reasons
19 set forth below, the Court DISMISSES the complaint with leave to amend to correct certain
20 deficiencies addressed below, and directs Plaintiff to provide sufficient information regarding the
21 exhaustion of administrative remedies.

22 **II. DISCUSSION**

23 **A. Standard of Review**

24 Federal courts must engage in a preliminary screening of cases in which prisoners seek
25 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
26 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
27 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
28 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). *Pro se*

1 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th
2 Cir. 1990).

3 Liability may be imposed on an individual defendant under section 1983 if the plaintiff can
4 show that the defendant proximately caused the deprivation of a federally protected right. *See*
5 *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); *Harris v. City of Roseburg*, 664 F.2d 1121,
6 1125 (9th Cir. 1981). A person deprives another of a constitutional right within the meaning of
7 section 1983 if he does an affirmative act, participates in another's affirmative act or omits to
8 perform an act which he is legally required to do, that causes the deprivation of which the plaintiff
9 complains. *Leer*, 844 F.2d at 633; *Robins v. Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995). To
10 state a claim a plaintiff must show a specific constitutional or federal guarantee safeguarding the
11 interests that have been invaded. *See Paul v. Davis*, 424 U.S. 693, 697 (1976).

12 Although a plaintiff is not required to plead "specific factual details not ascertainable in
13 advance of discovery," *Gibson v. United States*, 781 F.2d 1334, 1340 (9th Cir. 1986), he does not
14 state a claim under 42 U.S.C. § 1983 if the allegations in the complaint are mere conclusions,
15 *Kennedy v. H & M Landing, Inc.*, 529 F.2d 987, 989 (9th Cir. 1976); *Fisher v. Flynn*, 598 F.2d
16 663, 665 (1st Cir. 1979). A complaint must contain sufficient allegations to put defendants fairly
17 on notice of the claims against them. *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991). A
18 complaint that fails to state the specific acts of the defendant which violated the plaintiff's rights
19 fails to meet the notice requirements of Federal Rule of Civil Procedure 8(a). *Hutchinson v.*
20 *United States*, 677 F.2d 1322, 1328 n.5 (9th Cir. 1982).

21 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
22 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the
23 statement need only "give the defendant fair notice of what the . . . claim is and the grounds
24 upon which it rests."” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although
25 in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's
26 obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than labels and
27 conclusions, and a formulaic recitation of the elements of a cause of action will not do
28 Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell*

1 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-55 (2007) (citations omitted). A complaint must
2 proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570.

3 **B. Legal Claims**

4 Plaintiff’s pleading is too short on facts for the Court to determine whether any of his
5 constitutional rights may have been violated. Plaintiff will be given leave to amend so that he may
6 attempt to allege facts showing how his constitutional rights have been violated. Also, for each
7 instance of a constitutional violation, Plaintiff should name each person who violated his
8 constitutional rights, describe what each person did to violate his rights, state where the violation
9 occurred, and *when* certain violations occurred, i.e., he has failed to indicate the exact date of the
10 alleged denial of medication.

11 In his amended complaint, Plaintiff must provide a more detailed description of his claims
12 in order for the Court to determine whether enough is alleged to find the pleading adequate to state
13 a claim for relief and require a response from Defendants.

14 Plaintiff’s first possible claim involves an incident on January 11, 2016 in which he claims
15 that his constitutional right to “freedom of religion” was violated. Dkt. 1 at 3.¹ Specifically,
16 Plaintiff, who claims to be a practicing Muslim, alleges that on that date, he was performing
17 “fitra,” an act performed “every 40 days” by “all [M]uslims” in order to “to keep clean.” *Id.*
18 Specifically, Plaintiff claims that “fitra” involved the shaving of his pubic hair. *See id.* at 8.
19 Plaintiff further alleges that SVSP Correctional Officer L. Mendez, the sole Defendant in this
20 action, “lied” on “the RVR,” which the Court assumes relates to the attached Rules Violation
21 Report (“RVR”) log no. A16-01-0023 for the offense of “Indecent Exposure W/Masturbation.”
22 *Id.* at 3, 9-16. The record shows that Plaintiff was eventually found “not guilty” of the
23 aforementioned offense. *Id.* at 7-8. However, Plaintiff was instead found to be “in violation of
24 having a razor in his possession,” but nothing in the record indicates that he received any form of
25 “disciplinary action” for this violation aside from a “disciplinary chrono.” *Id.* at 8. The record
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27 ¹ Page number citations refer to those assigned by the Court’s electronic case management
28 filing system and not those assigned by Plaintiff.

1 further shows that Plaintiff’s RVR log no. A16-01-0023 was “dismissed,” and the senior hearing
2 officer requested that the “Records Department destroy all documentation regarding this report as
3 well as any reports written in support of this disciplinary report.” *Id.* at 7.

4 An inmate in California is entitled to due process before being disciplined when the
5 discipline imposed will inevitably affect the duration of his sentence or causes an “atypical and
6 significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin v.*
7 *Conner*, 515 U.S. 472, 484, 487 (1995). The process due in such a prison disciplinary proceeding
8 includes written notice, time to prepare for the hearing, a written statement of decision, allowance
9 of witnesses and documentary evidence when not unduly hazardous, and aid to the accused where
10 the inmate is illiterate or the issues are complex. *Wolff v. McDonnell*, 418 U.S. at 564-7. Due
11 process also requires that there be “some evidence” to support the disciplinary decision.
12 *Superintendent v. Hill*, 472 U.S. 445 at 454. The Due Process Clause only requires that prisoners
13 be afforded those procedures mandated by *Wolff* and its progeny; it does not require that a prison
14 comply with its own, more generous procedures. *See Walker v. Sumner*, 14 F.3d 1415, 1419-20
15 (9th Cir. 1994).

16 Here, Plaintiff does not allege any cognizable due process violation. He does not allege
17 that the senior hearing officer refused to allow him to present certain witnesses and evidence at his
18 disciplinary hearing. Instead, as mentioned earlier, after the disciplinary hearing, Plaintiff was
19 found not guilty and the RVR was dismissed.

20 A second possible claim concerns the alleged denial of medication. However, Plaintiff
21 merely claims that Defendant Mendez “violated the color of code of law by not letting [Plaintiff]
22 out too [sic] get [his] medication.” Dkt. 1 at 4. Plaintiff does not describe what type of
23 medication he required, nor does he specify how his health was severely harmed. Deliberate
24 indifference to serious medical needs violates the Eighth Amendment’s proscription against cruel
25 and unusual punishment. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *McGuckin v. Smith*, 974
26 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX Technologies, Inc. v. Miller*,
27 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A determination of “deliberate indifference”
28 involves an examination of two elements: the seriousness of the prisoner’s medical need and the

1 nature of the defendant’s response to that need. *See McGuckin*, 974 F.2d at 1059. Here, again,
2 Plaintiff does not indicate why he needed the medication or how the denial of such medication
3 affected his health. *See id.* The Court finds that Defendant Mendez’s alleged one-time refusal to
4 allow Plaintiff access to his medication, at most, amounts to nothing more than negligence. *See*
5 *Farmer*, 511 U.S. at 835-36 & n.4.

6 A third possible claim is Plaintiff’s claim of retaliation. “Within the prison context, a
7 viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a
8 state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected
9 conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and
10 (5) the action did not reasonably advance a legitimate correctional goal.” *Rhodes v. Robinson*, 408
11 F.3d 559, 567–68 (9th Cir. 2005) (footnote omitted). The plaintiff must show that the type of
12 activity he was engaged in was protected by the First Amendment and that the protected conduct
13 was a substantial or motivating factor for the alleged retaliatory acts. *See Mt. Healthy City Bd. of*
14 *Educ. v. Doyle*, 429 U.S. 274, 287 (1977). Retaliation is not established simply by showing
15 adverse activity by a defendant after protected speech; rather, the plaintiff must show a nexus
16 between the two. *See Huskey v. City of San Jose*, 204 F.3d 893, 899 (9th Cir. 2000) (retaliation
17 claim cannot rest on the logical fallacy of *post hoc, ergo propter hoc*, i.e., “after this, therefore
18 because of this”). In the instant action, Plaintiff must provide more allegations regarding his
19 retaliation claim. Simply stating that he felt that Defendant Mendez’s actions were “very racist all
20 because [Plaintiff is] black,” and that “retaliation is what she is doing” is insufficient. *See* Dkt. 1
21 at 4. Therefore, Plaintiff’s conclusory allegations of retaliation by Defendants fail to state a
22 cognizable claim for relief. Plaintiff must allege that he engaged in constitutionally-protected
23 conduct, that prison staff took adverse action against him in retaliation for the protected conduct,
24 and that he suffered harm as a result of the retaliation.

25 In sum, the Court finds that the above allegations fail to state a claim and this complaint
26 will be dismissed but Plaintiff will be provided leave to amend to attempt to cure any deficiencies.
27 The Court also finds that the complaint is deficient because it fails to provide sufficient
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1 information regarding the exhaustion of administrative remedies.² See Dkt. 1 at 1-2. Accordingly,
2 this Court has no choice but to dismiss the complaint with leave to amend.

3 **C. Exhaustion**

4 A prisoner must exhaust his administrative remedies for constitutional claims prior to
5 asserting them in a civil rights complaint. 42 U.S.C. § 1997e(a); *McKinney v. Carey*, 311 F.3d
6 1198, 1199 (9th Cir. 2002). If a prisoner exhausts a claim after bringing it before the court, his
7 subsequent exhaustion cannot excuse his earlier failure to exhaust. *Vaden v. Summerhill*, 449 F.3d
8 1047, 1051 (9th Cir. 2006) (“[A prisoner] may initiate litigation in federal court only after the
9 administrative process ends and leaves his grievances unredressed. It would be inconsistent with
10 the objectives of the statute to let him submit his complaint any earlier than that.”) When the
11 district court concludes that the prisoner has not exhausted administrative remedies on a claim,
12 “the proper remedy is dismissal of the claim without prejudice.” *Wyatt v. Terhune*, 315 F.3d,
13 1108, 1120 (9th Cir. 2003) *overruled on other grounds by Albino v. Baca*, 747 F.3d 1162, 1166
14 (9th Cir. 2014) (en banc). However, as mentioned above, Plaintiff failed to provide sufficient
15 information regarding the exhaustion of administrative remedies. See Dkt. 1 at 1-2. Plaintiff
16 merely checks the box “YES” next to the question “[D]id you present the facts in your complaint
17 for review through the grievance procedure?” *Id.* at 1. When asked to further explain, he includes
18 information on RVR log no. A16-01-0023 instead of listing the “date and result of the appeal at
19 each level of review.” *Id.* at 1-2. He also merely checks the box “YES” next to the question “Is
20 the last level to which you appealed the highest level of appeal available to you?” However,
21 again, he does not give any information indicating that he pursued an appeal to the highest level of
22 review. Such a vague and conclusory response is insufficient. Furthermore, Plaintiff has not
23 alleged any extraordinary circumstances which might compel that he be excused from complying
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25 ² The Prison Litigation Reform Act of 1995 (“PLRA”) amended 42 U.S.C. § 1997e to
26 provide that “[n]o action shall be brought with respect to prison conditions under [42 U.S.C.
27 § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional
28 facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a).
Exhaustion is mandatory and no longer left to the discretion of the district court. *Ross v. Blake*,
136 S. Ct. 1850, 1856-58 (2016); *Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (citing *Booth v.*
Churner, 532 U.S. 731, 739 (2001)).

1 with PLRA’s exhaustion requirement. *Cf. Booth*, 532 U.S. at 741 n.6 (courts should not read
2 “futility or other exceptions” into section 1997e(a)). During the same time frame that he amends
3 his complaint, Plaintiff will be given an opportunity to provide sufficient information regarding
4 the exhaustion of administrative remedies. Specifically, to avoid dismissal, Plaintiff needs to
5 provide proof that extraordinary circumstances existed in order to excuse him from complying
6 with PLRA’s exhaustion requirement. *See e.g., Ross*, 136 S. Ct. at 1859-60 (identifying “three
7 kinds of circumstances in which an administrative remedy, although officially on the books, is not
8 capable of use to obtain relief.”)

9 **III. CONCLUSION**

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

11 1. The complaint is DISMISSED WITH LEAVE TO AMEND, as indicated above,
12 within **twenty-eight (28) days** of the date this Order is filed. The amended complaint must
13 include the caption and civil case number used in this Order (C 16-3110 YGR (PR)) and the words
14 “AMENDED COMPLAINT” on the first page. Because an amended complaint completely
15 replaces the prior pleadings, Plaintiff may not incorporate material from the prior pleadings by
16 reference but must include in the amended complaint all the claims and allegations he wishes to
17 present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). **Failure to amend within**
18 **the designated time and in accordance with this Order will result in the dismissal of this**
19 **action.**

20 2. It is Plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court
21 informed of any change of address and must comply with the Court’s orders in a timely fashion.
22 Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se* whose address changes
23 while an action is pending must promptly file a notice of change of address specifying the new
24 address. *See* L.R. 3-11(a). The Court may dismiss without prejudice a complaint when: (1) mail
25 directed to the *pro se* party by the Court has been returned to the Court as not deliverable, and
26 (2) the Court fails to receive within sixty days of this return a written communication from the *pro*
27 *se* party indicating a current address. *See* L.R. 3-11(b).

28 3. The Clerk of the Court shall send Plaintiff a blank civil rights complaint form along

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with his copy of this Order.

IT IS SO ORDERED.

Dated: January 11, 2017


YVONNE GONZALEZ ROGERS
United States District Judge