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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 JEFFREY MILLS,

8 Plaintiff,

9 v.

10 K. MITCHELL, et al.,

11 Defendants.

Case No. [16-cv-05095-HSG](#)

**ORDER REOPENING CASE;
VACATING JUDGMENT; VACATING
IN PART ORDER GRANTING
SUMMARY JUDGMENT; STAYING
ACTION AND REFERRING FOR
SETTLEMENT PROCEEDINGS;
DIRECTIONS TO CLERK**

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13 Plaintiff, a prisoner incarcerated at San Quentin State Prison (“SQSP”) and proceeding *pro*
14 *se*, filed the instant civil rights action under 42 U.S.C. § 1983. For the reasons set forth below, the
15 Court REOPENS the instant action; VACATES the March 19, 2018 judgment; VACATES in part
16 the prior grant of summary judgment in favor of Defendants; and REFERS this case for settlement
17 proceedings.

18 **DISCUSSION**

19 **I. Procedural Background**

20 On April 19, 2016, Plaintiff commenced the instant action.¹ The Court found the
21 complaint stated a cognizable claim for retaliation in violation of the First Amendment, and a
22 cognizable state-law intentional tort claim when it made the following allegations: (1) Officer
23 Arana removed Plaintiff from his lead yard attendant job in May 2015 and reassigned him to
24 sweeping and mopping stairs; withheld Plaintiff’s May 2015 pay; moved Plaintiff from his cell in
25 June 2015; and continually harassed Plaintiff from late 2014 through March 2016, all in retaliation

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27 ¹ Plaintiff commenced this action by filing a complaint in Marin County Superior Court on April
28 August 3, 2016, Dkt. No. 1 at 1. Plaintiff served Defendants in accordance with California law on
No. 1.

1 for filing a successful grievance; (2) Sgt. Blarcom, Lt. Walls, and Capt. Evans participated in the
2 retaliation and civil rights violations when they were informed of, but did not stop, Officer
3 Arana’s retaliation and harassment; (3) Officer Mitchell participated in the retaliation and civil
4 rights violations when he covered up the other defendants’ misconduct; and (4) all defendants
5 engaged in retaliation and civil rights violations when they conducted a “massive” search of
6 Plaintiff’s cell in February 2016; moved him from his cell in February 2016; added false
7 documents to his grievances; and falsified a 129B chrono. Dkt. No. 1; Dkt. No. 14 at 5–7.

8 On March 19, 2018, the Court granted Defendants’ motion for summary judgment for
9 failure to exhaust administrative remedies. In the order granting summary judgment, the Court
10 identified Grievance Nos. SQ-15-1751, SQ-15-02514, and SQ-15-03254 as the grievances
11 relevant to the issues raised in this action, and concluded that none of these grievances had been
12 exhausted. These grievances raised the first three claims identified by the Court, but did not raise
13 Plaintiff’s claims regarding Defendants’ actions in 2016. The Court concluded that Plaintiff had
14 not exhausted his administrative remedies with respect to the first three claims because he had not
15 appealed Grievance No. SQ-15-1751 to the third and final level of review, and because he did not
16 exhaust Grievance Nos. SQ-15-02514 and SQ-15-03254 prior to filing suit. The Court further
17 concluded that Plaintiff’s claims regarding Defendants’ actions in 2016 were unexhausted because
18 they had not been raised in any of these three grievances. *See generally* Dkt. No. 31. The Court
19 entered judgment in favor of defendants that same day. Dkt. No. 32.

20 Plaintiff appealed. Dkt. No. 33.

21 On February 6, 2020, the Ninth Circuit found that the California Department of
22 Corrections’ handling of Grievances Nos. SQ-15-1751, SQ-15-2514, and SQ-15-2839 effectively
23 made administrative remedies unavailable to Plaintiff,² and that this Court erred in disregarding
24 Grievance No. SQ-15-2839 as unrelated to this action. Dkt. No. 41. The Ninth Circuit reversed
25 and remanded for further proceedings. *Id.*

26 Accordingly, the Court REOPENS the instant action and VACATES the March 19, 2018

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28 ² Plaintiff did not raise Grievance No. SQ-15-3254 on appeal. *Mills v. Mitchell*, slip op. no. 18-15531 at 3 n.1.

1 related judgment.

2 **II. Vacating in Part Prior Grant of Summary Judgment**

3 As explained below, the Court VACATES in part the March 19, 2018 order granting
4 defendants' summary judgment motion.

5 In accordance with the Ninth Circuit's memorandum opinion, the Court finds that
6 Grievances Nos. SQ-15-1751, SQ-15-2514, and SQ-15-2839 effectively made administrative
7 remedies unavailable to Plaintiff. Accordingly, Plaintiff has exhausted his administrative
8 remedies with respect to his claims that (1) Officer Arana committed an intentional tort against
9 him and retaliated against him in violation of the First Amendment when he removed Plaintiff
10 from his lead yard attendant job in May 2015 and reassigned him to sweeping and mopping stairs;
11 withheld Plaintiff's May 2015 pay; moved Plaintiff from his cell in June 2015; and, starting in late
12 2014, continually harassed Plaintiff in retaliation for filing a successful grievance; (2) Sgt.
13 Blarcom, Lt. Walls, and Capt. Evans participated in the retaliation, civil rights violations, and
14 intentional tort when they were informed of, but did not stop, Officer Arana's retaliation and
15 harassment; and (3) Officer Mitchell participated in the retaliation, civil rights violations, and
16 intentional tort when he covered up the other defendants' misconduct. The Court therefore
17 VACATES the grant of summary judgment in favor of Defendants on these claims.

18 However, none of these three grievances exhausted Plaintiff's claims regarding
19 Defendants' February 2016 alleged actions, i.e. his claims that Defendants retaliated against him,
20 committed civil rights violations, and committed an intentional tort when they conducted a
21 "massive" search of Plaintiff's cell on February 3, 2016; moved him from his cell on February 4,
22 2016; and added a falsified 129B chrono to his grievances on January 25, 2016.

23 Grievance No. SQ-15-1751, submitted on June 11, 2015, alleged that Officer Arana had
24 harassed Plaintiff by *inter alia* illegally removing him from his job in or around June 2015;
25 withholding his May 2015 pay; and moving him to a new cell in June 2015. The last action taken
26 with respect to Grievance No. SQ-15-1751 by prison officials occurred on September 19, 2016.
27 Dkt. No. 24-1 at 33-49.

28 Grievance No. SQ-15-2514, submitted on August 26, 2015, alleged that Officer Arana had

1 harassed Plaintiff since May 2, 2015 in the following ways: treated Plaintiff with disrespect and
2 contempt in the presence of other inmates; instructed Plaintiff to clean areas that were the
3 responsibility of other porters; and tried to get Plaintiff to quit his job or accept another job
4 assignment. Dkt. No. 24-1 at 57–60. The grievance also alleged that Plaintiff reported these acts
5 of retaliation to Lt. Walls and Officer Arana in August 2015; and that Officer Arana and Lt. Walls
6 retaliated against Plaintiff for filing grievances by urging Plaintiff to consider going to third watch
7 or accepting a different job. The last action taken with respect to Grievance No. SQ-15-2514 by
8 prison officials occurred on June 22, 2016. Dkt. No. 24-1 at 55-62.

9 Grievance No. SQ-15-2839, submitted on June 11, 2015, alleged that prison officials had
10 failed to provide him with copies of his timekeeping / pay sheets, despite repeated requests.
11 Grievance No. SQ-15-2839 also stated that Plaintiff had informed officer Arana that officer Arana
12 had, as part of a pattern of retaliation, harassment, and oppression, illegally reassigned him to
13 another job on August 27, 2015. Grievance No. SQ-15-2839 requested that Plaintiff be provided
14 with a copy of his timekeeping sheets and of his job change slip; that an audit be conducted of the
15 inmate timekeeping sheets; that Plaintiff be reinstated in his job; and that Plaintiff receive a raise
16 and back pay for May 2015. Dkt. No. 24-1 at 46-49. The last action taken with respect to
17 Grievance No. SQ-15-2839 by prison officials occurred on April 5, 2016. Dkt. No. 24-1 at 44-45.

18 The February 2016 incidents happened after Grievances Nos. SQ-15-1751, SQ-15-2514,
19 and SQ-15-2839 were submitted to prison officials. None of these grievances raise claims
20 regarding events in 2016. *See generally* Dkt. No. 24-1 at 33-62. Plaintiff’s appeals challenging
21 the first level and second level decisions also do not mention events in 2016. *See id.*

22 Accordingly, the Court does not vacate its grant of summary judgment for failure to
23 exhaust administrative remedies in favor of Defendants with respect to Plaintiff’s claims that
24 Defendants engaged in retaliation and civil rights violations when they conducted a “massive”
25 search of Plaintiff’s cell on February 3, 2016; moved Plaintiff from his cell on February 4, 2016;
26 and added a falsified 129B chrono to his grievances on January 25, 2016. Nor does the Court
27 vacate the related dismissal without prejudice of these claims. Plaintiff may re-file these claims in
28 a new action after he has exhausted his administrative remedies for these claims.

1 **III. Referral to Settlement Proceedings**

2 The following claims remain in this action. Defendants Arana, Blarcom, Walls, Evans,
3 and Mitchell violated the First Amendment and committed an intentional tort against Plaintiff
4 when they took the following actions: (1) when Officer Arana removed Plaintiff from his lead
5 yard attendant job in May 2015 and reassigned him to sweeping and mopping stairs; withheld
6 Plaintiff’s May 2015 pay; moved Plaintiff from his cell in June 2015; and continually harassed
7 Plaintiff from late 2014 through March 2016 in retaliation for filing a successful grievance;
8 (2) when Sgt. Blarcom, Lt. Walls, and Capt. Evans were informed of, but did not stop, Officer
9 Arana’s retaliation and harassment; and (3) when Officer Mitchell covered up the other
10 defendants’ misconduct.

11 The case is hereby REFERRED to Magistrate Judge Robert Illman for settlement
12 proceedings pursuant to the Pro Se Prisoner Mediation Program. Such proceedings shall take
13 place within 120 days of the date this order is filed, or as soon thereafter as Magistrate Judge
14 Illman’s calendar will permit. Magistrate Judge Illman shall coordinate a place, time and date for
15 one or more settlement conferences with all interested parties and/or their representatives and,
16 within fifteen days of the conclusion of all settlement proceedings, shall file with the Court a
17 report thereon. The Clerk is directed to serve Magistrate Judge Illman with a copy of this order
18 and to notify Magistrate Judge Illman that a copy of the Court file can be retrieved from the
19 Court’s electronic filing database.

20 **CONCLUSION**

21 For the foregoing reasons, the Court orders as follows.

22 1. The Court REOPENS the instant action and VACATES the March 19, 2018
23 judgment.

24 2. The Court VACATES in part the March 19, 2018 order granting Defendants’
25 summary judgment motion.

26 3. The Court REFERS this case to Magistrate Judge Robert Illman for settlement
27 proceedings pursuant to the Pro Se Prisoner Mediation Program. The Clerk is directed to serve
28 Magistrate Judge Illman with a copy of this order and to notify Magistrate Judge Illman that a


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copy of the Court file can be retrieved from the Court’s electronic filing database.

4. In view of the referral, further proceedings in this case are hereby STAYED. The Clerk shall ADMINISTRATIVELY CLOSE this case until further order of the Court. If the case is not settled, the Court will enter a new scheduling order for further proceedings.

IT IS SO ORDERED.

Dated: 1/19/2021


HAYWOOD S. GILLIAM, JR.
United States District Judge