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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEPHEN C REED,
Plaintiff,

v.

B. CHAVEZ, et al.,
Defendants.

Case No. [22-cv-02657-JSW](#)

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT; DENYING
MOTION FOR SCHEDULING ORDER**

Re: Dkt. Nos. 18, 19

INTRODUCTION

Plaintiff is a California prisoner proceeding pro se who filed this civil rights action under 42 U.S.C. § 1983 against officials at Salinas Valley State Prison (“SVSP”). The operative complaint is the First Amended Complaint (“FAC”) against SVSP officials E. Howard, J. Sanchez, A. Gullo, A. Selby, B. Chavez, and T. Gonzalez. Defendants have filed a motion for partial summary judgment. Plaintiff has filed an opposition, and Defendant has filed a reply brief. For the reasons discussed below, the motion for summary judgment is GRANTED.

BACKGROUND

1. Plaintiff’s Claims

Plaintiff makes two claims. First, he claims Defendants violated his First Amendment rights by retaliating against him for filing an administrative grievance (log number 158280) against Defendant Chavez. He claims they retaliated against him with “frivolous” disciplinary writeups (called Rules Violations Reports (“RVR”s) or “115s”) and by ceasing to call him in for his prison job as a “porter.”¹² (ECF No. 8 at 3-5.) Second, Plaintiff claims Defendants, who

¹ Porters are responsible for keeping certain areas of the prison clean, in Plaintiff’s case his unit’s program office and patio area.

² Plaintiff also alleges Defendants Howard, Shelby, Gullo, and Gonzalez, inadequately investigated his administrative grievance concerning his work assignment. (See ECF No. 8 at 4-

1 supervised him and other porters, discriminated against him based on his race when they did not
2 call him and other African American inmates into work and when they created problematic
3 working conditions for him and other African American inmates when they were working. These
4 conditions consisted of close supervision; false accusations of stealing, “prying,” not cleaning, and
5 “disturbing staff”; and not allowing them to sit on patio benches. (ECF No. 8 at 6.)

6 2. Administrative Grievances

7 On August 29, 2021, Plaintiff submitted grievance number 158280 complaining that after
8 Plaintiff had verbal dispute with Chavez’s wife (another prison employee), Chavez improperly
9 warned him and searched his cell without adequate COVID-19 safety precautions. Non-defendant
10 officials reviewed and investigated this grievance, denied it in part and granted it in part, assigned
11 a separate log number to the claim regarding COVID-19 precautions, and referred that claim to
12 another department.

13 On December 22, 2021, Plaintiff submitted grievance number 201929 against all
14 Defendants complaining that Defendants have not allowed him to continue his work assignments
15 in retaliation for Plaintiff’s filing grievance number 158280 against Chavez. This grievance was
16 subsequently referred to other CDCR officials, renumbered twice, and eventually denied on
17 December 20, 2022, with the explanation that staff shortages prevented continuing Plaintiff in his
18 work assignment.

19 3. Rules Violations Reports³

20 On August 21, 2021, a non-defendant correctional officer who is the wife of Defendant
21 Chavez got into a verbal dispute with Plaintiff. On that day, this correctional officer issued an
22 RVR (number 7114194) against Plaintiff for “disrespect without potential for violence or
23 disruption” based upon Plaintiff’s use of profanity. Defendant Howard found Plaintiff guilty of
24 the charge on September 21, 2021. The RVR was approved by a non-defendant official.

25 On August 25, 2021, Defendant Chavez issued Plaintiff an RVR (number 7115952) for
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27 5.) Defendants state that this a third form of retaliation claimed by Plaintiff, but for the reasons
discussed below, the Court finds it is not.

28 ³ The Court describes only the three RVRs that Plaintiff asserts were retaliatory in his deposition.
(Pl. Depo. at 81.)

1 delaying an officer in performing his duties based on Plaintiff's refusal to leave his cell for a
2 search. Non-defendant officials approved this RVR on August 28, 2021, and found Plaintiff guilty
3 of the charge on September 24, 2021.

4 On March 18, 2022, Defendant Chavez issued Plaintiff another RVR (number 7168778)
5 for "disrespect without potential for violence or disruption" based upon Plaintiff's use of profanity
6 against him. Defendant Howard approved the RVR, and on April 4, 2022, a non-defendant
7 official found Plaintiff guilty. Plaintiff's administrative grievances challenging these RVRs were
8 denied.

9 Plaintiff claims all of these RVRs are false and were in retaliation for administrative
10 grievance number 158280 against Chavez.

11 4. Plaintiff's Work Assignment

12 Plaintiff became a full-time porter on January 17, 2020. Defendants supervised the
13 porters, including Plaintiff, who are responsible for keeping the program office and patio in
14 Plaintiff's section of SVSP clean. Porters are not called to work if there are not enough prison
15 staff to supervise them, there is no work, or there is a prison-wide restriction on prisoners
16 requiring them to stay in their cells. According to Plaintiff, Chavez never supervised him,
17 Plaintiff was the only African-American porter, and Defendant Sanchez allowed other inmates
18 who are Hispanic to work less hard. On December 9, 2021, Plaintiff no longer was called to work
19 as a porter.

20 **DISCUSSION**

21 **I. Standard of Review**

22 Summary judgment is proper where the pleadings, discovery and affidavits show that there
23 is "no genuine issue as to any material fact and that the moving party is entitled to judgment as a
24 matter of law." Fed. R. Civ. P. 56(c). Material facts are those which may affect the outcome of the
25 case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,248 (1986). A dispute as to a material fact is
26 genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving
27 party.

28 The moving party for summary judgment bears the initial burden of identifying those

1 portions of the pleadings, discovery and affidavits which demonstrate the absence of a genuine
2 issue of material fact. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323 (1986). When the moving party
3 has met this burden of production, the nonmoving party must go beyond the pleadings and, by its
4 own affidavits or discovery, set forth specific facts showing that there is a genuine issue for trial.
5 If the nonmoving party fails to produce enough evidence to show a genuine issue of material fact,
6 the moving party wins. *Id.*

7 **II. Analysis**

8 1. Retaliation

9 Plaintiff claims Defendants violated his First Amendment rights by retaliating against him
10 for filing administrative grievance number 158280 against Defendant Chavez. The asserted
11 retaliation took the form of “frivolous” RVRs and not calling him into work. (ECF No. 8 at 3-5.)

12 “Within the prison context, a viable claim of First Amendment retaliation entails five basic
13 elements: (1) an assertion that a state actor took some adverse action against an inmate (2) because
14 of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of
15 his First Amendment rights, and (5) the action did not reasonably advance a legitimate
16 correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted).
17 “[M]ere speculation that defendants acted out of retaliation is not sufficient to show causation.”
18 *Wood v. Yordy*, 753 F.3d 899, 904-05 (2014). A retaliation claim will not stand when premised
19 simply on “the logical fallacy of post hoc, ergo propter hoc, literally, ‘after this, therefore because
20 of this.’” *Huskey v. City of San Jose*, 204 F.3d 893, 899 (9th Cir. 2000). The inmate must
21 demonstrate a nexus between the alleged adverse conduct and the protected speech. *Id.*; see *Pratt*
22 *v. Rowland*, 65 F.3d 802, 807 (1995) (finding timing and speculation alone insufficient for
23 retaliation claim). There must be a showing that the adverse action was taken out of “retaliatory
24 animus” to “silence and punish” the inmate based on their protected conduct, and not for some
25 other reason. *Shepard v. Quillen*, 840 F.3d 686, 690-91 (9th Cir. 2016).

26 The asserted adverse actions by Defendants are three RVRs (numbers 7114194, 7115952,
27 and 7168778) and ceasing to call Plaintiff to his job assignment. The asserted protected speech is
28 grievance 158280. The problem with Plaintiff’s retaliation claim is there is no evidence of a nexus

1 between the two, i.e. that the protected speech caused the adverse actions.

2 First, to the extent Plaintiff claims the *issuance* of the RVRs were retaliatory, two of them
3 (RVRs 7114194 and 7115952) were issued before Plaintiff filed grievance 158280: these RVRs
4 were issued on August 21 and 25, 2021, respectively, while Plaintiff filed grievance 158280 on
5 August 29, 2021. Therefore, the issuance of these two RVRs could not have been caused by, or in
6 retaliation for, the grievance 158280.

7 Second, even after these two RVRs were issued, the only Defendant involved with them in
8 any manner was Howard, who, on September 22, 2021, held the hearing on RVR 7114194 and
9 found Plaintiff guilty of violating the prison rule of “disrespect without potential for violence or
10 disruption.” Although Howard made this finding *after* Plaintiff filed grievance 158280, there is no
11 evidence he did so *because of* grievance 158280. There was ample evidence presented to Howard
12 to support his finding that Plaintiff had shown “disrespect” to a correctional officer: the report
13 Howard received stated Plaintiff shouted “a bunch of B words,” “[f]uck you bitch, fuck you!” and
14 “[f]uck you skinny bitch, fuck you!” at a non-defendant officer. (ECF No. 18-2 at 6.) Plaintiff
15 disputes the accuracy of this evidence, but simply asserting the evidence was not true or that the
16 guilty finding was false and retaliatory does not constitute evidence Howard’s actions were caused
17 by grievance 158280. Plaintiff does not present any evidence Howard even knew about grievance
18 158280, which did not mention Howard, let alone that Howard found Plaintiff guilty showing
19 disrespect to a correctional officer because of it. Plaintiff’s conclusory statement that this RVR
20 was retaliatory does not create a triable issue as to whether Howard found him guilty because of
21 Plaintiff’s protected speech, an essential element of a First Amendment retaliation claim.

22 Third, as with the above two RVRs, there is similarly no evidence --- other than timing and
23 Plaintiff’s speculation --- that either the third RVR (number 7168778), or the discontinuation of
24 Plaintiff’s job assignment, were caused by grievance 158280. RVR number 7168778 --- for
25 showing “disrespect” to a correctional officer --- was supported by evidence Plaintiff said to
26 Chavez, “Fuck you Chavez and stick that flashlight up your ass” and “That’s right walk away and
27 stick that flashlight up your ass.” (ECF No. 186-2 at 26.) The only evidence about the reason
28 Plaintiff’s job assignment was discontinued is there was a shortage of staff (due to the COVID-19

1 pandemic) necessary to supervise inmates on their job assignments. (*See, e.g.*, ECF Nos. 18-6 ¶ 3,
2 18-13 ¶ 3; 18-8 at 16; 8 at 4⁴.) There is no evidence any Defendant or other official mentioned
3 grievance 158280 in issuing or deciding RVR number 7168778 or discontinuing his job
4 assignment, or any other evidence of a connection with grievance 158280. Plaintiff contends the
5 evidence used to support this RVR and discontinuation of his work assignment were false, but
6 again simply asserting this evidence was not true is not evidence these adverse actions were taken
7 because of Plaintiff’s speech, i.e. grievance 158280. And, as explained, the fact these adverse
8 actions were taken *after* grievance 158280 does not raise a triable issue as to whether these actions
9 were taken *because of* grievance 158280.

10 Plaintiff makes several in his opposition that there is evidence showing he was not called
11 into work because of grievance 158280: (1) he has not returned to work; (2) his grievances remain
12 unresolved; (3) Defendant Selby removed him from a list of critical workers and told him on
13 October 24, 2022, he would not come back to work no matter how many grievances he filed; (4)
14 Defendants Howard, Selby, Gonzalez, and Gullo laughed when another inmate (Godbolt) asked
15 them to return Plaintiff to work; and (5) another inmate (Barnes) received a job change after
16 speaking with Sergeant Howard. (ECF No. 20 at 10.)

17 As an initial matter, the facts asserted in the opposition cannot be considered evidence
18 because the opposition is not verified, and Plaintiff does not submit a declaration by him attesting
19 to such facts.⁵ As for Plaintiff’s above five arguments:

20 First, there is no evidence Plaintiff has not returned to work, but even if such evidence
21 could be presented, this does not show that this was because of grievance 158280 as opposed to
22 for some other reason, including the reasons discussed above regarding staff shortages and
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24 ⁴ Plaintiff’s verified FAC states the “reasoning” prison officials provided for denying Plaintiff’s
25 administrative grievance of the discontinuation of his work assignment was “Covid-19 and staff
26 shortage.” (ECF No. 8 at 4.) Based upon the other evidence presented that sufficient staff was
27 necessary to supervise inmate-porters, as well as the fact that his job assignment was discontinued
28 in December 2021, when the COVID-19 pandemic may have been affecting prison staffing, the
Court interprets this statement in the FAC to mean prison officials told Plaintiff his work
assignment was discontinued because of staff shortages related to the COVID-19 pandemic.

⁵ The attachments may be considered evidence and are discussed below to the extent they are
relevant.

1 COVID-19.

2 Second, it is not clear which grievances Plaintiff is referring to that remain pending, and
3 Plaintiff's exhibits show all of his administrative grievances have been "closed" (*id.* at 19).
4 Moreover, it is also not clear how any unresolved grievances would show Defendants had
5 retaliatory motive for not calling him into his job assignment.

6 Third, the attachments indicate that two non-defendant officials compiled the list of critical
7 inmates who would return to work(*id.* at 41, 43-45), with the exception of one occasion when
8 Defendant Selby identified one inmate --- not Plaintiff --- as a porter (*id.* at 40). There is no
9 evidence, however, Selby knew about grievance 158280, let alone this grievance had anything to
10 do with not calling him to work. There is also no evidence Selby made the statement to Plaintiff
11 he would not return to work no matter how many grievances he filed. Also, as there is no
12 evidence Selby knew about grievance 158280, this statement does not permit a reasonable
13 inference Selby was tying Plaintiff's not returning to work to that grievance as opposed to other
14 non-retaliatory reasons such as a staffing shortage.

15 Fourth, Defendants Howard, Selby, Gonzalez, and Gullo laughing at Godbolt's request
16 does not, without more, reasonably support an inference these Defendants refused Plaintiff's
17 return to work because of grievance 158280. There is, in any event, no evidence these Defendants
18 knew about that grievance.

19 Fifth, it is not clear how Howard's giving another inmate a job change could support an
20 inference Howard failed to call Plaintiff into work because of grievance 158280. In any event,
21 there is no evidence Howard knew about grievance 158280.

22 For these reasons, the Court concludes there is no triable issue as to whether the asserted
23 adverse actions by Defendants, i.e. the RVRs and the failure to continue his work assignment,
24 were caused by Plaintiff's speech, i.e. grievance 158280. As this is an essential element of a
25 retaliation claim, Defendants are entitled to summary judgment on Plaintiff's retaliation claim.

26 2. Racial Discrimination

27 Plaintiff claims Defendants discriminated against him based on his race when they stopped
28 calling him to his work assignment, and, when Plaintiff was working, they created problematic

1 conditions for him and other African American inmates, including supervising them more closely,
2 accusing them of stealing, “prying,” not cleaning, and “disturbing staff” without evidence, and not
3 allowing them to sit on benches for breaks. (ECF No. 8 at 6.)

4 The Equal Protection Clause requires that persons who are similarly situated be treated
5 alike. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). “Prisoners are
6 protected under the Equal Protection Clause . . . from invidious discrimination based on race.”
7 *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974) (citation omitted). An equal protection claim may
8 be established by showing that defendants intentionally discriminated against plaintiff based on
9 his membership in a protected class. *Hartmann v. Cal. Dep’t. of Corr. & Rehab.*, 707 F.3d 1114,
10 1123 (9th Cir. 2013). “To state a claim for violation of the Equal Protection Clause, a plaintiff
11 must show that the defendant acted with an intent or purpose to discriminate against him based
12 upon his membership in a protected class.” *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir.
13 2003). “Intentional discrimination means that a defendant acted at least in part because of a
14 plaintiff’s protected status.” *Id.* (internal quotation marks and citation omitted). “To avoid
15 summary judgment, [the plaintiff] ‘must produce evidence sufficient to permit a reasonable trier of
16 fact to find by a preponderance of the evidence that the decision was racially motivated.’” *Id.*
17 (quoting *Bingham v. City of Manhattan Beach*, 329 F.3d 723, 732 (9th Cir. 2003)).

18 There is no evidence that Defendants did not allow Plaintiff to return to his work
19 assignment and created problematic working conditions when he was working because of his race.
20 Plaintiff attempts to show a racially discriminatory purpose by arguing that they also treated other
21 African American inmates in this manner. He submits the declarations of two African-American
22 inmates stating they, like Plaintiff, were not called back to work (ECF No. 20 at 31-33). However,
23 Plaintiff’s other evidence shows 29 other African-American inmates were put on the critical
24 worker list and allowed to return to work (*id.* at 12, 40-41, 43-45). No reasonable inference can be
25 drawn from this evidence that Defendants did not call African American inmates as a whole, or
26 Plaintiff in particular, back to work because of their race insofar as the evidence shows a great
27 number more African-American inmates were allowed to return to work than the three inmates
28 (Plaintiff and two others) who were not called in. Plaintiff argues that his evidence shows 78

1 “Hispanic/White” inmates were called back to work (*id.* at 12), but without evidence that the ratio
2 of White, Hispanic, and African-American inmates called back to work was disproportionate to
3 the overall population of inmates eligible to return to work, this evidence does not support a
4 reasonable inference of discrimination against African Americans.

5 With respect to Plaintiff’s allegations of problematic conditions on the job when he was
6 working, Plaintiff submits the declaration of one other African-American inmate who states he
7 experienced similar working conditions. (*Id.* at 31.) There is no evidence that workers of other
8 races were not also subject to the same working conditions. Without that evidence, no reasonable
9 fact-finder could conclude that Defendants treated Plaintiff (and the other inmate) differently on
10 the job than other similarly situated inmates of other races. And there is no other evidence that
11 Defendants subjected Plaintiff to poor working conditions because of his race.

12 For these reasons, the evidence does not support a triable issue as to whether Defendants
13 did not call Plaintiff to return to work or caused problematic conditions on the job because of his
14 race. As this is an essential element of his equal protection claim, Defendants are entitled to
15 summary judgment on this claim as well.

16 3. Investigation

17 As noted above, Defendants state Plaintiff claims Defendants’ inadequate investigation of
18 his administrative grievances was another form of retaliation for grievance 158280. This is not a
19 fair interpretation of the allegations in the FAC, even when liberally construed. Plaintiff does not
20 allege anywhere in the FAC the inadequate investigation was in retaliation for filing grievance
21 152820 or for any other protected speech. Rather, the FAC simply alleges the investigation of the
22 grievance was inadequate. An inadequate investigation or processing of an administrative
23 grievance does not in and of itself implicate any constitutional right because there is no
24 constitutional right to a prison administrative grievance system. *See Ramirez v. Galaza*, 334 F.3d
25 850, 860 (9th Cir. 2003). And because the FAC, even when liberally construed, does not claim
26 this investigation was retaliatory, the Court finds the FAC states no cognizable claim for relief
27 against Defendants for inadequately investigating his administrative grievance regarding his work
28 assignment.

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4. Summary Judgment Motion

Defendants label their motion as a motion for “partial” summary judgment. This appears to be a mistake because the motion makes at least two arguments that seek summary judgment on the entirety of Plaintiff’s claims. (ECF No. 18 at 14-17 (Section III arguing entirety of retaliation claim fails for failure to show causation), 17-28 (Section IV arguing entirety of discrimination claim fails for failure to show discriminatory intent).) The Court concludes, for the reasons discussed above, Defendants are entitled to summary judgment on the entirety of Plaintiff’s two claims; no portion of these claims remain. Based upon this conclusion, judgment will be entered against Plaintiff.

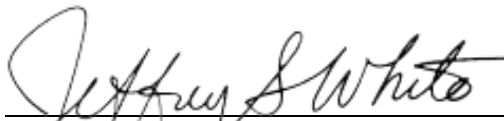
CONCLUSION

For the foregoing reasons, Defendants’ motion for summary judgment is GRANTED. The motion for appointment of counsel and a settlement conference is DENIED.⁶

Judgment is entered in favor of Defendants.

IT IS SO ORDERED.

Dated: December 5, 2023



JEFFREY S. WHITE
United States District Judge

⁶ This motion also seeks a “scheduling order.” Such an order is unnecessary in light of the schedule and other matters ordered in the order of service.