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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MILES O. BONTY,)	No. C 09-3838 LHK (PR)
)	
Plaintiff,)	ORDER GRANTING
)	DEFENDANT'S MOTION FOR
vs.)	JUDGMENT ON THE PLEADINGS
)	
J. STEVENSON,)	(Docket Nos. 15, 20)
)	
Defendant.)	

Plaintiff, a state prisoner proceeding pro se, filed a civil rights action under 42 U.S.C. § 1983 alleging that officials at the Salinas Valley State Prison violated his right to due process when they refused to allow him to call witnesses during his February 2009 disciplinary hearing. On October 12, 2010, Defendant filed a motion for judgment on the pleadings. Plaintiff filed an opposition, and Defendant filed a reply. Plaintiff filed a response to Defendant's reply. Defendant filed a motion to strike Plaintiff's response, and Plaintiff filed an opposition. Defendant's motion to strike the Plaintiff's response is DENIED. For the reasons below, the Court GRANTS Defendant's motion for judgment on the pleadings.

BACKGROUND

In February 2009, Plaintiff was found guilty at a disciplinary hearing of refusing to obey orders. (Complaint at 3-4.) As a result, Plaintiff was sentenced to thirty-days forfeiture of

1 credits, and placed on “C” privilege status for sixty days. (*Id.* at 4.) Plaintiff claims that he was
2 denied the right to present witnesses at his disciplinary hearing, in violation of his right to due
3 process. (*Id.* at 6-7.) Plaintiff filed the instant federal civil rights complaint on September 2,
4 2009.

5 DISCUSSION

6 Defendant argues that Plaintiff’s claim is barred by *Heck v. Humphrey*, 512 U.S. 477
7 (1994). Specifically, Defendant asserts that Plaintiff’s suit, if successful, would necessarily
8 imply the invalidity of the result of the disciplinary hearing, which is impermissible. (MTD at 4-
9 8.)

10 *Heck* does not apply to prisoner civil rights actions challenging a disciplinary hearing or
11 administrative sanction that does not affect the overall length of the prisoner’s confinement.
12 *Ramirez v. Galaza*, 334 F.3d 850, 857-58 (9th Cir. 2003) (holding that a challenge to a
13 disciplinary proceeding that resulted in ten-day disciplinary detention, loss of privileges and a
14 24-month administrative segregation term was not barred by *Heck*, even though the discipline
15 could be considered by the parole board in determining whether to release the prisoner on
16 parole). *Heck* also bars a claim for using the wrong *Wolff v. McDonnell*, 418 U.S. 539 (1974),
17 procedures in a disciplinary hearing that resulted in the deprivation of time credits if “the nature
18 of the challenge to the procedures [is] such as necessarily to imply the invalidity of the
19 judgment.” *Edwards v. Balisok*, 520 U.S. 641, 645 (1997). A claim for damages based on
20 allegations that a plaintiff was completely denied the opportunity to put on a defense, and that
21 there was deceit and bias on the part of the decisionmaker, for example, necessarily implies the
22 invalidity of the punishment imposed and is barred by *Heck*. *See id.* at 646-47.

23 Here, Plaintiff requests money damages and a declaratory judgment based on the
24 allegation that Defendant denied him the opportunity to present witnesses at his disciplinary
25 hearing. This case is not like *Edwards*, in which the prisoner there alleged deceit and bias. *See*
26 *id.* at 647, 649-50 (concurrency, J. Ginsburg). Plaintiff here appears to be challenging the
27 validity of the procedure rather than the validity of the result. *See id.* at 645-47; *Heck*, 512 U.S.
28 at 482-83 (making a distinction between claims that allege a deprivation of civil rights and a

1 deprivation of good-time credits). Thus, Plaintiff's claim is not barred by *Heck*.

2 Nevertheless, Plaintiff's action cannot proceed because he has not alleged the deprivation
3 of a protected liberty interest. The Fourteenth Amendment entitles a prisoner to certain due
4 process protections when he is charged with a disciplinary violation, including the right to call
5 witnesses. *See Serrano v. Francis*, 345 F.3d 1071, 1077 (9th Cir. 2003) (citing *Wolff v.*
6 *McDonnell*, 418 U.S. 539, 564-71 (1974)). However, these protections only attach when the
7 disciplinary action implicates a prisoner's protected liberty interest. *Serrano*, 345 F.3d at 1078.

8 Interests protected by the Due Process Clause may arise from two sources -- the Due
9 Process Clause itself and laws of the states. *See Meachum v. Fano*, 427 U.S. 215, 223-27
10 (1976). Changes in conditions so severe as to affect the sentence imposed in an unexpected
11 manner implicate the Due Process Clause itself, whether or not they are authorized by state law.
12 *See Sandin v. Conner*, 515 U.S. 472, 484 (1995). Deprivations authorized by state law that are
13 less severe or more closely related to the expected terms of confinement may also amount to
14 deprivations of a procedurally protected liberty interest, provided that (1) state statutes or
15 regulations narrowly restrict the power of prison officials to impose the deprivation, i.e., give the
16 inmate a kind of right to avoid it, and (2) the liberty in question is one of "real substance." *See*
17 *id.* at 477-87. Generally, "real substance" will be limited to freedom from (1) a restraint that
18 imposes "atypical and significant hardship on the inmate in relation to the ordinary incidents of
19 prison life," *id.* at 484, or (2) state action that "will inevitably affect the duration of [a]
20 sentence," *id.* at 487.

21 In determining whether a restraint is an "atypical and significant hardship," *Sandin*
22 suggests that courts should consider whether the challenged condition mirrored the conditions
23 imposed on inmates in administrative segregation and protective custody, and thus comported
24 with the prison's discretionary authority; the duration of the condition; the degree of restraint
25 imposed; and whether the discipline will invariably affect the duration of the prisoner's sentence.
26 *See Serrano*, 345 F.3d at 1078; *Ramirez v. Galaza*, 334 F.3d 850, 861 (9th Cir. 2003). If the
27 deprivation is one of "real substance," *Wolff's* procedural protections must be afforded.

28 There is no indication that there is any state statute or regulation that narrowly restricts

1 the power of prison officials to impose the deprivations at issue here. Moreover, even assuming
2 a statute or regulation existed to give rise to a liberty interest, the liberty in question is not one of
3 “real substance.” After Plaintiff was found guilty at his disciplinary hearing, he was sentenced
4 to thirty-days forfeiture of credit, sixty-days “C” Privilege status, and thirty-days without
5 property.¹ (Complaint at 4, Ex. B.) Plaintiff conceded that the thirty-day forfeiture of credit has
6 no effect on the duration of his sentence. Being placed for sixty-days into the “C” Privilege
7 status and temporarily losing his property appear to be losses of privileges normally associated
8 with the basic conditions of life as a prisoner, and are “within the range of confinement to be
9 normally expected” by prison inmates. *See, e.g., Resnick v. Hayes*, 213 F.3d 443, 448-49 & n.3
10 (9th Cir. 2000) (concluding that prisoner had no protected liberty interest in being placed in
11 disciplinary segregation for 70 days prior to his hearing even though it limited his recreational
12 activities, received cold food, and had no pillow, among other things). These consequences do
13 not constitute an “atypical and significant hardship” sufficient to implicate a liberty interest.
14 Therefore, Plaintiff has failed to state a federal due process claim regarding his disciplinary
15 proceeding, and this action must be dismissed.

16 **CONCLUSION**

17 Defendant’s motion for judgment on the pleadings (docket no. 15) is GRANTED. The
18 Clerk shall terminate all pending motions and close the file.

19 **IT IS SO ORDERED.**

20 DATED: 5/24/11

21 
22 LUCY H. KOH
23 United States District Judge
24

25 ¹ Plaintiff’s disposition states, “Inmate Bonty’s privilege group “C” received: No Family
26 visits, Only 1/4 the Maximum Canteen Draw, No Telephone Calls, Limited Yard and Dayroom
27 Access per “C” Status, No Special Purchases and No Quarterly Packages. . . Inmate Bonty is
28 placed on Temporary loss of his appliances such as (i.e., TV, Radio, CD Player, etc.) or musical
appliance, nor may he purchase any electrical entertainment or battery operated type of
appliance for a period of 30 days. . .) (Complaint, Ex. B.)