

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ENRIQUE DIAZ, *also known as*
YOSEF E. DIAZ-SHEVATZ,

Plaintiff,

v.

V. MIRABAL, et al.,

Defendants.

Case No. 16-04217 EJD (PR)

**ORDER OF SERVICE; DIRECTING
DEFENDANTS TO FILE
DISPOSITIVE MOTION OR
NOTICE REGARDING SUCH
MOTION; INSTRUCTIONS TO
CLERK**

Plaintiff, a California state prisoner, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 against officials at Salinas Valley State Prison (“SVSP”). Plaintiff’s motion for leave to proceed in forma pauperis will be addressed in a separate order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim

1 upon which relief may be granted or seek monetary relief from a defendant who is immune
2 from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
3 construed. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

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

8 **B. Plaintiff’s Claims**

9 Plaintiff claims that he was subjected to “discriminatory measurements” when he
10 engaged in “protected activity,” i.e., “complaining.” (Compl. at 3.) Specifically, Plaintiff
11 alleges that Defendants issued a false Rules Violation Report against him in August 2014
12 (for being under the influence of alcohol during work hours), and denied him due process
13 in connection with the disciplinary hearing. He was found guilty of the charge and
14 subjected to several penalties. (Compl. at 3-B.) Plaintiff challenged the RVR, and after
15 several re-hearings on the matter, the RVR was eventually dismissed on June 1, 2015, for
16 lack of evidence to support the charges and any forfeiture of credits were restored. (Id. at
17 3-D.) Plaintiff claims that during this process, Defendants also obstructed his
18 administrative appeals on the matter and threatened him. (Id.) Plaintiff seeks damages.
19 (Id. at 3.) Liberally construed, Plaintiff states a violation of his right to procedural due
20 process for the dismissed RVR which may entitle him to damages. See Raditch v. United
21 States, 929 F.2d 478, 481 n. 5 (9th Cir. 1991).

22 With respect to Plaintiff’s claim that Defendants obstructed his administrative
23 appeals, he fails to state a cognizable claim because a prison official’s failure to process
24 grievances, without more, is not actionable under § 1983. See Buckley v. Barlow, 997
25 F.2d 494, 495 (8th Cir. 1993); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir.
26 2003) (holding that prisoner’s claimed loss of a liberty interest in the processing of his
27 appeals does not violate due process because prisoners lack a separate constitutional

1 entitlement to a specific prison grievance system).

2
3 **CONCLUSION**

4 For the reasons state above, the Court orders as follows:

5 1. The Clerk of the Court shall mail a Notice of Lawsuit and Request for
6 Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy
7 of the complaint, all attachments thereto, and a copy of this order upon **Defendants V.**
8 **Mirabal, R. Kessler, J. Hughes, R. J. Downey, R. Poodry, Roger Martinez, Emilio**
9 **Perez, F. Vasquez, D. A. Ascuncion, and S. Solis** at **Salinas Valley State Prison** (P.O.
10 Box 1020, Soledad, CA 93960-1020). The Clerk shall also mail a copy of this Order to
11 Plaintiff.

12 2. Defendants are cautioned that Rule 4 of the Federal Rules of Civil
13 Procedure requires them to cooperate in saving unnecessary costs of service of the
14 summons and the complaint. Pursuant to Rule 4, if Defendants, after being notified of this
15 action and asked by the Court, on behalf of Plaintiff, to waive service of the summons, fail
16 to do so, they will be required to bear the cost of such service unless good cause shown for
17 their failure to sign and return the waiver form. If service is waived, this action will
18 proceed as if Defendants had been served on the date that the waiver is filed, except that
19 pursuant to Rule 12(a)(1)(B), Defendants will not be required to serve and file an answer
20 before **sixty (60) days** from the day on which the request for waiver was sent. (This
21 allows a longer time to respond than would be required if formal service of summons is
22 necessary.) Defendants are asked to read the statement set forth at the foot of the waiver
23 form that more completely describes the duties of the parties with regard to waiver of
24 service of the summons. If service is waived after the date provided in the Notice but
25 before Defendants have been personally served, the Answer shall be due sixty (60) days
26 from the date on which the request for waiver was sent or twenty (20) days from the date
27 the waiver form is filed, whichever is later.

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No hearing will be held on the motion unless the Court so orders at a later date.

7. All communications by the Plaintiff with the Court must be served on Defendants, or Defendants' counsel once counsel has been designated, by mailing a true copy of the document to Defendants or Defendants' counsel.

8. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required before the parties may conduct discovery.

9. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

10. Extensions of time must be filed no later than the deadline sought to be extended and must be accompanied by a showing of good cause.

IT IS SO ORDERED.

Dated: 12/19/2016


EDWARD J. DAVILA
United States District Judge