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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Guillermo Trujillo Cruz,

Plaintiff,

v.

Jeffreys et al.,

Defendants.

Case No. 15cv2826 JLS (PCL)

**REPORT AND
RECOMMENDATION OF U.S.
MAGISTRATE JUDGE RE:

DEFENDANTS' MOTION TO
DISMISS**

Plaintiff Guillermo Trujillo Cruz, a state prisoner proceeding *pro se*, filed a Complaint under the Civil Rights Act 42 U.S.C. §1983, alleging that three correctional officers, Defendants Jeffries, Rios, and Ramos, retaliated against him in 2010 by reporting him to a mental health professional and setting him up to be assaulted. (Doc. 1.) Plaintiff alleges claims under the Eighth Amendment, First Amendment, and Fourteenth Amendment Due Process clause. (Doc. 1, at 4-5.) Defendants have filed a motion to dismiss Plaintiff's complaint, arguing that Plaintiff's claims are barred by the statute of limitations and that Plaintiff has failed to state a claim under federal law. (Doc. 33-1.) For the following reasons, the Court recommends granting in part Defendant's motion and dismissing the Complaint with leave to amend.

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1 BACKGROUND

2 Plaintiff is an inmate currently incarcerated at Kern Valley State Prison, but at
3 the times relevant to this action, was incarcerated at R.J. Donovan Correctional
4 Facility (RJD) in San Diego, California. (Doc. 1, at 2.) Defendants Jeffries, Rios, and
5 Ramos are correctional officers stationed at RJD. (Id.)

6 Plaintiff alleges that in July 2010, he filed an inmate grievance alleging that
7 certain unnamed male and female officers had failed to log into the E.R.M.S. System.
8 (Doc. 1, at 3.) Plaintiff alleges that Defendants Jeffries and Rios reported him to the
9 Mental Health Services Delivery System because he was hearing things and filing
10 false 602 grievances. (Doc. 1, at 3.)

11 Plaintiff next alleges that on July 13, 2010, he was targeted for assault while on
12 the prison recreation yard. (Doc. 1, at 3.) Plaintiff alleges that he “was unlawfully
13 subjected to be targeted [in] an assault in retaliation for filing 602 grievances . . .”
14 (Doc. 1, at 3.) Plaintiff alleges he was hit and punched in the face, causing bruising to
15 his eye socket, a gash on his cheek bone, and bruising to his rib cage. (Id.) Plaintiff
16 attaches to the Complaint his Rules Violation Report, which documents the incident.
17 (Doc. 1, at 7.) The Rules Violation Report shows that Plaintiff was convicted of
18 fighting with two other inmates. (Doc. 1, at 8.) The Report includes Plaintiff’s
19 statement that he was not involved in the fight, but was over by the handball court,
20 minding his own business. (Id.)

21 Plaintiff claims that he filed a 602 grievance form with the prison regarding the
22 July 13, 2010 incident on the prison yard in which Plaintiff was convicted of fighting
23 with two other inmates. (Doc. 1, at 4, 17.) Plaintiff also claims to have submitted a
24 602 form purportedly filed on July 5, 2010 in which Plaintiff states that Defendant
25 Jeffries called him a “punk” for filing 602 forms and claims that Jeffries “tried to get
26 him to fight with other inmates.” (Doc. 36, at 11.) Plaintiff also purportedly described
27 in writing that Defendant Rios “instigate[d]” him to start a fight with other inmates on
28 July 1, 2010 for “reporting employee sexual misconduct on correctional females.”

1 (Doc. 36, at 12.) Plaintiff states that prison officials did not respond to his grievance
2 forms. (Doc. 1, at 4.) Plaintiff also states that on March 26, 2011 he filed a
3 government claim form to obtain compensation damages for injuries and the pain he
4 suffered. (Doc. 1, at 3.)

5 Plaintiff's complaint, containing claims against Defendants Rios, Jeffries, and
6 Ramos for retaliation under the First Amendment, failure to protect under the Eighth
7 Amendment, and violation of due process under the Fourteenth Amendment, was filed
8 on December 15, 2015. (Doc. 1.) Plaintiff signed his complaint on December 9, 2015,
9 but the envelope in which it was mailed was signed by a correctional officer on
10 December 8, 2015 and shows a postage date of December 10, 2015. (Doc. 1, at 6, 19,
11 20.)

12 STANDARD OF REVIEW

13 A motion to dismiss a complaint under Federal Rules of Civil Procedure
14 12(b)(6) tests the legal sufficiency of plaintiff's claims. Navarro v. Block, 250 F.3d
15 729, 732 (9th Cir. 2001). The Court must assume the truth of the facts presented in
16 Plaintiff's complaint and construe inferences from them in the light most favorable to
17 the nonmoving party when reviewing a motion to dismiss under Rule 12(b)(6).
18 Erickson v. Pardus, 551 U.S. 89, 94 (2007). Rule 12(b)(6) permits dismissal of a claim
19 either where that claim lacks a cognizable legal theory, or where insufficient facts are
20 alleged to support plaintiff's legal theory. See Balisteri v. Pacifica Police Department,
21 901 F.2d 696, 699 (9th Cir. 1990). While a complaint does not need detailed factual
22 allegations to survive a motion to dismiss, a plaintiff's obligation to provide the
23 grounds of his entitlement to relief requires more than labels and conclusions, or a
24 formulaic recitation of the elements of a cause of action. See Bell Atlantic Corp. v.
25 Twombly, 127 S. Ct. 1955, 1964-65 (2007). Rather, to survive a motion to dismiss
26 pursuant to 12(b)(6), factual allegations must be sufficient to raise a right to relief
27 above the speculative level, on the assumption that all the allegations in the complaint
28 are true even if doubtful in fact. See id. at 1965. However, a court need not accept as

1 true allegations that contradict matters properly subject to judicial notice or by exhibit.
2 See Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 1987). “Nor is the
3 court required to accept as true allegations that are merely conclusory, unwarranted
4 deductions of fact, or unreasonable inferences.” Id.

5 A motion to dismiss may be based on the running of the statute of limitations
6 period if the running of the statute is apparent on the face of the complaint. See Jablon
7 v. Dean Witter & Co., 614 F.2d 677, 682 (9th Cir. 1980). Section 1983 claims are
8 governed by the forum state’s statute of limitations for personal injury actions, and the
9 days start to accrue when the plaintiff knows or should know of the injury that is the
10 basis of the claim. Douglas v. Noelle, 567 F.3d 1103, 1109 (9th Cir. 2009). The
11 applicable statute of limitations under California law is two years. Cal. Civ. Proc.
12 Code section 335.1; see Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004).
13 Additionally, California law tolls the statute of limitations for up to two years based
14 on the disability of imprisonment for inmates serving less than life terms. Cal. Civ.
15 Proc. Code section 352.1; Jones, 393 F.3d at 927. The effective statute of limitations
16 for an action by a prisoner under 42 U.S.C. section 1983 is therefore up to four years
17 notwithstanding the fact that “[t]he applicable statute of limitations is tolled when a
18 prisoner completes the mandatory exhaustion process.” Brown v. Valoff, 422 F.3d
19 926, 943 (9th Cir. 2005).

20 To ensure further fairness, California law also provides for equitable tolling to
21 extend the statute of limitations under certain circumstances. Jones, 393 F.3d at 928.
22 “[T]hree conditions must be met to toll the statute of limitations: (1) defendant must
23 have had a timely notice of the claim; (2) defendant must not be prejudiced by being
24 required to defend the otherwise barred claim; and (3) plaintiff’s conduct must have
25 been reasonable and in good faith.” Bacon v. City of Los Angeles, 843 F.2d 372, 374
26 (9th Cir. 1988). The effect of equitable tolling is that the limitations period stops
27 running during a tolling event and begins to run again only when the tolling event has
28 concluded. See Lantzy v. Centex Homes, 31 Cal. 4th 363, 370 (2003). The tolled

1 interval is tacked onto the end of the limitations period, thus extending the deadline
2 for suit by the entire length of time during which the tolling event previously
3 occurred. See id. at 370-71. Application of the equitable tolling doctrine requires a
4 balancing of the injustice to the plaintiff occasioned by the bar of his claims against
5 the effect upon the important public interest or policy expressed by the limitations
6 statute. See id. at 371.

7 A federal court must determine on a motion to dismiss “whether the complaint
8 liberally construed in light of our ‘notice pleading’ system, adequately alleges facts
9 showing the potential applicability of the equitable tolling doctrine.” Cervantes v. City
10 of San Diego, 5 F.3d 1273, 1277 (9th Cir. 1993).

11 If a complaint is found to fail to state a claim or is statutorily barred, the court
12 should grant leave to amend unless it determines that the pleading could not possibly
13 be cured by the allegations of other facts. See Doe v. United States, 58 F.3d 494, 497
14 (9th Cir. 1995).

15 DISCUSSION

16 Defendants argue in their motion to dismiss that Plaintiff’s claims are barred by
17 the statute of limitations. (Doc. 33-1.) Defendants also argue that because Plaintiff has
18 failed to state an Eighth Amendment claim, a First Amendment claim, and a Due
19 Process claim, his complaint should be dismissed for failure to state a claim. (Id.)

20 *Statute of limitations*

21 Defendants argue that Plaintiff’s section 1983 claims against them should be
22 dismissed for being time-barred by section 335.1 of California’s Code of Civil
23 Procedure, which sets a two-year statute of limitations for personal injury claims, even
24 when accounting for additional tolling allowed by law. (Doc. 33-1, at 5.) California
25 law tolls the statute of limitations for up to two years based on the disability of
26 imprisonment for inmates serving terms less than life terms. Cal. Civ. Proc. Code §
27 352.1; Jones, 393 F.3d at 927. As Plaintiff filed his complaint on December 15, 2015
28 on actions that occurred in July of 2010, Plaintiff’s claims, which should have been

1 filed by July 2014 at the latest, are therefore time barred. Furthermore, under
2 California's equitable tolling pleading rules, Plaintiff has failed to allege facts
3 showing that his tardiness "was reasonable and in good faith," which is a required
4 prerequisite to rely on the equity-based exception to the statutory rule. Bacon v. City
5 of Los Angeles, 843 F.2d 372, 374 (9th Cir. 1988); see Cervantes v. City of San Diego,
6 5 F.3d 1273, 1277 (9th Cir. 1993). As Plaintiff's complaint on its face shows the
7 running of the statute of limitations and a lack of reasons to support equitable tolling,
8 Plaintiff's complaint should be dismissed with leave to amend.

9 *Plaintiff has stated a claim under the Eighth Amendment*

10 Defendants argue that Plaintiff has not allege any facts connecting Defendants
11 to his alleged assault on July 13, 2010, in which Plaintiff was allegedly assaulted by
12 other inmates. The Court disagrees.

13 Prison officials violate the Eighth Amendment when the alleged deprivation is,
14 objectively, sufficiently serious to result in the denial of the minimal civilized measure
15 of life's necessities and constitutes unnecessary and wanton infliction of pain. Farmer
16 v. Brennan, 511 U.S. 825, 832 (1994). The Constitution "does not mandate
17 comfortable prisons." Rhodes v. Chapman, 452 U.S. 337, 349 (1981) (holding that
18 prison staff may violate Eighth Amendment by ignoring a substantial threat to inmate
19 safety and abandoning duty to protect prisoners from obvious danger of violence
20 where prison officials were at least reckless in their disregard of the danger.) Prison
21 conditions may be "restrictive and even harsh." Rhodes, 452 U.S. at 347. Nonetheless,
22 prison officials have a duty to take reasonable steps to protect inmates from physical
23 abuse. Farmer, 511 U.S. at 833. To state a claim for deprivation of Eighth Amendment
24 rights, the prisoner must show that prison officials were deliberately indifferent to
25 serious threats to the inmate's safety. Id. A prison official cannot be found liable under
26 the Eighth Amendment "unless the official knows of and disregards an excessive risk
27 to inmate health or safety; the official must both be aware of facts from which the
28 inference could be drawn that a substantial risk of serious harm exists, and he must

1 also draw the inference.” Id. at 837.

2 Here, Plaintiff has alleged that he “was unlawfully subjected to be targeted [in]
3 an assault in retaliation for filing 602 grievances . . .” (Doc. 1, at 3.) Plaintiff has
4 alleged that Defendant Jeffries, Rios, and Ramos instigated the retaliation and failed to
5 protect him during the assaults by other inmates. Thus, Plaintiff has stated Eighth
6 Amendment claims against Defendants.

7 *Plaintiff has failed to state a claim under the First Amendment*

8 Defendants argue that Plaintiff has failed to state a First Amendment retaliation
9 claim against Defendants because he failed to connect the Defendants to the retaliation
10 event. The Court finds that Plaintiff’s factual scenario fails to touch upon all the
11 elements of a First Amendment retaliation claim.

12 The Ninth Circuit set forth the requirements for a First Amendment retaliation
13 claim in Rhodes v. Robinson, 408 F.3d 559 (9th Cir. 2005).

14 Within the prison context, a viable claim of First Amendment retaliation entails
15 five basic elements: (1) an assertion that a state actor took some adverse action
16 against an inmate (2) because of (3) that prisoner’s protected conduct, and that
17 such action (4) chilled the inmate’s exercise of his First Amendment rights, and
18 (5) the action did not reasonably advance a legitimate correctional goal.

19 Rhodes, 408 F.3d at 567-68 (footnote omitted). A plaintiff is required to link
20 the alleged retaliation to the exercise of a constitutional right. Id. A plaintiff must also
21 prove that the prison authorities’ alleged retaliatory action did not advance legitimate
22 goals of the correctional institution. Watison v. Carter, 668 F.3d 1108, 1114-1115 (9th
23 Cir. 2012). At the pleading stage, a plaintiff need not “demonstrate a total chilling of
24 his First Amendment right to file grievances and to pursue civil rights litigation in
25 order to perfect a retaliation claim.” Rhodes, 408 F.3d at 568. In other words, the fact
26 that an inmate has fulfilled the legal requirements necessary to pursue his cause of
27 action in federal court does not mean that his First Amendment rights were not chilled.
28 Id. at 569.

1 Here, Plaintiff has failed to state a First Amendment claim against Defendants
2 for allegedly setting him up to be assaulted by other inmates on July 13, 2010.
3 Plaintiff has alleged that Defendants retaliated against him for his previous filing of
4 602 grievances, which is his First Amendment right to do so. However, nowhere in his
5 Complaint does Plaintiff allege that his First Amendment rights were chilled as a
6 result of Defendants' actions. Thus, Defendants' motion to dismiss Plaintiff's First
7 Amendment claims should be granted.

8 *Plaintiff's Due Process claims should be dismissed*

9 Defendants argue that Plaintiff's claims for violation of Due Process under the
10 Fourteenth Amendment should be dismissed as duplicative of his claims under the
11 First and Eighth Amendments. The Court agrees.

12 The Supreme Court has held that a plaintiff cannot "double up" constitutional
13 claims. Where a claim can be analyzed under the "explicit textual source" of a specific
14 constitutional amendment, "that Amendment, not the more generalized notion of
15 'substantive due process' must be the guide for analyzing these claims." Graham v.
16 Connor, 490 U.S. 386, 395 (1989). For example, the Court held that the duplicative
17 Fourteenth Amendment claim in an action for excessive force must be dismissed
18 because "[a]ny protection that 'substantive due process' affords convicted prisoners
19 against excessive force is, we have held, at best redundant of that provided by the
20 Eighth Amendment." Id. at 395 n.10 (citing Whitley v. Albers, 475 U.S. 312, 327
21 (1986)).

22 Here, Plaintiff has stated claims under the Eighth Amendment. As Plaintiff is
23 not permitted to allege a Due Process violation under the Fourteenth Amendment that
24 duplicates these more specific failure to protect claims, the generalized Due Process
25 claims should be dismissed.

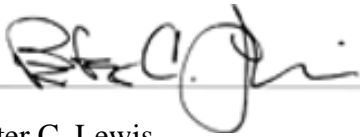
26 CONCLUSION

27 While Plaintiff has failed to state Due Process and First Amendment claims in
28 his Complaint, he has stated Eighth Amendment claims against Defendants. However,

1 as Plaintiff has waited more than five years after the incident documented in his
2 Complaint to file his case in federal court, his causes of action are statutorily barred,
3 and he has not alleged sufficient facts to claim equitable tolling. As such, Plaintiff's
4 Complaint should be dismissed without prejudice and with leave to amend.

5 Any written objections to this Report and Recommendation must be filed with
6 the Court and a copy served on all parties on or before June 29, 2017. The document
7 should be captioned "Objections to Report and Recommendation." The parties are
8 advised that failure to file objections within the specified time may waive the right to
9 raise those objections on appeal of this Court's order. Martinez v. Ylst, 951 F.2d 1153,
10 1156 (9th Cir. 1991).

11 DATED: June 13, 2017



Peter C. Lewis

United States District Court

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