

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Arthur Lee Smart,

Plaintiff,

v.

E. Ortiz, et al.,

Defendants.

Case No.: 17-cv-1454-AJB-BGS

ORDER:

(1) ADOPTING THE REPORT AND RECOMMENDATION (Doc. No. 29);

(2) GRANTING DEFENDANTS' MOTION TO DISMISS (Doc. No. 18);
and

(3) DISMISSING PLAINTIFF'S COMPLAINT (Doc. No. 1).

Before the Court is Magistrate Judge Skomal's report and recommendation ("R&R") on Defendants' motion to dismiss Plaintiff's complaint. The R&R recommends the Court grant the dismissal motion and dismiss Plaintiff's complaint. (Doc. No. 29.) For the reasons stated herein, the Court **ADOPTS** the R&R's holdings, **GRANTS** Defendants' dismissal motion, and **DISMISSES** Plaintiff's complaint without leave to amend.

I. LEGAL STANDARDS

"The court shall make a de novo determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). The "statute makes it clear that the district judge must review the magistrate judge's findings and

1 recommendations de novo if objection is made, but not otherwise.” *United States v. Reyna-*
2 *Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis in original); *see Schmidt*
3 *v. Johnstone*, 263 F. Supp. 2d 1219, 1225–26 & n. 5 (D. Ariz. 2003) (applying *Reyna-*
4 *Tapia* to habeas review).

5 **II. BACKGROUND**

6 Plaintiff brings this lawsuit complaining of: (1) a due process violation stemming
7 from a disciplinary hearing in which he neither received timely notice of nor was able to
8 call witnesses; and (2) an Eighth Amendment violation for cruel and unusual punishment
9 resulting from said hearing. (Doc. No. 1 at 5–8.) Essentially, Plaintiff alleges that during
10 an inmate search, an officer found marijuana, asked Plaintiff if it was his, Plaintiff
11 responded it was not, but the officer wrote him up anyways. (*Id.* at 5.) Another officer, A.
12 Silva, gave Plaintiff a Rules Violation Report, or RVR, to sign to indicate he wanted a
13 delayed hearing and review by a prosecutor. (*Id.* at 5–6.) Plaintiff signed it, but later noticed
14 that the RVR was not his. (*Id.* at 6.) Plaintiff was unable to obtain a copy of his RVR before
15 his hearing, which he explained at the hearing. (*Id.* at 6, 9.) Despite this, the hearing
16 continued, and Plaintiff was unable to call any witnesses—such as other inmates in the
17 room when the marijuana was found—and was found guilty of marijuana possession.
18 (*Id.* at 7, 9.) As a result, Plaintiff was given numerous repercussions, including a loss of
19 visits for one year, nine months in segregated housing, inability to participate in
20 rehabilitation, employment, and recreation, and an inmate level change from Level III to
21 Level IV. (*Id.* at 9–11.)

22 **III. DISCUSSION**

23 Defendants moved to dismiss on two grounds: (1) res judicata; and (2) failure to
24 state a claim. The R&R analyzes both arguments and recommends this Court grant
25 dismissal on both grounds. For the reasons stated below, the Court agrees.

26 **A. Res Judicata**

27 Defendants argue that Plaintiff’s due process claim is procedurally barred through
28 res judicata as Plaintiff raised the same claim in his state court habeas proceedings. Plaintiff

1 concedes as much, arguing that although he did raise the issue in state court, he did not
2 receive a full and fair hearing. The R&R finds that Plaintiff's claim is precluded as it meets
3 the three requirements. (Doc. No. 29 at 6.) "[C]laim preclusion arises if a second suit
4 involves: (1) the same cause of action (2) between the same parties or parties in privity
5 with them (3) after a final judgment on the merits of the first suit." *DKN Holdings LLC v.*
6 *Faerber*, 61 Cal. 4th 813, 824 (2015). In his objection, Plaintiff does not dispute the first
7 two prongs, only taking issue with the final one. (Doc. No. 35 at 10.) Thus, the Court will
8 only discuss the final prong, and finds that the first two prongs are well reasoned.

9 Regarding the third prong, Plaintiff claims that although the state courts reached a
10 final decision on the merits of his claim, he never received a full and fair hearing on his
11 claims. (*Id.* at 10.) Looking to the Ninth Circuit, the R&R notes that "reasoned denials of
12 California habeas petitions . . . do have a claim preclusive effect." (Doc. No. 29 at 10 (citing
13 *Gonzalez v. Cal. Dep't of Corrs.*, 739 F.3d 1226, 1230 (9th Cir. 2014)).) The R&R states
14 that each decision the California courts reached "recognized [Plaintiff's] challenge based
15 on lack of timely notice, *i.e.* did not receive his RVR before the hearing, and den[ied]
16 relief." (Doc. No. 29 at 10.) The Superior Court indeed twice rejected Plaintiff's claims
17 around being unable to call witnesses. (*Id.* at 10–11.) The R&R, in its analysis, states that
18 "Plaintiff appears to be arguing that because he did not receive an evidentiary hearing in
19 the state court proceedings, his Due Process claim is not precluded." (*Id.* at 11.) The R&R
20 concludes by stating Plaintiff did not provide any supporting case law that an evidentiary
21 hearing is required, and further, the Ninth Circuit—in two recent decisions—fails to
22 suggest anything to the contrary. (*Id.*) Thus, the R&R finds that this prong is satisfied, and
23 along with the other two, concludes that Plaintiff's claim is barred.

24 In his objection, Plaintiff argues that his due process rights were violated because he
25 was not given notice before the hearing and because he was unable to call witnesses during
26 the hearing. (Doc. No. 35 at 11–12.) Plaintiff correctly relies on a Supreme Court case to
27 support his claim that notice must be provided at least 24 hours before a disciplinary
28 hearing. (*Id.* at 11 (citing to *Wolff v. McDonnell*, 418 U.S. 539, 564 (1974)).) However,

1 this belies the fact that the state court has already considered this argument, and thus, the
2 Court today is precluded from revisiting it.

3 As to his inability to call witnesses, Plaintiff incorrectly relies on another Supreme
4 Court case, which purports to hold that due process dictates a person be able to present a
5 full defense, including testimony of witnesses. (*Id.* at 12 (citing to *Kremer v. Chemical*
6 *Construction Corp.*, 456 U.S. 461, 483 (1982)).) However, preceding the section Plaintiff
7 quotes, the Court states “[u]nder New York law, a claim of employment discrimination
8 requires the NYHRD to investigate whether there is ‘probable cause’ to believe that the
9 complaint is true. Before this determination of probable cause is made, the claimant is
10 entitled . . .” to said defense, including witness testimony. *Kremer*, 461 U.S. at 483. Clearly,
11 Plaintiff’s case is distinguishable as this case involves constitutional rights and not
12 employment law, and the Court is applying California law rather than New York law.

13 Plaintiff failed to rebut the R&R’s finding that he was entitled, under the
14 Constitution, to an evidentiary hearing. Finding that R&R’s conclusion that Plaintiff’s due
15 process claim is precluded under California claim preclusion well-reasoned and thorough,
16 the Court **ADOPTS** it. Accordingly, the Court **DISMISSES** Plaintiff’s due process claim.¹

17 **B. Eighth Amendment Claim**

18 Plaintiff alleges that consequences of his disciplinary hearing violated the Eighth
19 Amendment as cruel and unusual punishment. To show an Eighth Amendment violation
20 based on conditions of confinement, both an objective and subjective prong must be
21 proven. *Foster v. Runnels*, 554 F.3d 807, 812 (9th Cir. 2009); *Farmer v. Brennan*, 511 U.S.
22 825, 832 (1994). The R&R finds that under the objective prong, none of the restrictions
23 Plaintiff complains of “rise to the level of a denial of these ‘the minimal civilized measure
24 of life’s necessities.’” (Doc. No. 29 at 18 (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347
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26 ¹ Although the R&R also discusses Plaintiff’s due process claim under Fed. R. Civ. P.
27 12b(6) as well, and recommends dismissing it for failure to state a claim, the Court declines
28 to discuss it here as Plaintiff only objects to the R&R’s analysis surrounding claim
preclusion. (Doc. No. 29 at 14–17.)

1 (1981)).) The types of items deemed necessary to life's necessities include "adequate food,
2 clothing, shelter, and medical care" as well as safety. (*Id.* (quoting *Farmer v. Brennan*, 511
3 U.S. 825, 832 (1994)).) The Court agrees that this prong is met.

4 As to the subjective prong, an inmate must show that the official was acting with
5 deliberate indifference, that is, the official both knew of a risk of substantial harm to the
6 inmate's health or safety and knowingly disregarded it. *Thomas v. Ponder*, 611 F.3d 1144,
7 1150 (9th Cir. 2010). The R&R states that Plaintiff failed to allege any such knowledge in
8 his complaint. (Doc. No. 29 at 18.) The R&R concludes that "[t]here are simply no
9 allegations in the complaint that any Defendant was aware of any serious harm to Plaintiff's
10 health or safety." (*Id.* at 19.)

11 Plaintiff objects, stating that Defendants "deliberately denied or delay[ed] an inmate
12 medical treatment," and thus alleges that Defendants deprived him by being deliberately
13 indifferent to his medical needs. (Doc. No. 35 at 14.) While Plaintiff is correct that such
14 knowledge and deprivation of treatment would be considered deliberate indifference, he
15 did not raise a deliberate indifference to medical needs claim in his complaint and there are
16 no supporting allegations as such. (Doc. No. 1 at 9–11.) Plaintiff goes on to state the guards
17 interfered with his legal material causing a mental break, resulting in Plaintiff not eating
18 and losing 60 pounds. (Doc. No. 35 at 15.) Again, there is no support for such contentions
19 in the complaint.

20 The Court finds the R&R's conclusions that Plaintiff failed to state an Eighth
21 Amendment claim well-reasoned and thorough. Thus, the Court **ADOPTS** the R&R's
22 conclusions and **DISMISSES** Plaintiff's cruel and unusual punishment claim.

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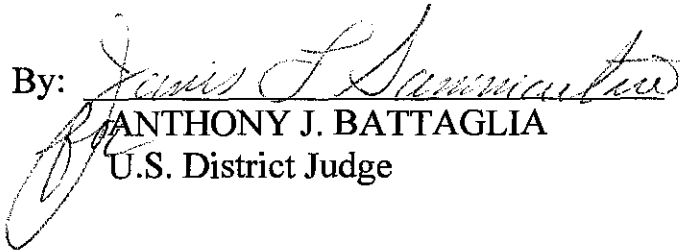
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IV. CONCLUSION

Because Plaintiff both cannot overcome claim preclusion for his due process claim and fails to state a claim under the Eighth Amendment, the Court **ADOPTS** the reasoning of the R&R, (Doc. No. 29), **GRANTS** Defendants' motion to dismiss, (Doc. No. 18), and **DISMISSES** Plaintiff's complaint, (Doc. No. 1). The Court Clerk is instructed to close the case.

IT IS SO ORDERED.

Dated: 3/15/19

By: 
ANTHONY J. BATTAGLIA
U.S. District Judge