

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Khan v. Presley

No. 24-cv-03905 BLF (PR) (N.D. Cal. May 27, 2025) · No. 24-cv-03905 BLF (PR) · Decided May 28, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 NORTHERN DISTRICT OF
CALIFORNIA 10 11 MUHAMMAD KHAN, Case No. 24-cv-03905 BLF (PR) 12 ORDER
GRANTING MOTION FOR Plaintiff, EXTENSION OF TIME; OF 13 PARTIAL DISMISSAL
AND v. GRANTING LEAVE TO FILE 14 SECOND AMENDED COMPLAINT; GRANTING
LEAVE TO PROCEED 15 PRESLEY, et al., IN FORMA PAUPERIS 16 Defendants. (Docket No.
9) 17 18 Plaintiff, a state parolee, filed the instant civil rights action pursuant to 42 U.S.C. § 19
1983 for unconstitutional acts that took place at the Correctional Training Facility 20 (“CTF”),
where he was formerly housed.

Dkt. No. 1. On December 2, 2024, the Court 21 dismissed the complaint with leave to amend and
directed Plaintiff to file a non-prisoner 22 IFP application. Dkt. No. 6. Plaintiff was directed to file
an amended complaint to correct 23 the deficiencies to avoid dismissal with prejudice of this
action for failure to state a claim 24 for relief. Id. at 6. He was granted an extension of time until
February 1, 2025.

Dkt. No. 25 8. On February 13, 2025, Plaintiff filed another motion for extension of time along
with 26 the amended complaint and a non-prisoner IFP application. Dkt. Nos 9-1, 9-2. Good 27
cause appearing, the motion is GRANTED.

The Court will proceed with a screening of 1 the amended complaint. 2 3 DISCUSSION 4 A.
Standard of Review 5 A federal court must conduct a preliminary screening in any case in which a
6 prisoner seeks redress from a governmental entity or officer or employee of a 7 governmental
entity. See 28 U.S.C. § 1915A(a).

In its review, the court must identify any 8 cognizable claims and dismiss any claims that are
frivolous, malicious, fail to state a claim 9 upon which relief may be granted or seek monetary
relief from a defendant who is immune 10 from such relief. See id. § 1915A(b)(1), (2). Pro se
pleadings must, however, be liberally 11 construed. See *Balistreri v. Pacifica Police Dep’t*, 901
F.2d 696, 699 (9th Cir.

1988). 12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential 13
elements: (1) that a right secured by the Constitution or laws of the United States was 14 violated,
and (2) that the alleged violation was committed by a person acting under the 15 color of state

law. See *West v. Atkins*, 487 U.S. 42, 48 (1988). 16 B. Plaintiff's Claims 17 In dismissing the original complaint, the Court found the allegations were 18 insufficient to state any cognizable claim, specifically for retaliation against any named 19 defendant, excessive force against Defendant Presley, and violation of due process during 20 his retention in administrative segregation.

Dkt. No. 6 at 3-5. Plaintiff asserts that the 21 Court did not address his "due process/reprisal claims" against Defendant Borjorquez, the 22 hearing officer. Dkt. No. 9 at 1. However, in its screening order, the Court stated that the 23 allegations were insufficient to state a retaliation claims "against any Defendant" or to 24 state a due process claim at all in connection with the ASU retention hearing.

Dkt. No. 6 25 at 3, 5. 26 In the amended complaint, Plaintiff alleges that on or about October 5, 2020, he was 1 Dkt. No. 9-1 at 2. Plaintiff states he is mobility impaired and wore such an "identifying 2 vest." Id. He told Defendant Presley that he needed more time. Id. On his way out, 3 Defendant Presley told Plaintiff that he "took too long, now I have to hit your cell." Id. 4 After Plaintiff returned from his appointment, in inmate informed Plaintiff that Defendant 5 Presley had gone into Plaintiff's cell.

Id. Plaintiff saw that his cell was "trashed," as his 6 property was all over the place, including his legal paperwork. Id. He was not provided 7 with a cell inspection receipt. Id. Plaintiff alleges that A. Andrade was Defendant 8 Presley's partner and participated in this action. Id. Plaintiff claims defendants trashed his 9 cell because of his disability and taking longer to get ready.

Id. 10 Plaintiff was taken to a holding cell and "denied sitting and using restroom the 11 whole time." Id. at 3. He claims this violated his Eighth Amendment rights and 12 constitutes cruel and unusual punishment. Id. 13 Plaintiff was placed in adseg and told he was the aggressor. Id. Plaintiff spent 14 several months in ASU. Id. Plaintiff claims Defendant Lt.

Borjorquez denied him a fair 15 and impartial hearing by denying him witnesses, documentary evidence, and due process. 16 Id. He claims Defendant Borjorquez was not impartial and retaliated because Plaintiff 17 filed grievances. Id. He claims this violated his due process rights and amounts to First 18 Amendment retaliation. Id. 19 Plaintiff claims that around the "first half of 2024," he went to medical at CTC 20 Soledad; he was wearing a mobility impaired vest.

Id. He claims Defendant Presley was 21 the officer at medical, and stated to Plaintiff, "so you're still pretending to be handicapped? 22 This is why I beat your ass and threw you in Adseg." Id. Plaintiff claims these comments 23 further show that Defendant Presley's motive and intent behind his previous actions. Id. 24 He claims this was the first time he saw Defendant Presley since the 2020 encounter when 25 he was "beat and put into Administrative Segregation." Id.

Plaintiff seeks “declaratory, 26 punitive, compensatory, equitable, special, nominal, and related relief including 1 are again deficient to state any cognizable claim.

2 First, the allegations are insufficient to state a retaliation claim against any 3 Defendant. “Within the prison context, a viable claim of First Amendment retaliation 4 entails five basic elements: (1) An assertion that a state actor took some adverse action 5 against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action 6 (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not 7 reasonably advance a legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 8 567-68 (9th Cir.

2005) (footnote omitted). Plaintiff’s allegations are insufficient to satisfy 9 all five elements to state a retaliation claim. Specifically, he alleges that Defendants 10 Presley and Andrade trashed his cell because of his disability and taking too long to get 11 ready, not because Plaintiff was exercising his First Amendment rights. See *supra* at 3. 12 Plaintiff’s allegation that Defendant Borjorquez “retaliated” because Plaintiff filed 13 grievances is also conclusory as there is no allegation that Defendant was aware that 14 Plaintiff filed grievances prior to the adseg hearing such that it can be said that this was the 15 because of factor for violating Plaintiff’s due process rights.

Lastly, Plaintiff again fails to 16 allege that these adverse actions chilled the exercise of his First Amendment rights and did 17 not reasonably advance a legitimate correctional goal. Plaintiff was already afforded one 18 opportunity to amend this retaliation claim, and the Court finds no good cause to grant him 19 another opportunity where the amended complaint fails to correct the deficiencies of the 20 retaliation claim from the original.

Wagh v. Metris Direct, Inc., 363 F.3d 821, 830 (9th 21 Cir. 2003) (district court’s discretion to deny leave to amend particularly broad where 22 plaintiff has previously filed an amended complaint); *Ferdik v. Bonzelet*, 963 F.2d 1258, 23 1261 (9th Cir. 1992).

Accordingly, this retaliation claim must be dismissed for failure to 24 state a claim. 25 Second, Plaintiff alleges for the first time that being held in a holding cell where he 26 was “denied sitting and using restroom” the whole time amounts to cruel and unusual 1 Amendment when two requirements are met: (1) the deprivation alleged must be, 2 objectively, sufficiently serious, *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citing 3 *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and (2) the prison official possesses a 4 sufficiently culpable state of mind, *id.* (citing *Wilson*, 501 U.S. at 297).

In determining 5 whether a deprivation of a basic necessity is sufficiently serious to satisfy the objective 6 component of an Eighth Amendment claim, a court must consider the circumstances, 7 nature, and duration of the deprivation.

The more basic the need, the shorter the time it can be withheld. See *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000). Substantial deprivations of shelter, food, drinking water or sanitation for four days, for example, are sufficiently serious to satisfy the objective component of an Eighth Amendment claim. See *id.* at 732-733.

Here, Plaintiff's allegations fail to indicate how long he was allegedly deprived of sitting and a restroom for the Court to determine whether he satisfies the objective component of an Eighth Amendment claim. Furthermore, he does not identify which defendant was responsible for this alleged deprivation to satisfy the second element, i.e., the prison official possesses a sufficiently culpable state of mind.

Accordingly, Plaintiff shall be granted leave to amend to attempt to state an Eighth Amendment claim based on the deprivation of "sitting and a restroom." Third, Plaintiff's allegations of due process violations by Defendant Borjorquez during his ASU retention hearing again fails to state a claim.

In *Toussaint v. McCarthy*, the Ninth Circuit held that when prison officials initially determine whether a prisoner is to be segregated for administrative reasons due process requires that they comply with the following procedures: (1) they must hold an informal nonadversary hearing within a reasonable time after the prisoner is segregated,¹ (2) the prisoner must be informed of the charges against him or the reasons segregation is being considered, and (3) the prisoner must be allowed to present his views.

See *Toussaint v. McCarthy*, 801 F.2d 1080, 1100-01 (9th Cir. 1986).² Due process does not require detailed written notice of charges, representation by counsel or counsel-substitute, an opportunity to present witnesses, a written decision describing the reasons for placing the prisoner in administrative segregation or disclosure of the identity of any person providing information leading to placement of a prisoner in administrative segregation.

See *id.* at 1100-01. Accord *Wilkinson v. Austin*, 545 U.S. 209, 228-29 (2005) (determining that prisoners are constitutionally entitled only to the informal, non-adversary procedures set forth in *Greenholtz v. Inmates of Neb. Penal and Correctional Complex*, 442 U.S. 1 (1979), and *Hewitt v. Helms*, 459 U.S. 460 (1983), prior to assignment to "supermax" facility).

As the Court already advised, Plaintiff was not entitled to present witnesses or documentary evidence under *Toussaint*. See Dkt. No. 6 at 5. Plaintiff has otherwise failed to establish that Defendant Borjorquez was not "impartial." Therefore, his allegations are insufficient to state a due process claim against Defendant Borjorquez in connection with the ASU retention hearing.

Plaintiff was already afforded one opportunity to amend this 16 claim, and the Court finds no good cause to grant him another opportunity where the 17 deficiencies of this due process claim remain the same as the original. Wagh, 363 F.3d at 18 830; Ferdik, 963 F.2d at 1261.

Accordingly, this due process claim must be dismissed for 19 failure to state a claim. 20 Lastly, Plaintiff alludes to Defendant Presley “beat[ing]” him in the amended 21 complaint. See supra at 3. Plaintiff’s original claim of excessive force against Defendant 22 Presley was dismissed with leave to amend to provide more facts to establish that 23 Defendant “used force ‘maliciously and sadistically to cause harm’” rather than in a good- 24 faith effort to maintain or restore discipline because Plaintiff admitted that he was issued 25 26 2 The official charged with deciding to place an inmate in administrative segregation must 1 an RVR accusing him of being the aggressor.

Dkt. No. 6 at 4. Here, Plaintiff again fails to 2 provide sufficient allegations describing the circumstances of Defendant Presley’s conduct 3 to establish an excessive force claim against him. This claim must also be dismissed for 4 failure to state a claim because Plaintiff failed to correct the deficiencies of this claim from 5 the original. Wagh, 363 F.3d at 830; Ferdik, 963 F.2d at 1261.

6 Plaintiff shall be granted leave to amend solely with respect to his Eighth 7 Amendment claim regarding the deprivations he allegedly suffered while in the holding 8 cell. See supra at 5. Plaintiff should keep the following principles in mind in preparing an 9 amended complaint. Liability may be imposed on an individual defendant under § 1983 10 only if Plaintiff can show that the defendant proximately caused the deprivation of a 11 federally protected right.

See *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); *Harris v. 12 City of Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a 13 constitutional right within the meaning of section 1983 if he does an affirmative act, 14 participates in another’s affirmative act or omits to perform an act which he is legally 15 required to do, that causes the deprivation of which the plaintiff complains.

See *Leer*, 844 16 F.2d at 633. 17 18 CONCLUSION 19 For the reasons state above, the Court orders as follows: 20 1. The following claims are DISMISSED with prejudice for failure to state a 21 claim for relief: (1) retaliation claim against all named defendants; (2) due process claim 22 against Defendant Borjorquez; and (3) excessive force claim against Defendant Presley.

23 Plaintiff may not raise these claims in the second amended complaint. 24 2. The Eighth Amendment claim regarding deprivations while in the holding 25 cell is DISMISSED with leave to amend. Within twenty-eight (28) days from the date 26 this order is filed, Plaintiff shall file a second amended complaint using the court’s form 1 || 4-5.

The second amended complaint must include the caption and civil case number used 2 || in this order, i.e., Case No. C 24-cv-03905 BLF (PR), and the words “SECOND 3. || AMENDED COMPLAINT” on the first page. Plaintiff must answer all the questions on 4 || the form in order

for the action to proceed. Plaintiff is reminded that the second amended 5 || complaint supersedes the original and first amended complaints, and Plaintiff may not 6 || refer to them in the second amended complaint.

Claims not included in the second 7 || amended complaint are no longer claims and defendants not named therein are no longer 8 || defendants. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992). 9 3. Failure to respond in accordance with this order by filing a second 10 || amended complaint in the time provided will result in the dismissal with prejudice of 11 || this action for failure to state a claim for relief.

3 (12 4. The Clerk shall enclose two copies of the court's form complaint with a copy E 13 of this order. 14 IT IS SO ORDERED. 15 || Dated: __May 27, 2025 foafhacien BETH LABSON FREEMAN 16 United States District Judge Oo Z 18 19 20 21 22 23 24 25 Order Granting Mot; Partial Dism & LTA; Granting IFP 26 PRO-SE\BLF\CR.24\03905Khan_dwlta2&grant.IFP 27