

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

**Adkins v. Schultz**

Adkins · No. 2:23-cv-1654 AC P · Decided February 26, 2025

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**OPINION**

(PC) Adkins v. Schultz

PER CURIAM.

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7 UNITED STATES DISTRICT COURT

8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9

10 DUPREE LAMONT ADKINS, No. 2:23-cv-1654 AC P

11 Plaintiff, 12 v. ORDER 13 J. SCHULTZ, et al., 14 Defendants. 15 16 Plaintiff is a state inmate  
who filed this civil rights action pursuant to 42 U.S.C. § 1983 17 without a lawyer. He has  
requested leave to proceed without paying the full filing fee for this 18 action, under 28 U.S.C. §  
1915. Plaintiff has submitted a declaration showing that he cannot 19 afford to pay the entire filing  
fee. See 28 U.S.C. § 1915(a)(2). Accordingly, plaintiff’s motion to 20 proceed in forma pauperis is  
granted.<sup>1</sup> Plaintiff has also filed a motion to exceed the twenty-five- 21 page limit for e-filed  
complaints (ECF No. 3) and that request will be granted. 22 I. Statutory Screening of Prisoner  
Complaints 23 The court is required to screen complaints brought by prisoners seeking relief  
against “a 24 governmental entity or officer or employee of a governmental entity.” 28 U.S.C. §  
1915A(a). A 25 1 This means that plaintiff is allowed to pay the \$350.00 filing fee in monthly  
installments that 26 are taken from the inmate’s trust account rather than in one lump sum. 28  
U.S.C. §§ 1914(a). As part of this order, the prison is required to remove an initial partial filing fee  
from plaintiff’s trust 27 account. See 28 U.S.C. § 1915(b)(1). A separate order directed to CDCR  
requires monthly payments of twenty percent of the prior month’s income to be taken from  
plaintiff’s trust account. 28 These payments will be taken until the \$350 filing fee is paid in full.  
See 28 U.S.C. § 1915(b)(2). 1 claim “is [legally] frivolous when it lacks an arguable basis either in  
law or in fact. *Neitzke v. 2 Williams*, 490 U.S. 319, 325 (1989). The court may dismiss a claim as  
frivolous if it is based on 3 an indisputably meritless legal theory or factual contentions that are  
baseless. *Id.*, 490 U.S. at 4 327. The critical inquiry is whether a constitutional claim, however  
inartfully pleaded, has an 5 arguable legal and factual basis. *Jackson v. Arizona*, 885 F.2d 639, 640  
(9th Cir. 1989), 6 superseded by statute on other grounds as stated in *Lopez v. Smith*, 203 F.3d  
1122, 1130 (9th Cir. 7 2000). 8 In order to avoid dismissal for failure to state a claim a complaint  
must contain more than 9 “naked assertion[s],” “labels and conclusions” or “a formulaic recitation

of the elements of a 10 cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007). In other words, 11 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 12 statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim upon which the 13 court can grant relief has facial plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial 14 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable 15 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation 16 omitted). When considering whether a complaint states a claim, the court must accept the 17 allegations as true, *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007) (per curiam), and construe the 18 complaint in the light most favorable to the plaintiff, *Jenkins v. McKeithen*, 395 U.S. 411, 421 19 (1969) (citations omitted). 20 II. Factual Allegations of the Complaint 21 Plaintiff is a state inmate bringing a civil rights complaint against defendants Schultz, 22 Richardson, Crawford, De Jesus, Pursey, and Hayden for violations of his rights under the First 23 and Fourteenth Amendments. ECF No. 1. Generally, plaintiff alleges that he is Black and, over a 24 six-month period after he was unassigned from kitchen duty for mental health reasons, he 25 received three violations for not showing up for work detail while two similarly situated white 26 inmates were treated differently for the same conduct. *Id.* at 6-9, 11-13, 17-18. He also alleges 27 that the treatment he received was in retaliation for filing grievances and telling defendants that 28 he would sue them. *Id.* at 21-25 1 More specifically, plaintiff alleges that on October 21, 2022, his Interdisciplinary 2 Treatment Team (IDTT) counselor began the months-long process of unassigning him from 3 kitchen duty due to “ongoing mental health issues and violence.” *Id.* at 10-11, 17. Crawford, 4 who was the kitchen supervisor, drew a red line through plaintiff’s name on the list of kitchen 5 workers so he would not be called to work while the IDTT completed the process. *Id.* at 2, 11. 6 On November 5, 2022, De Jesus issued the first rules violation report (RVR) against 7 plaintiff for failing to report to work. *Id.* at 7. Richardson then proceeded to find him guilty of 8 the RVR and Schultz upheld the guilty finding. *Id.* at 8-9, 15-16. Two similarly situated white 9 inmates, Vincent and Robertson, also received RVRs for not appearing for work duty. *Id.* 10 However, De Jesus and Richardson permitted Vincent and Robertson to receive mental health 11 accommodations to explain their behavior—even though plaintiff was refused those 12 accommodations—and Richardson found them not guilty as a result. *Id.* Plaintiff asserts that De 13 Jesus, Richardson, and Schultz all “hold[] racial animus against [him] because [he is] black,” and 14 that Richardson and Schultz are white like Vincent and Robertson. *Id.* at 7-9. He further asserts 15 that Schultz was retaliating against him for seeking an injunction against him. *Id.* at 15-16. 16 On December 17, 2022, Pursey singled out plaintiff by issuing a second RVR as “a ruse to 17 cover up his Racial Animus towards [plaintiff] because [plaintiff] is black and informed [Pursey 18 he] would sue him.” *Id.* at 12. Pursey did not issue Vincent or Robertson RVRs for refusing to 19 work. *Id.* at 13. De Jesus then discriminated against plaintiff by making a mental health 20 assessment that plaintiff was not eligible for staff assistance to gather evidence and present a 21 mental health defense at the RVR hearing, and Richardson

found him guilty despite knowing 22 plaintiff had been removed from his kitchen assignment by his IDTT. Id. at 13-14. 23 On January 5, 2023, plaintiff's IDTT finished unassigning him from kitchen duty. Id. at 24 18. However, on May 2, 2023, after plaintiff told Hayden that he was going to sue him for racial 25 discrimination, Hayden issued plaintiff a third RVR for refusing to work in the kitchen, even 26 though Hayden knew that IDTT had unassigned him from kitchen duty. Id. at 17, 25. He did not 27 issue similar RVRs to Vincent and Robertson. Id. at 18. Plaintiff alleges that Hayden holds 28 animus towards him and discriminated against him because he is Black and because plaintiff told 1 Hayden he would sue him. Id. at 17, 25. Even though Crawford did not approve the first two 2 RVRs, she approved the third RVR in retaliation for a staff complaint plaintiff filed a week earlier 3 and for which she was assigned as the investigator. Id. at 18-19, 23-24. 4 III. Claims for Which a Response Will Be Required 5 After conducting the screening required by 28 U.S.C. § 1915A(a), the court finds that 6 plaintiff has adequately stated a valid claim against defendants Schultz, Richardson, and De Jesus 7 for violation of the Equal Protection Clause. Plaintiff's allegations that these defendants denied 8 him the same treatment during the disciplinary process that was afforded to white inmates who 9 received similar disciplinary write ups under similar circumstances at the same time as plaintiff 10 are sufficient to state a claim for relief. He has also stated cognizable retaliation claims against 11 defendants Hayden and Crawford based on Hayden's issuance and Crawford's approval of the 12 third RVR. 13 IV. Failure to State a Claim 14 However, the allegations in the complaint are not sufficient to state a discrimination claim 15 against defendants Crawford, Pursey, or Hayden. Plaintiff does not offer any facts from which 16 the court can infer that these defendants treated plaintiff differently from other inmates or singled 17 him out because of his race. Although plaintiff alleges that Crawford discriminated against him, 18 he alleges that her animus was based on his filing of a grievance, not on his membership in a 19 protected class. ECF No. 1 at 18. With respect to Pursey and Hayden, unlike the allegations 20 against Schultz, Richardson, and De Jesus, which demonstrate that they were involved in the 21 RVRs issued to Vincent and Robertson, there are no facts showing that Pursey or Hayden were 22 aware of Vincent and Robertson's failure to report to work under circumstances similar to 23 plaintiff when they issued plaintiff RVRs. 24 Nor do the allegations in the complaint state a claim for retaliation against defendants De 25 Jesus, Richardson, Pursey, or Schultz. Although plaintiff alleges that Schultz conduct was 26 motivated by a motion for an injunction he filed against Schultz, the motion was filed 27 approximately two months prior to Schultz' decision to uphold the first RVR, and there are no 28 facts indicating that Schultz was aware of the motion or that would otherwise indicate that the 1 motion was the impetus for his decision. See ECF No. 1 at 8, 16, 21. Plaintiff does not appear to 2 be alleging that De Jesus, Richardson, and Pursey's conduct was retaliatory. See ECF No. 1 at 3 21-26 (Claim II, alleging retaliation by Schultz, Crawford, and Hayden). However, to the extent 4 he was attempting to make a claim for retaliation, he does not allege that De Jesus and 5 Richardson's conduct was motivated by his protected conduct. With respect to Pursey, he makes 6 only a

conclusory assertion that Pursey issued the RVR because plaintiff stated he would sue him, 7 with no facts regarding when plaintiff made the statement to Pursey or any other facts that would 8 support an inference of retaliation. 9 Finally, to the extent plaintiff may be attempting to state a claim for the violation of his 10 due process rights in the disciplinary process, he fails to state a claim. He does not allege that he 11 lost any good-time credits, and it appears that the first and second RVRs, where he claims he was 12 denied the ability to present evidence, were eventually overturned through the appeals process. 13 ECF No. 1 at 14, 16, 23. 14 It appears to the court that plaintiff may be able to allege facts to fix these problems. 15 Therefore, plaintiff has the option of filing an amended complaint. In deciding whether to file an 16 amended complaint, plaintiff is provided with the relevant legal standards governing his potential 17 claims for relief which are attached to this order. See Attachment A. 18 V. Options from Which Plaintiff Must Choose 19 Based on the court's screening, plaintiff has a choice to make. After selecting an option 20 from the two options listed below, plaintiff must return the attached Notice of Election form to 21 the court within 21 days from the date of this order. 22 The first option available to plaintiff is to proceed immediately against defendants 23 Schultz, Richardson, and De Jesus on the Fourteenth Amendment equal protection claims, 24 and against defendants Hayden and Crawford on the First Amendment retaliation claims. 25 By choosing this option, plaintiff will be agreeing to voluntarily dismiss all other claims and 26 defendant Pursey. The court will proceed to immediately serve the complaint and order a 27 response from defendants Schultz, Richardson, De Jesus, Hayden, and Crawford. 28 //// 1 The second option available to plaintiff is to file an amended complaint to fix the 2 problems described in Section IV. If plaintiff chooses this option, the court will set a 3 deadline in a subsequent order to give plaintiff time to file an amended complaint. 4 VI. Motion for Discovery 5 Plaintiff has filed a request for AVSS footage to be preserved, which the court construes 6 as a motion for discovery. ECF No. 9. The motion will be denied both as premature and because 7 it appears to seek the preservation of videos unrelated to the incidents at issue in this case. See id. 8 at 3, 5 (seeking video from incidents that occurred in November 2024). 9 VII. Plain Language Summary of this Order for Party Proceeding Without a Lawyer 10 Some of the allegations in the complaint state claims against the defendants and some do 11 not. You have stated a claim for discrimination against defendants De Jesus, Richardson, and 12 Schultz and for retaliation against Hayden and Crawford. 13 You have not stated any claims against Pursey because there are not any facts to support 14 that he issued you an RVR either because of your race or because you filed a grievance or 15 lawsuit. You also have not alleged any claims for discrimination against Crawford or Hayden 16 because there are no facts showing that they treated you differently because of your race. There 17 are not enough facts to support claims for retaliation against De Jesus, Richardson, or Schultz 18 because your complaint does not show that their conduct was motivated by your grievances or 19 lawsuits. You have not stated any due process claims based on your inability to put forth 20 evidence related to your first and second RVRs because you do not allege that you lost good-time 21 credits and it appears they were

reversed on appeal. 22 You have a choice to make. You may either (1) proceed immediately on  
your 23 discrimination claims against defendants De Jesus, Richardson, and Schultz and  
retaliation claims 24 against Hayden and Crawford and voluntarily dismiss the other claims and  
defendant Pursey or 25 (2) try to amend the complaint. To decide whether to amend your  
complaint, the court has 26 attached the relevant legal standards that may govern your claims for  
relief. See Attachment A. 27 Pay particular attention to these standards if you choose to file an  
amended complaint. 28 ///

## 1 CONCLUSION

2 In accordance with the above, IT IS HEREBY ORDERED that: 3 1. Plaintiffs request for leave  
to proceed in forma pauperis (ECF No. 2) is GRANTED. 4 2. Plaintiff is obligated to pay the  
statutory filing fee of \$350.00 for this action. Plaintiff 5 || is assessed an initial partial filing fee in  
accordance with the provisions of 28 U.S.C. 6 || § 1915(b)(1). All fees shall be collected and paid  
in accordance with this court's order to the 7 || appropriate agency filed concurrently herewith. 8 3.  
Plaintiffs motion to exceed the page limit (ECF No. 3) is GRANTED. 9 4. Plaintiffs motion to  
preserve AVSS footage (ECF No. 9) is DENIED. 10 5. Plaintiffs allegations against defendant  
Pursey do not state any claims for relief and 11 | he has not stated a viable due process claim  
against any defendant. He also does not state any 12 || claims against defendants Crawford,  
Pursey, and Hayden for discrimination or against De Jesus, 13 || Richardson, Pursey, and Schultz  
for retaliation. 14 6. Plaintiff has the option to proceed immediately on his Fourteenth Amendment  
15 || discrimination claims against defendants De Jesus, Richardson, and Schultz and his First 16 ||  
Amendment retaliation claims against Hayden and Crawford as set forth in Section III above or to  
17 | file an amended complaint. 18 7. Within 21 days from the date of this order, plaintiff shall  
complete and return the 19 || attached Notice of Election form notifying the court whether he  
wants to proceed on the screened 20 || complaint or whether he wants to file an amended  
complaint. 21 8. If plaintiff does not return the form, the court will assume that he is choosing to  
22 || proceed on the complaint as screened and will recommend dismissal without prejudice of 23 |  
plaintiff's due process claims against all defendants; all claims against defendant Pursey; the 24 ||  
discrimination claims against defendant Crawford, Pursey, and Hayden; and the retaliation claims  
25 || against De Jesus, Richardson, Pursey, and Schultz. 26 || DATED: February 26, 2025 A /

27 ALLISON CLAIRE

2g UNITED STATES MAGISTRATE JUDGE

1 2 3 4 5 6

7 UNITED STATES DISTRICT COURT

8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9

10 DUPREE LAMONT ADKINS, No. 2:23-cv-1654 AC P

11 Plaintiff,

12 v. NOTICE OF ELECTION

13 J. SCHULTZ, et al., 14 Defendants. 15 16 Check one: 17 \_\_\_\_\_ Plaintiff wants to proceed immediately on his discrimination claims against defendants De 18 Jesus, Richardson, and Schultz and his retaliation claims against Hayden and Crawford 19 without amending the complaint. Plaintiff understands that by choosing this option his 20 due process claims against all defendants; all claims against defendant Pursey; the 21 discrimination claims against defendant Crawford, Pursey, and Hayden; and the retaliation 22 claims against De Jesus, Richardson, Pursey, and Schultz will be voluntarily dismissed 23 without prejudice pursuant to Federal Rule of Civil Procedure 41(a). 24 \_\_\_\_\_ Plaintiff wants time to file an amended complaint. 25

26 DATED: \_\_\_\_\_

27 DUPREE LAMONT ADKINS

Plaintiff pro se 28 1 Attachment A 2 This Attachment provides, for informational purposes only, the legal standards that may 3 apply to your claims for relief. Pay particular attention to these standards if you choose to file an 4 amended complaint. 5 I. Legal Standards Governing Amended Complaints 6 If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions 7 about which he complains resulted in a deprivation of his constitutional rights. *Rizzo v. Goode*, 8 423 U.S. 362, 370-71 (1976). Also, the complaint must specifically identify how each named 9 defendant is involved. *Arnold v. Int’l Bus. Machs. Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981). 10 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or 11 connection between a defendant’s actions and the claimed deprivation. *Id.*; *Johnson v. Duffy*, 12 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, “[v]ague and conclusory allegations of official 13 participation in civil rights violations are not sufficient.” *Ivey v. Bd. of Regents*, 673 F.2d 266, 14 268 (9th Cir. 1982) (citations omitted). 15 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make 16 his amended complaint complete. See L.R. 220. This is because, as a general rule, an amended 17 complaint replaces the prior complaint. *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) (citations 18 omitted), overruled in part by *Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012). 19 Therefore, in an amended complaint, every claim and every defendant must be included. 20 II. Legal Standards Governing Substantive Claims for Relief 21 A. Equal Protection 22 The Fourteenth Amendment’s Equal Protection Clause requires the State to treat all 23 similarly situated people equally. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 24 (1985) (citation omitted). “To state a claim for violation of the Equal Protection Clause, a 25 plaintiff must show that the defendant acted with an intent or purpose to discriminate against him 26 based upon his membership in a protected class.” *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th 27 Cir. 2003) (citing *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)). Alternatively, a 28 plaintiff may state an equal protection claim if he shows similarly situated individuals were 1 intentionally treated differently without a rational relationship to a legitimate government 2 purpose. *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (citations omitted). 3 B. Retaliation 4 “Within the prison context, a viable claim of First Amendment retaliation entails five

5 basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2)  
6 because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's 7  
8 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate  
9 correctional goal." *Rhodes v. Robinson*, 408 F.3d 559 567-68 (9th Cir. 2005) (citations omitted).  
10 C. Disciplinary Due Process 10 "Prison disciplinary proceedings are not part of a criminal  
11 prosecution, and the full 11 panoply of rights due a defendant in such proceedings does not apply."  
12 *Wolff v. McDonnell*, 418 12 U.S. 539, 556 (1974). Rather, with respect to prison disciplinary  
13 proceedings that include the loss 13 of good-time credits, an inmate must receive (1) twenty-four-  
14 hour advanced written notice of the 14 charges against him, *id.* at 563-64; (2) "a written statement  
15 by the factfinders as to the evidence 15 relied on and reasons for the disciplinary action," *id.* at  
16 564 (quotation marks and citation 16 omitted); (3) an opportunity to call witnesses and present  
17 documentary evidence where doing so 17 "will not be unduly hazardous to institutional safety or  
18 correctional goals," *id.* at 566; (4) 18 assistance at the hearing if he is illiterate or if the matter is  
19 complex, *id.* at 570; and (5) a 19 sufficiently impartial fact finder, *id.* at 570-71. A finding of guilt  
20 must also be "supported by 20 some evidence in the record." *Superintendent v. Hill*, 472 U.S. 445,  
21 454 (1985). When a 21 procedural error is later corrected through administrative process and the  
22 prisoner does not 22 ultimately lose good-time credits, there is no compensable due process  
23 violation. *Frank v. Schultz*, 808 F.3d 762, 764 (9th Cir. 2015) (*per curiam*) (citations omitted).  
24 25 26 27 28