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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

J.P. PARNELL, Plaintiff-Appellant, v. CHEN, Doctor, Medical Physician; et al., Defendants-Appellees.	No. 19-16163 D.C. No. 2:16-cv-00749-JAM-AC MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted September 8, 2020**

Before: TASHIMA, SILVERMAN, and OWENS, Circuit Judges.

California state prisoner J.P. Parnell appeals pro se from the district court's judgment dismissing his action alleging deliberate indifference to serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim under 28 U.S.C. § 1915A. *Wilhelm v. Rotman*,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

680 F.3d 1113, 1118 (9th Cir. 2012). We review for an abuse of discretion a dismissal for failure to prosecute under Federal Rule of Civil Procedure 41(b). *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 890 (9th Cir. 2019). We may affirm on any basis supported by the record. *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008). We affirm.

Dismissal of Parnell's action was proper because Parnell failed to allege facts sufficient to show that defendants disregarded an excessive risk to Parnell's serious medical needs related to his feet. *See Toguchi v. Chung*, 391 F.3d 1051, 1056-60 (9th Cir. 2004) (a prison official is deliberately indifferent only if he or she knows of and disregards an excessive risk to inmate health; medical malpractice, negligence, or a difference of opinion concerning the course of treatment does not amount to deliberate indifference); *Roberts v. Spalding*, 783 F.2d 867, 870 (9th Cir. 1986) (a prisoner has no constitutional right to outside medical care to supplement the medical care provided by the prison).

To the extent Parnell challenges the processing of his grievances regarding his medical needs, the district court properly dismissed such claims because "inmates lack a separate constitutional entitlement to a specific . . . grievance procedure." *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003).

Parnell's motion for oral argument (Docket Entry Nos. 11, 13) is denied. Parnell's motion to take judicial notice (Docket Entry No. 14) is denied as

unnecessary.

AFFIRMED.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

J.P. PARNELL, Plaintiff, v. CHEN, et al., Defendants.	No. 2:16-cv-0749 JAM AC P ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 4, 2019, the magistrate judge filed findings and recommendations herein which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. ECF No. 19. Plaintiff filed untimely objections to the findings and recommendations following a request for additional time.[1]

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the

[1] Plaintiff's request fails to acknowledge that dismissal was recommended due to plaintiff's failure to file an amended complaint in response to the court's order filed November 5, 2018, ECF No. 10, despite numerous prior extensions of time, see ECF Nos. 14, 16, 18; the last order informed plaintiff that no further extensions of time would be granted.

court finds the findings and recommendations to be supported by the record and by proper analysis. Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's request for extended time, ECF No. 20, is granted nunc pro tunc;

2. The findings and recommendations filed April 4, 9019, ECF No. 19, are adopted in full; and

3. This action is dismissed without prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

DATED: May 17, 2019

/s/ John A. Mendez

UNITED STATES DISTRICT COURT JUDGE

NOT FOR PUBLICATION

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

J.P. PARNELL, Plaintiff-Appellant, v. A. MARTINEZ; et al., Defendants-Appellees.	No. 19-16393 D.C. No. 2:16-cv-01556-MCE-CKD MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

Submitted September 8, 2020**

Before: TASHIMA, SILVERMAN, and OWENS, Circuit Judges.

California state prisoner J.P. Parnell appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging various constitutional claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Wilhelm v. Rotman*, 680 F.3d 1113, 1118 (9th

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** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Cir. 2012). We affirm.

The district court properly dismissed Parnell's due process claim challenging his raised classification level following his failure to submit to a urinalysis because Parnell failed to allege facts sufficient to demonstrate that his raised classification level presented an "atypical and significant hardship . . . in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995); *Myron v. Terhune*, 476 F.3d 716, 718 (9th Cir. 2007) (concluding that prison regulations governing inmate's classification did not create a liberty interest because inmate failed to show that his raised classification level presented an "atypical and significant hardship" or would "invariably affect the duration of his sentence" (citations and quotation marks omitted)).

The district court properly dismissed Parnell's due process claim challenging his disciplinary hearing following his failure to submit to a urinalysis because Parnell failed to allege facts sufficient to demonstrate that he was not afforded all the process that was due. *See Wolff v. McDonnell*, 418 U.S. 539, 563-67 (1974) (to satisfy due process, prison officials must provide an inmate advance written notice of the violation, a written statement as to the evidence relied upon and the reasons for the disciplinary action taken, and a limited right to call witnesses and present documentary evidence); *see also Superintendent v. Hill*, 472 U.S. 445, 455 (1985) ("[T]he requirements of due process are satisfied if some evidence supports the

[disciplinary] decision . . . . ").

The district court properly dismissed Parnell's due process claim challenging defendants' responses to his grievances because Parnell "lack[s] a separate constitutional entitlement to a specific prison grievance procedure." *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003).

The district court properly dismissed Parnell's claims challenging defendants' alleged failure to comply with prison regulations because failure to follow "state departmental regulations do[es] not establish a federal constitutional violation." *Cousins v. Lockyer*, 568 F.3d 1063, 1070 (9th Cir. 2009).

The district court properly dismissed Parnell's equal protection, cruel and unusual punishment, and retaliation claims because Parnell failed to allege facts sufficient to state a plausible claim. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are to be construed liberally, a plaintiff must present factual allegations sufficient to state a plausible claim for relief); *see also Hartmann v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1123 (9th Cir. 2013) (elements of a § 1983 equal protection claim); *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (elements of a retaliation claim in the prison context); *Schwenk v. Hartford*, 204 F.3d 1187, 1196 (9th Cir. 2000) (an Eighth Amendment cruel and unusual punishment claim requires punishment which is "offensive to human dignity" (citation omitted)).

Contrary to Parnell's contentions, he suffered no prejudice from the district court's failure to rule on his motions for judicial notice or for reconsideration.

Parnell's motion for a temporary restraining order (Docket Entry No. 12) is denied.

AFFIRMED.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

J.P. PARNELL,

Plaintiff,

v.

A. MARTINEZ, et al.,

Defendants.

No. 2:16-cv-1556 MCE CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se. The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

The court screened plaintiff's original complaint on November 23, 2016. ECF No. 7. The court found that the original complaint failed to state a claim upon which relief could be granted. The court did, however, grant leave to amend and provided plaintiff with the following advice as to the contents of his amended complaint:

> Any challenge to prisoner disciplinary proceedings which resulted in the revocation of good conduct sentence credit must be brought in a petition for writ of habeas corpus and not a 42 U.S.C. § 1983 action

> unless the revoked sentence credit has been restored. See Edwards v. Balisok, 520 U.S. 641, 646-47 (1996).
>
> Forcing prisoners to submit to urine testing for drugs generally does not violate the Fourth Amendment. See Thompson v. Souza, 111 F.3d 694, 701-702 (9th Cir. 1997).
>
> In order to state a cognizable claim for violation of due process with respect to prison conditions, plaintiff must allege facts which suggest he was deprived of a protected liberty interest. Such liberty interests are "generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, [citations omitted], nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Connor, 515 U.S. 472, 484 (1995).
>
> Prison officials generally cannot retaliate against inmates for exercising First Amendment rights. Rizzo v. Dawson, 778 F.2d 527, 531 (9th Cir. 1985). Because a prisoner's First Amendment rights are necessarily curtailed, however, a successful retaliation claim requires a finding that "the prison authorities' retaliatory action did not advance legitimate goals of the correctional institution or was not tailored narrowly enough to achieve such goals." Id. at 532. The plaintiff bears the burden of pleading and proving the absence of legitimate correctional goals for the conduct of which he complains. Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995).
>
> Prisoners do not have a constitutional right to a prison grievance procedure. Ramirez v. Galazza, 334 F.3d 850, 860 (9th Cir. 2003).

Plaintiff filed his amended complaint on March 6, 2017 (ECF No. 16) which the court screened on July 27, 2017 (ECF No. 20). The court found as follows:

> The court has reviewed the amended complaint and finds that it also fails to state a claim upon which relief can be granted for essentially the same reasons as the original.
>
> Good cause appearing, plaintiff will be given one final opportunity to cure the defects in his pleadings. Plaintiff should review the court's November 23, 2016 order, and the legal principles identified therein, in determining whether he should file a second amended complaint. If he elects to do so, he must adhere to all instructions given in the order. Plaintiff is further advised as follows:
>
> 1. In order to state a claim for First Amendment retaliation, plaintiff must allege facts showing a causal connection between protected conduct and adverse action. See Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012).
>
> 2. The Eighth Amendment provides protection against "cruel and unusual punishment." With respect to conditions of confinement, only "extreme deprivations" amount to cruel and unusual

punishment, not "routine discomfort." Hudson v. McMillian, 503 U.S. 1, 8-9 (1992).

3. Plaintiff's second amended complaint cannot exceed 20 pages.

Plaintiff's second amended complaint is now before the court for screening. First, the second amended complaint, excluding exhibits, is 50 pages. On March 22, 2018, plaintiff filed a motion for leave to exceed the 20-page limitation established in the court's July 27, 2017 order due to limitations of his typewriter. The motion will be denied as is clear that the second amended complaint would well exceed the page limitation even with standard margins and font size.

In any case, the second amended complaint again fails to state a claim upon which relief can be granted. As with his prior complaints, plaintiff complains about classification levels and housing assignments without pointing to any facts suggesting any condition to which he has been subjected amounts to a violation of the Constitution, e.g. "cruel and unusual punishment" or "atypical and significant hardship." Also, plaintiff asserts these conditions are the result of retaliation. But plaintiff fails to point to facts which reasonably suggest that adverse action was taken against plaintiff by a defendant simply because plaintiff engaged in activities protected under the First Amendment (like submitting complaints through the inmate grievance process).

For these reasons, the court will recommend that plaintiff's second amended complaint be dismissed. Leave to amend a third time should not be granted at this point as that appears futile.

In accordance with the above, IT IS HEREBY RECOMMENDED that:

1. Plaintiff's motion for leave to exceed the 20-page limitation imposed upon plaintiff's second amended complaint be denied.

2. Plaintiff's second amended compliant be dismissed without leave to amend; and

3. This case be closed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and

Recommendations." Plaintiff is advised that failure to file objections within the specified time waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: September 19, 2018

CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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