(PC) Cruz v. Savoie

2023 | Cited 0 times | E.D. California | April 14, 2023

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,

Plaintiff, v. S. SAVOIE, et al.,

Defendants.

Case No. 1:19-cv-01024-ADA-HBK (PC) FINDINGS AND RECOMMENDATIONS TO DISMISS CASE 1 (Doc. No. 34) FOURTEEN-DAY OBJECTION PERIOD

Pending before the Court for screening under 28 U.S.C. § 1915A is the first amended pro se civil rights complaint filed under 42 U.S.C. § 1983 by Plaintiff Guillermo Trujillo Cruz a prisoner. (Doc. No. 34 F). For the reasons set forth below, the undersigned recommends the district court dismiss the FAC because it fails to state a claim.

SCREENING REQUIREMENT Plaintiff commenced this action while in prison and is subject to the Prison Litigation inter alia, the court to screen any complaint that seeks relief against a governmental entity, its officers, or its employees before directing service upon any defendant. 28 U.S.C. § 1915A. This requires the Court to identify any cognizable claims and dismiss the complaint, or any portion, if is frivolous or malicious, that fails to state a claim upon 1 This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022). which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915A(b)(1), (2).

At the screening stage, the Court accepts the factual allegations in the complaint as true, cons Jenkins v. McKeithen, 395 U.S. 411, 421 (1969); Bernhardt v. L.A. County, 339 F.3d 920, 925 (9th Cir. 2003). A court does not have to accept as true conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). Critical to evaluating a constitutional claim is whether it has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

plain statement of the claim showing the pleader is entitled to relief . . . Nonetheless, a claim must be facially plausible to survive screening. This requires sufficient

factual detail to allow the court to reasonably infer that each named defendant is liable for the misconduct alleged. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969. Although detailed factual allegations are not d by mere conclusory Iqbal Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

Finally, the Rules permit a complaint to include all related claims against a party and

stion of law or fact common to all Rules do not permit conglomeration of unrelated claims against unrelated defendants in a single

lawsuit. Unrelated claims must be filed in separate lawsuits.

If an otherwise deficient pleading could be cured by the allegation of other facts, the pro se litigant is entitled to an opportunity to amend their complaint before dismissal of the action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc); Lucas v. Department of Corr., 66 F.3d 245, 248 (9th Cir. 1995). However, it is not the role of the Court to advise a pro se le as Pliler v. Ford, 542 U.S. 225, 231 (2004); see also Lopez, 203 F.3d at 1131 n.13.

SUMMARY OF OPERATIVE PLEADING Plaintiff initiated this action by filing a complaint. (Doc. No. 1). The undersigned itial complaint and found that he failed to state any claim. (Doc. No. 32). Plaintiff timely filed a FAC (Doc. No. 34).

While incarcerated at Kern Plaintiff states he was subject to a false Rule Violation Report of filed on April 27, 2016 by Correctional Officer S. Savoie, who was retaliating against Plaintiff for filing his own sexual harassment grievance against her that same month. (Doc. No. 34 at 3-4). Nearly three years later, on February 6, 2019, Plaintiff was transferred to North Kern for Id. at 2). Plaintiff asserts the transfer was pretextual and part of a conspiracy to have Plaintiff Savoie]. (Id. at 2). Plaintiff states that he learned of this conspiracy from transportation officers

at PBSP, who advised him that Defendant Savoie conspired with unspecified coworkers at KVSP and release and receiving officers at PBSP to arrange the transfer and then have him assaulted in retaliation for his earlier grievance. (Id.).

Four months after the transfer, on June 27, 2019, Plaintiff was

Plaintiff claims the false fabricated rules violation report authored by S. (Id. at 3). The unnamed assailants punched Plaintiff with their fists, and after he fell to the ground to protect himself [d] to punch . . . . and kick [Plaintiff] while on the Id. at 4). Plaintiff suffered swelling, redness, and bruising

to his left ear, redness and bruising to the front and back of the left shoulder and a Id.).

Plaintiff alleges that Savoie violated his constitutional rights by using excessive force, by failing to protect him from assaults by the NKSP inmates, and by filing a false RVR against Plaintiff and not arranging a new hearing where he could be exonerated of the grievance or [sic] the grievance from prison records. (Id. at 5-6).

As relief, Plaintiff seeks a declaration that his constitutional rights were violated, an

fabricated rule $250,000, punitive damages of $250,000, a jury trial, recovery of costs, and any additional relief the court deems just and proper. (Id. at 7).

APPLICABLE LAW AND ANALYSIS A. Rule 8 R 8(d)(1). To ensure compliance with Rule 8, courts of the Eastern District of California generally

limit complaints to twenty-five pages. See Lal v. United States, 2022 WL 37019, at *2 (E.D. Cal. Jan. 3, 2022); Williams v. Corcoran State Prison, 2022 WL 1093976, at *1 (E.D. Cal. Apr. 12, 2022). The page limit includes the complaint itself and any exhibits, for a total of twenty-five pages. See Rivas v. Padilla, 2022 WL 675704, at *2 (E.D. Cal. Mar. 7, 2022). Skinner v. Lee, 2021 U.S. Dist. LEXIS 251321, 2021 WL 6617390, *2-*3 (C. D. Cal. May 20,

2021) (citing Cafasso v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1059 (9th Cir. 2011). A district court has the power to dismiss a complaint when a plaintiff fails to comply with Rules pleading directives. McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir. 1996); Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981). When the factual elements of a cause of action are not organized into a short and plain statement for each particular claim, a dismissal for failure to satisfy Rule 8(a) is appropriate. Sparling v. Hoffman Constr. Co., 864 F.2d 635, 640 (9th Cir. 1988); see also Nevijel, 651 F.2d at 674. Under Rule 8, allegations of facts that are extraneous and not part of the factual basis for the particular constitutional claim are not permitted. See Knapp v. Hogan, 738 F.3d 1106, 1109 (9th Cir. 2013) (recognizing that Rule 8 can be violated when the plaintiff provides too much information). As an initial matter, and as FAC fails to comply with Rule 8 due to its failure to state short and plain statements.

As stated supra, the FAC is 146 pages of which 139 pages are exhibits. The attachment of excessive and unnecessary exhibits may be grounds for dismissal. WebQuest.com, Inc. v. Hayward Industries, Inc., Case No. 1:10-cv-00306-OWW-JLT, 2010 WL 4630230 (E.D. Cal. Nov. 8, 2010) (citing Hatch v. Reliance Ins. Co., 758 F.2d 409, 415 (9th Cir. 1985) (noting the district court did not abuse discretion in dismissing complaint that included over 70 pages of exhibits relying on Fed. R. Civ. P. 8). Although documentary evidence may be incorporated into a pleading under Rule 10, exhibits containing largely evidentiary material typically do not fall under Rule 10. Id. (citing United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003)). Further,

See North v. Mirra, Case No. C13-6090- BHS, 2014 WL 345303 * 2 (W.D. Wash. Jan. 30, 2014); see also Fairfield v. Khoo, 1:19-cv- 00632-DAD-HBK, 2021 WL 1178261, *1-*2 (E.D. Cal. March 29, 2021) (granting motion to strike unrelated exhibits in response to motion for summary judgment).

The Court will therefore seven-page FAC but is not required to review the voluminous attached exhibits. The Court makes only limited reference to those materials in

B. Duplicative Claims Duplicative lawsuits filed by a plaintiff proceeding in forma pauperis are subject to dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e). See, e.g., Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); McWilliams v. State of Colo., 121 F.3d 573, 574 (10th Cir. 1997); Pittman v. Moore, 980 F.2d 994, 994 95 (5th Cir. 1993); Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988). A complaint that merely repeats pending or previously litigated claims may be considered abusive and dismissed under § 1915. Cato, 70 F.3d at 1105 n.2; Bailey stay or the enjoinment of proceedings, promotes judicial economy and the comprehensive

., 487 F.3d 684, 692 93 (9th Cir. 2007), overruled on other grounds by Taylor v. Sturgell, 553 U.S. 880, 904 (2008).

the causes o Adams

separate actions involving the same subject matter at the same time in the same court and against Id. at 688 (internal quotations and citations omitted). If the causes of action and relief sought are the same and involve the same parties or their privies, the duplicative lawsuit may be dismissed with prejudice. Adams v. California Dept. of Health Services, 487 F.3d 684, 688 (9th Cir. 2007), overruled on other grounds by Taylor v. Sturgel, 553 U.S. 880, 128 S.Ct. 2161) (2008).

Plaintiff previously filed a 42 U.S.C. § 1983 complaint in this Court against Defendant Savoie, alleging that she sexually harassed him on multiple occasions, and that after he filed a grievance against her, Savoie filed a false RVR against him alleging overfamiliarity with staff. See Am. Compl. filed May 21, 2018, Doc. No. 11 at 3-4, in E.D. Cal. Civil Case No. 17cv1474- DAD-BAM. The amended complaint in that case contains some additional allegations against Savoie, but otherwise mirrors the same dates and details as in the present Complaint. (Id. at 3-5). The remedies sought in both cases are largely the same injunctive relief against Defendant Savoie, compensatory and punitive damages, jury trial, and cost of suit. (Id. at 6). In comparing the two matters, it appears Plaintiff is repeating claims that were previously litigated; such claims may be considered abusive and dismissed under § 1915. Cato, 70 F.3d at 1105 n.2; Bailey, 846 F.2d at 1021. against Defendant Savoie is barred as duplicative.

C. Excessive Force

Amendment right to be free from cruel and unusual punishment. Farmer v. Brennan, 511 U.S. er

prison officials stand accused of using excessive physical force in violation of the [Eighth Amendment], the core judicial inquiry is . . . whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadisticalHudson v. McMillian, 503 U.S. 1, 6- of injury suffered by an inmate . . . the need for application of force, the relationship between that need a Id. at 7 (quoting Whitley v. Albers, 475 U.S. 312, 321 (1986)). While de minimis uses of physical force generally do not implicate the Eighth Amendment, significant injury need not be evident in the context of an

cause harm, contemporary standards Hudson, 503 U.S. at 9.

not viola There are no facts indicating that Defendant Savoie used any force on Plaintiff, much less excessive force in violation of the Eighth Amendment. Liberally construed, Plaintiff appears to imply that

assault on Plaintiff at NKSP three years later, and possibly others. (Id. at 3-4). To state a claim under § 1983, a plaintiff must show that a defendant acting under color of state law caused an alleged deprivation of a right secured by federal law. See 42 U.S.C. § 1983; Soo Park v. Thompson, 851 F.3d 910, 921 (9th Cir. 2017). The plaintiff can satisfy the causation requirement by sho

deprivation. See King v. Cty. of Los Angeles, 885 F.3d 548, 559 (9th Cir. 2018).

different CDCR facility than the one where Defendant works. facts from which the Court can infer a causal connection b in authoring a RVR on April 27, 2016, and the altercation that occurred on June 27, 2019, over three years later, at a different institution. Indeed, the FAC does not identify who attacked Plaintiff. Nor does the FAC contain any facts that Defendant Savoie had any reason to believe the issuance of her RVR in April 2016 would result in a future attack on Plaintiff, yet alone an attack in June 2019 at a different institution. Therefore, the FAC fails to state an Eighth Amendment excessive force claim against Defendant Savoie.

D. Failure to Protect

Cortes Quinones v. Jimenez Nettleship, 842 F.2d 556, 558 (internal quotation marks and citation omitted), cert. denied, 488 U.S. 823 (1988); see also Wilson v. Seiter, 501 U.S. 294,

injury suffered by one prisoner at the hands of another that translates into constitutional liability Farmer v. Brennan, 511 U.S. 825, 834 (1994). A prison official violates the Eighth Amendment only when two requirements are met. Wilson, 501 U.S., at Farmer, 511 U.S. at 834. In prison-conditions cases that inmate health or safety, Wilson, 501 U.S. at 302 303; see also Helling v. McKinney, 509 U.S. 25, 34 35; Hudson v. McMillian, 503 U.S. 1, 5 (1992); Estelle v. Gamble, 429 U.S. 97, 106 (1976).

Plaintiff as

filing the false RVR in April 2016. (Doc. No. 34 at 4-5). Again, the Complaint is devoid of facts indicating that Defendant knew about the June 27, 2019 assault at NKSP, nor that she was in a position to protect Plaintiff from it. See Haggerty v. Lynch, 2022 WL 4473388, at *2 (E.D. Cal. Sept. 26, 2022) (Finding no failure to protect officers were going to stage a fight between plaintiff and the other inmate or that they were . It is uncontested that Defendant works at KVSP, not NKSP where the assault occurred. The Complaint therefore lacks any facts showing that Defendant knew of and was deliberately indifferent to a serious risk to Plaintiff in violation of the Eighth Amendment. See, e.g., Lemire v. California Dep't of Corr. & Rehab., 726 F.3d 1062, 1080 (9th Cir. 2013) (finding summary judgment for correctional officer on a failure to protect claim because she staffed a different building at the facility than where the incident occurred).

In fact, an exhibit attached to the FAC knowledge of, condoned, or planned the June 27, 2019 assault. In a report documenting the incident prepared by a Correctional Sergeant Huerta, the two other inmates involved were identified as FNU Fernandez and FNU Gutierrez. (Doc. No. 34 at 46). According to the report, ted he had no safety

(Id.). The officer who prepared the report also interviewed inmates Fernandez and Gutierrez, who confirmed the incident was based on a misunderstanding Id.). This report suggests the incident was the result of an ordinary prison yard disagreement, rather than an attack planned in coordination with Defendant, and from which she failed to protect Plaintiff. 2

Because the FAC contradicts Plaintiff statement to Sergeant Huerta that Defendant Savoir knew of and/or orchestrated the attack or otherwise failed to protect him, The FAC fails to state an Eighth Amendment failure to protect claim.

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2 The Court may disregard allegations contradicted by facts established in exhibits to the Complaint. See Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2011) (a plaintiff may plead himself out of a claim by including . . . details contrary to his claims); see also Cooper v. Yates, No. 1:09-cv-85-AWI- MJS, 2010 WL 4924748, *3 (E.D. Cal. Nov. 29, 2010) (courts may disregard factual allegations contradicted by facts established by reference to exhibits attached to the complaint). Plaintiff has not stated a claim that he was denied access to the law library.

D. False Rule Violation Report The filing of a false disciplinary report by a prison official against a prisoner is not a per se violation of tutional rights. See Muhammad v. Rubia, 2010 WL 1260425,

being falsely or wrongly accused of conduct which may result in the deprivation of a protected liberty interest. As long as a prisoner is afforded procedural due process in the disciplinary hearing, allegations of a fabricated charge fail to state a c) (internal citation omitted)), Harper v. Costa, 2009 WL 1684599, at *2-3 [D]istrict courts throughout California . . . have determined that a

state a cognizable claim for reli 393 F. Ap Thus, even assuming that the disciplinary report filed by Defendant Savoie against Plaintiff was false, it does not state a standalone constitutional claim. Canovas v. California Dept. of Corrections, 2014 WL 5699750, n.2 (E.D. Cal. 2014). Accordingly Plaintiff fails to state a due process claim against Defendant Savoie.

E. Conspiracy A civil conspiracy is a combination of two or more persons who, by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another, which results in damage. Gilbrook v. City of Westminster, 177 F.3d 839, 856 (9th Cir. 1999). To prove a civil conspiracy, the plaintiff must show that the conspiring parties reached a unity of purpose or common design and understanding, or a meeting of the minds in an unlawful agreement. Id. To be liable, each participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy. Id. A defendant s knowledge of and participation in a conspiracy may be inferred from circumstantial evidence and from evidence of the defendant s actions. Id. at 856 57.

Conclusory allegations of conspiracy are not enough to support a § 1983 conspiracy claim. Burns v. County of King, 883 F.2d 819, 821 (9th Cir. 1989) (per curiam). Although an ate [the plaintiff s] constitutional rights must be Woodrum v. Woodward County, of improper motive or an agreement to violate a plaintiff s constitutional rights will only rarely be

available. Instead, it will almost always be necessary to infer such agreements from Mendocino Environmental Center v. Mendocino County, vert, and may be inferred on the basis of circumstantial evidence such as the actions of the Id. at 1301. alleging either direct or circumstantial evidence of an agreement or meeting of minds between Savoie and any other individuals to commit harm against Plaintiff. Plaintiff does not name a single individual with whom Savoie allegedly conspired nor describe any evidence of an alleged agreement. He claims to have learned of a conspiracy between Savoie, unspecified KVSP coworkers, and unspecified release and receiving officers at PBSP. (Doc. No. 34 at 2). This conclusion is based on statements of unnamed transportation officers at PBSP and is devoid of any further factual enhancement. Although detai Iqbal, 556 U.S. at 678.

Furthermore, as noted above, the report documenting the June 27, 2019 incident indicates admitted he did not have any ongoing concern about his safety due to inmates Fernandez and Gutierrez. (Doc. No. 34 at 46). This report therefore contradicts a conspiracy and that he continues to fear reprisals from Defendant Savoie and her associates; instead, it suggests that the June 27, 2019 incident was the result of an ordinary prison yard disagreement. Because the FAC is devoid of facts establishing the elements of a conspiracy among Savoie and various prison officials, this allegation fails to state a claim.

FINDINGS AND RECOMMENDATIONS Based on the a against Defendant Savoie screening order, Plaintiff failed to cure any of the identified deficiencies but instead filed a FAC that is very similar to his initial complaint. The undersigned warned Plaintiff that his complaint lacked facts sufficient to

sustain his claims. (See Doc. No. 32 at 5-7). Despite guidance from the Court, Plaintiff still was unable to state claims for excessive force, failure to protect, or conspiracy. Plaintiff was likewise advised that the filing of a false disciplinary report against a prisoner is not a per se constitutional violation. (Id. at 5 expl same claims demonstrates that he cannot cure the deficiencies identified above with a second amended complaint and is evidence of bad faith. Thus, the undersigned recommends the district court dismiss the FAC without further leave to amend. McKinney v. Baca, 250 F. App x 781 (9th Cir. 2007) citing Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir.1992) (noting discretion to deny leave to amend is particularly broad where court has afforded plaintiff one or more opportunities to amend his complaint).

Accordingly, it is RECOMMENDED: The FAC be dismissed under § 1915A for failure to state a claim.

NOTICE TO PARTIES These findings and recommendations will be submitted to the United States district judge assigned to the case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, a party may file written objections with specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,

838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). Dated: April 14, 2023

HELENA M. BARCH-KUCHTA UNITED STATES MAGISTRATE JUDGE