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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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10 JUAN ANTONIO FALCON,

11 Plaintiff,

12 vs.

13 M. R. PHILLIPS,

14 Defendant.

1:10-cv-02262-GSA-PC

ORDER DISMISSING ACTION FOR  
FAILURE TO STATE A CLAIM UPON  
WHICH RELIEF MAY BE GRANTED  
UNDER SECTION 1983  
(Doc. 9.)

ORDER THAT THIS DISMISSAL IS  
SUBJECT TO THE "THREE-STRIKES"  
PROVISION OF 28 U.S.C. § 1915(g)

ORDER DIRECTING CLERK TO  
CLOSE CASE

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18 **I. BACKGROUND**

19 Juan Antonio Falcon ("Plaintiff") is a state prisoner proceeding pro se and in forma  
20 pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint  
21 commencing this action on December 6, 2010. (Doc. 1.) On December 16, 2010, Plaintiff  
22 consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c), and no  
23 other parties have made an appearance. (Doc. 5.) Therefore, pursuant to Appendix A(k)(4) of  
24 the Local Rules of the Eastern District of California, the undersigned shall conduct any and all  
25 proceedings in the case until such time as reassignment to a District Judge is required. Local  
26 Rule Appendix A(k)(3).

27 The court screened the initial Complaint pursuant to 28 U.S.C. 1915A and entered an  
28 order on December 20, 2012, dismissing the Complaint for failure to state a claim, with leave

1 to amend. (Doc. 8.) On January 18, 2013, Plaintiff filed the First Amended Complaint, which  
2 is now before the Court for screening. (Doc. 9.)

## 3 **II. SCREENING REQUIREMENT**

4 The court is required to screen complaints brought by prisoners seeking relief against a  
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
6 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
7 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or  
8 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
9 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been  
10 paid, the court shall dismiss the case at any time if the court determines that . . . the action or  
11 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

12 A complaint is required to contain “a short and plain statement of the claim showing  
13 that the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
14 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by  
15 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct.  
16 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955  
17 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge  
18 unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)  
19 (internal quotation marks and citation omitted). Plaintiff must set forth “sufficient factual  
20 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Iqbal 556 U.S.  
21 at 678. While factual allegations are accepted as true, legal conclusions are not. Id. The mere  
22 possibility of misconduct falls short of meeting this plausibility standard. Id. at 678-79; Moss  
23 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

## 24 **III. SUMMARY OF FIRST AMENDED COMPLAINT**

25 Plaintiff is presently incarcerated at Salinas Valley State Prison in Soledad, California.  
26 The events at issue in the First Amended Complaint allegedly occurred while Plaintiff was  
27 housed at the Kern Valley State Prison in Delano, California. Plaintiff names as defendant  
28 Lieutenant M. R. Phillips. Plaintiff’s factual allegations follow.

1 On December 8, 2009, a 602 inmate appeal filed by Plaintiff was granted, allowing  
2 Plaintiff's Rules Violation Report to be re-issued and re-heard, because at the original hearing  
3 Plaintiff was denied essential witnesses. At the re-hearing, the Hearing Officer, Lieutenant M.  
4 R. Phillips, again denied Plaintiff his essential witnesses. Those witnesses were essential to  
5 Plaintiff's defense, and Plaintiff believes that he would not have been found guilty of battery at  
6 the hearing if the witnesses had been allowed. As a result of the re-hearing, Plaintiff was  
7 placed in segregated housing for something he was innocent of, and the lengthy confinement  
8 affected Plaintiff's mental state.

9 Plaintiff requests that Serious Rules Violation log# FA-09-08-006R and all related  
10 dispositions be vacated and dismissed, and requests monetary damages for mental suffering.

#### 11 **IV. PLAINTIFF'S DUE PROCESS CLAIM**

12 The Civil Rights Act under which this action was filed provides:

13 Every person who, under color of [state law] . . . subjects, or  
14 causes to be subjected, any citizen of the United States . . . to the  
15 deprivation of any rights, privileges, or immunities secured by  
16 the Constitution . . . shall be liable to the party injured in an  
17 action at law, suit in equity, or other proper proceeding for  
18 redress.

19 42 U.S.C. § 1983. "Section 1983 . . . creates a cause of action for violations of the federal  
20 Constitution and laws." Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir. 1997)  
21 (internal quotations omitted). "To the extent that the violation of a state law amounts to the  
22 deprivation of a state-created interest that reaches beyond that guaranteed by the federal  
23 Constitution, Section 1983 offers no redress." Id.

24 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted  
25 under color of state law and (2) the defendant deprived him of rights secured by the  
26 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.  
27 2006). "A person 'subjects' another to the deprivation of a constitutional right, within the  
28 meaning of section 1983, if he does an affirmative act, participates in another's affirmative acts,  
or omits to perform an act which he is legally required to do that causes the deprivation of  
which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). "The

1 requisite causal connection can be established not only by some kind of direct, personal  
2 participation in the deprivation, but also by setting in motion a series of acts by others which  
3 the actors knows or reasonably should know would cause others to inflict the constitutional  
4 injury.” Johnson at 743-44).

### 5 **Due Process**

6 The Due Process Clause protects Plaintiff against the deprivation of liberty without the  
7 procedural protections to which he is entitled under the law. Wilkinson v. Austin, 545 U.S.  
8 209, 221, 125 S.Ct. 2384 (2005). To state a claim, Plaintiff must first identify the interest at  
9 stake. Wilkinson, 545 U.S. at 221. Liberty interests may arise from the Due Process Clause or  
10 from state law. Id. The Due Process Clause itself does not confer on inmates a liberty interest  
11 in avoiding more adverse conditions of confinement, id. at 221-22 (citations and quotation  
12 marks omitted), and under state law, the existence of a liberty interest created by prison  
13 regulations is determined by focusing on the nature of the condition of confinement at issue, id.  
14 at 222-23 (citing Sandin v. Conner, 515 U.S. 472, 481-84, 115 S.Ct. 2293 (1995)) (quotation  
15 marks omitted). Liberty interests created by prison regulations are generally limited to freedom  
16 from restraint which imposes atypical and significant hardship on the inmate in relation to the  
17 ordinary incidents of prison life. Wilkinson, 545 U.S. at 221 (citing Sandin, 515 U.S. at 484)  
18 (quotation marks omitted); Myron v. Terhune, 476 F.3d 716, 718 (9th Cir. 2007).

19 “Prison disciplinary proceedings are not part of a criminal prosecution, and the full  
20 panoply of rights due a defendant in such proceedings does not apply.” Wolff v. McDonnell,  
21 418 U.S. 539, 556 (1974). With respect to prison disciplinary proceedings, the minimum  
22 procedural requirements that must be met are: (1) written notice of the charges; (2) at least 24  
23 hours between the time the prisoner receives written notice and the time of the hearing, so that  
24 the prisoner may prepare his defense; (3) a written statement by the fact finders of the evidence  
25 they rely on and reasons for taking disciplinary action; (4) the right of the prisoner to call  
26 witnesses in his defense, when permitting him to do so would not be unduly hazardous to  
27 institutional safety or correctional goals; and (5) legal assistance to the prisoner where the  
28 prisoner is illiterate or the issues presented are legally complex. Id. at 563-71. As long as the

1 five minimum Wolff requirements are met, due process has been satisfied. Walker v. Sumner,  
2 14 F.3d 1415, 1420 (9th Cir. 1994). “Some evidence” must support the decision of the hearing  
3 officer. Superintendent v. Hill, 472 U.S. 445, 455 (1985). The standard is not particularly  
4 stringent and the relevant inquiry is whether “there is *any* evidence in the record that could  
5 support the conclusion reached . . . .” Id. at 455-56 (emphasis added).

6 The Due Process Clause itself does not confer on inmates a liberty interest in being  
7 confined in the general prison population instead of administrative segregation. See Hewitt v.  
8 Helms, 459 U.S. 460, 466-68 (1983); see also May v. Baldwin, 109 F.3d 557, 565 (9th Cir.  
9 1997) (convicted inmate’s due process claim fails because he has no liberty interest in freedom  
10 from state action taken within sentence imposed and administrative segregation falls within the  
11 terms of confinement ordinarily contemplated by a sentence) (quotations omitted); Resnick v.  
12 Hayes, 213 F.3d 443, 447 (9th Cir. 2000) (plaintiff’s placement and retention in the SHU was  
13 within range of confinement normally expected by inmates in relation to ordinary incidents of  
14 prison life and, therefore, plaintiff had no protected liberty interest in being free from  
15 confinement in the SHU) (quotations omitted).

16 The Supreme Court has held that a claim challenging the procedures used in a prison  
17 disciplinary hearing is not cognizable under § 1983 if the nature of the inmate’s allegations are  
18 such that, if proven, would necessarily imply the invalidity of the result of the prison  
19 disciplinary hearing. Balisok, 520 U.S. at 644. Such a challenge is properly brought as a  
20 habeas corpus petition and not under § 1983. Heck, 512 U.S. at 487; Preiser v. Rodriguez, 411  
21 U.S. 475, 500 (1973) Such a claim will not accrue until the conviction or sentence has been  
22 invalidated.

23 In this case, Plaintiff alleges in the complaint that his disciplinary conviction was  
24 invalidated. However, Plaintiff has not alleged facts demonstrating that his placement and  
25 retention in the SHU imposed an atypical and significant hardship in relation to the ordinary  
26 incidents of prison life. Plaintiff alleges that his confinement was “lengthy” and “affected  
27 Plaintiff mentally,” but he does not describe conditions that posed an atypical and significant  
28 hardship in comparison to the conditions of prison life in general. (First Amd Cmp, Doc. 9 at 4

¶IV.) Therefore, Plaintiff fails to state a cognizable claim for violation of his rights to due process.

**V. CONCLUSION AND ORDER**

For the reasons set forth above, the court finds that Plaintiff fails to state any cognizable claims in the First Amended Complaint upon which relief may be granted under § 1983. Plaintiff was previously granted leave to amend the complaint with ample guidance by the court, and Plaintiff has now filed two complaints without stating any cognizable claims. Therefore, further leave to amend shall not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).

Based on the foregoing, it is HEREBY ORDERED that:

1. This action is DISMISSED in its entirety, with prejudice, for failure to state a claim upon which relief may be granted under § 1983;
2. This dismissal is subject to the “three-strikes” provision set forth in 28 U.S.C. § 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011); and
3. The Clerk is directed to close this case.

IT IS SO ORDERED.

Dated: October 2, 2013

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE