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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JUAN ANTONIO FALCON,)	CASE NO. 1:10-cv-02262 GSA PC
)	
Plaintiff,)	ORDER TO SHOW CAUSE WHY THIS
)	ACTION SHOULD NOT BE DISMISSED
v.)	
)	RESPONSE DUE IN THIRTY DAYS
M. R. PHILLIPS,)	
)	
Defendant.)	
	/	

Screening Order

I. Screening Requirement

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1). This action proceeds on the original complaint.

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). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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1 Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions,"
2 none of which applies to § 1983 actions. Swierkewicz v. Sorema, N.A., 534 U.S. 506 (512) (2002).
3 Pursuant to Rule 8(a), a complaint must contain "a short and plain statement of the claim showing
4 that the pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a). "Such a statement must simply give
5 defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests."
6 Swierkewicz, 534 U.S. at 512. Detailed factual allegations are not required, but "[t]hreadbare
7 recitals of the elements of the cause of action, supported by mere conclusory statements, do not
8 suffice." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009), citing Bell Atlantic Corp. v. Twombly, 550
9 U.S. 544, 555 (2007). "Plaintiff must set forth sufficient factual matter accepted as true, to 'state a
10 claim that is plausible on its face.'" Iqbal, 129 S.Ct. at 1949, quoting Twombly, 550 U.S. at 555.
11 While factual allegations are accepted as true, legal conclusions are not. Iqbal, 129 S.Ct. at 1949.

12 **II. Plaintiff's Claims**

13 Plaintiff's sole claim in this action relates to a disciplinary hearing held by Defendant
14 Lieutenant Phillips. Plaintiff's statement of claim, in its entirety, follows.

15 Plaintiff was found guilty of a serious rules violation by Lt. M. R.
16 Phillips on April 4th 2010 without being allowed to present witnesses
17 relevant to the case. Lt. M. R. Phillips was assigned as the senior
18 hearing officer during the fact finding hearing in response to
19 modification order number KVSP-0-09-01820 dated December 11th
2009 to remedy previous due process violations during a prior fact
finding hearing. Nevertheless Lt. M. R. Phillips denied plaintiff
relevant witnesses after the fact, once more.

20 (Compl. ¶ IV.)

21 In Edwards v. Balisok, 520 U.S. 641, 644 (1997), the United States Supreme Court applied
22 the doctrine articulated in Heck v. Humphrey, 512 U.S. 477, 487 (1994), to prison disciplinary
23 hearings. In Heck, the Court held that a state prisoner's claim for damages for unconstitutional
24 conviction or imprisonment is not cognizable under 42 U.S.C. § 1983 if a judgment in favor of
25 plaintiff would necessarily imply the invalidity of his conviction or sentence, unless the prisoner can
26 demonstrate that the conviction or sentence has previously been invalidated. 512 U.S. at 487. In
27 applying the principle to the facts of Balisok, the Court held that a claim challenging the procedures
28 used in a prison disciplinary hearing, even if such a claim seeks money damages and no injunctive

1 relief, is not cognizable under § 1983 if the nature of the inmate's allegations are such that, if proven,
2 would necessarily imply the invalidity of the result of the prison disciplinary hearing. 520 U.S. at
3 646. Because such a challenge, if successful, would invalidate the duration of the inmate's
4 confinement, it is properly brought as a habeas corpus petition and not under § 1983. Heck, 512 U.S.
5 at 487; Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

6 Although the specific facts of Balisok involved allegations of deceit and bias on the part of
7 a hearing officer, the Court's reasoning applies to any claim which, if proven, would have the effect
8 of invalidating the result of a disciplinary hearing. Here, Plaintiff's core factual allegation is that he
9 was denied the opportunity to call witnesses at his hearing. Because Plaintiff's claim necessarily
10 implies the invalidity of Plaintiff's continued confinement as a result of his disciplinary hearing,
11 Plaintiff's claim will not accrue until the conviction or sentence has been invalidated. Plaintiff has
12 not alleged any facts indicating that his conviction has been reversed, expunged or otherwise
13 invalidated. The complaint should therefore be dismissed.

14 **III. Conclusion and Order**

15 The Court has screened Plaintiff's complaint and finds that it does not state any claims upon
16 which relief may be granted under section 1983. Plaintiff will therefore be directed to show cause
17 why this action should not be dismissed for failure to state a claim upon which relief could be
18 granted.

19 Accordingly, based on the foregoing, it is HEREBY ORDERED that Plaintiff shall show
20 cause, within thirty days of the date of service of this order, why this action should not be dismissed
21 for failure to state a claim upon which relief could be granted. Should Plaintiff fail to file a response
22 to the order to show cause, the Court will dismiss this action for failure to state a claim upon which
23 relief could be granted.

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25
26 IT IS SO ORDERED.

27 **Dated: March 8, 2011**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE