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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOE LOUIS VALENTINE,

Plaintiff,

v.

J. YERENA,

Defendant.

CASE NO. 1:11-cv-1220-LJO-DLB PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF  
CERTAIN CLAIMS

(DOC. 1)

OBJECTIONS, IF ANY, DUE WITHIN  
FOURTEEN DAYS

**Findings And Recommendations**

**I. Background**

Plaintiff Joe Louis Valentine (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action by filing his complaint on July 25, 2011. On March 5, 2012, the Court screened Plaintiff’s complaint and found that it stated a cognizable claim against Defendant J. Yerena for retaliation in violation of the First Amendment, but failed to state any other claims. Plaintiff was provided the opportunity to file an amended complaint or to notify the Court that he is willing to proceed only on the cognizable claims found. Plaintiff filed his notice on March 16, 2012. The Court thus issues the following.

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

1 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or  
2 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
3 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been  
4 paid, the court shall dismiss the case at any time if the court determines that . . . the action or  
5 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §  
6 1915(e)(2)(B)(ii).

7 A complaint must contain “a short and plain statement of the claim showing that the  
8 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
9 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
10 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing  
11 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual  
12 matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Id.* (quoting *Twombly*,  
13 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are not. *Id.*

## 14 **II. Summary Of Complaint**

15 Plaintiff is incarcerated at Kern Valley State Prison (“KVSP”), where the events giving  
16 rise to this action occurred. Plaintiff names as Defendant J. Yerena, Jr, an Institution Gang  
17 Investigator (“IGI”).

18 Plaintiff alleges the following. On June 27, 2007, Plaintiff was transferred from general  
19 population to administrative segregation by prison officials based on Defendant Yerena’s  
20 allegation of Plaintiff’s prison gang involvement. *Id.* at 5. Seven independent source items were  
21 supposedly used to validate Plaintiff as a member of the Black Guerilla Family (“BGF”). *Id.*  
22 The validation was submitted to the Office of Correctional Safety, which approved it. *Id.*  
23 Defendant Yerena’s recommendation of validation was motivated by retaliation against Plaintiff  
24 for filing a 602 inmate grievance/complaint on August 30, 2006 against correctional officer  
25 Garcia. *Id.* at 5-5A. On September 22, 2006, Plaintiff was placed in administrative segregation  
26 (“ad seg”) and separated from Garcia. *Id.* at 5A. Plaintiff was held in ad seg from September 22,  
27 2006 to December 3, 2006 pending an investigation. During Plaintiff’s time in ad seg, Defendant  
28 Yerena informed Plaintiff that he had the ability to validate Plaintiff as a member of disruptive

1 group, but had not done so. *Id.* Defendant Yerena told Plaintiff that if he continued his  
2 complaint, Defendant Yerena would validate him. *Id.* Plaintiff made it clear that he would not  
3 drop the complaint. *Id.* After Plaintiff was released to general population on December 3, 2006,  
4 Defendant Yerena confiscated all of Plaintiff's political writings, pictures, and address lists. *Id.*  
5 Plaintiff contends that the items used to validate him should not have been relied upon as  
6 evidence of membership in a disruptive group, as they were indicative of his political beliefs, not  
7 disruptive group membership. *Id.* at 5B. Defendant Yerena stated to Plaintiff that he did not  
8 agree with Plaintiff's political beliefs, which Plaintiff contends is a reference to Plaintiff's  
9 political texts, and writings by George Jackson, an alleged founder of BGF. *Id.* at 5C-5D.  
10 Plaintiff contends that Defendant Yerena's actions were clearly motivated by Plaintiff filing a  
11 complaint and his political beliefs. *Id.* at 5D.

12 Plaintiff contends a violation of the First Amendment, the Eighth Amendment, and the  
13 Due Process Clause of the Fourteenth Amendment. Plaintiff requests as relief compensatory and  
14 punitive damages, and costs of suit.

### 15 **III. Analysis**

#### 16 **A. First Amendment**

17 Retaliation against a prisoner's First Amendment rights to speech or to petition the  
18 government may support a § 1983 claim. *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir. 1985);  
19 *see also Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989); *Pratt v. Rowland*, 65 F.3d  
20 802, 807 (9th Cir. 1995). "Within the prison context, a viable claim of First Amendment  
21 retaliation entails five basic elements: (1) An assertion that a state actor took some adverse  
22 action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action  
23 (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not  
24 reasonably advance a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-68  
25 (9th Cir. 2005). Abuse of the gang validation process is a sufficient adverse action. *Bruce v.*  
26 *Ylst*, 351 F.3d 1283, 1289 (9th Cir. 2003).

27 Plaintiff state a cognizable retaliation claim against Defendant Yerena. Plaintiff alleges  
28 that Defendant Yerena submitted a gang validation for Plaintiff because Plaintiff had filed an

1 inmate grievance against another correctional officer, and for his political beliefs.

2 **B. Eighth Amendment**

3 The Eighth Amendment protects prisoners from inhumane methods of punishment and  
4 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.  
5 2006). Extreme deprivations are required to make out a conditions of confinement claim, and  
6 only those deprivations denying the minimal civilized measure of life’s necessities are  
7 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,  
8 503 U.S. 1, 9 (1992) (citations and quotations omitted). In order to state a claim for violation of  
9 the Eighth Amendment, Plaintiff must allege facts sufficient to support a claim that officials  
10 knew of and disregarded a substantial risk of serious harm to him. *E.g., Farmer v. Brennan*, 511  
11 U.S. 825, 837 (1994); *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998). Mere negligence on  
12 the part of the official is not sufficient to establish liability, but rather, the official’s conduct must  
13 have been wanton. *Farmer*, 511 U.S. at 835; *Frost*, 152 F.3d at 1128.

14 Plaintiff fails to state a claim for violation of the Eighth Amendment, as Plaintiff has  
15 failed to allege a serious harm, or that Defendant knew of and disregarded an excessive risk of  
16 serious harm to Plaintiff.

17 **C. Due Process**

18 The Due Process Clause protects prisoners from being deprived of liberty without due  
19 process of law. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). In order to state a cause of  
20 action for deprivation of procedural due process, a plaintiff must first establish the existence of a  
21 liberty interest for which the protection is sought. *Id.* Liberty interests may arise from the Due  
22 Process Clause itself or from state law. *Hewitt v. Helms*, 459 U.S. 460, 466-68 (1983). The Due  
23 Process Clause itself does not confer on inmates a liberty interest in being confined in the general  
24 prison population instead of administrative segregation. *See id.* With respect to liberty interests  
25 arising from state law, the existence of a liberty interest created by prison regulations is  
26 determined by focusing on the nature of the deprivation. *Sandin v. Conner*, 515 U.S. 472, 481-  
27 84 (1995). Liberty interests created by prison regulations are limited to freedom from restraint  
28 which “imposes atypical and significant hardship on the inmate in relation to the ordinary

1 incidents of prison life.” *Id.* at 484. Plaintiff has not sufficiently alleged a liberty interest  
2 regarding confinement in the SHU.

3           Even assuming Plaintiff had alleged a liberty interest, Plaintiff has not stated a due  
4 process claim. Placement in administrative segregation, or the SHU if done for administrative  
5 rather than disciplinary purposes, requires notice to the prisoner, an opportunity for the prisoner  
6 to submit information, and non-adversarial review of the information supporting placement.  
7 *Toussaint v. McCarthy*, 801 F.2d 1080, 1100 (9th Cir. 1986). A prison gang validation  
8 proceeding is subject to the “some evidence” standard where it is an administrative strategy  
9 rather than a disciplinary action. *Bruce v. Ylst*, 351 F.3d 1283, 1287-88 (9th Cir. 2003) (citing  
10 *Superintendent v. Hill*, 472 U.S. 445, 455 (1985)). Under *Hill*, there is no independent  
11 assessment of witness credibility or reweighing of evidence; rather “the relevant question is  
12 whether there is any evidence in the record that could support the conclusion.” *Hill*, 472 U.S. at  
13 455-56. Here, there is “some evidence” that supports the gang validation of Plaintiff. The Court  
14 notes that for purposes of retaliation, the “some evidence” standard is inapplicable. *Bruce*, 351  
15 F.3d at 1289.

#### 16 **IV. Conclusion**

17           Plaintiff states a cognizable First Amendment claim against Defendant Yerena for  
18 retaliation. Plaintiff does not state any other claims. Plaintiff was provided the opportunity to  
19 file an amended complaint to cure the deficiencies identified. Plaintiff notified the Court that he  
20 wished to proceed only on the retaliation claim.

21           Accordingly, based on the foregoing, it is HEREBY RECOMMENDED that:

- 22           1.       This action proceed against Defendant J. Yerena for retaliation in violation of the  
23                   First Amendment; and
- 24           2.       All other claims be dismissed from this action for failure to state a claim.

25           These Findings and Recommendations will be submitted to the United States District  
26 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen**  
27 **(14) days** after being served with these Findings and Recommendations, the parties may file  
28 written objections with the Court. The document should be captioned “Objections to Magistrate

1 Judge's Findings and Recommendations." The parties are advised that failure to file objections  
2 within the specified time may waive the right to appeal the District Court's order. *Martinez v.*  
3 *Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

4 IT IS SO ORDERED.

5 **Dated: April 27, 2012**

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE

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