

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

8 A complaint must contain “a short and plain statement of the claim showing that the
9 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
10 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
11 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing
12 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient
13 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” Iqbal, 556
14 U.S. at 678 (quoting Twombly, 550 U.S. at 555). Facial plausibility demands more than the
15 mere possibility that a defendant committed misconduct and, while factual allegations are
16 accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 678.

16 **II. PLAINTIFF’S CLAIMS**

17 Plaintiff is incarcerated at Kern Valley State Prison. The events alleged in his First
18 Amended Complaint appear to have occurred at Wasco State Prison. The pleading is
19 difficult to decipher. It suggests that Plaintiff wants to allege that the following individuals
20 violated his Fourteenth Amendment equal protection rights: 1) Unit-Supervisor, 2) blond,
21 white correctional officer, 3) warden at Wasco State Prison, 4) County of Kern, City of
22 Bakersfield, and 5) City of Wasco.

23 Plaintiff’s allegations are summarized, as well as the Court can, as follows:

24 While Plaintiff was incarcerated at Wasco State Prison, a fight occurred between two
25 inmates and several rounds of ammunition were fired. Even though Plaintiff was not involved
26 in the fight, he was shot and injured. Defendants discriminated against Plaintiff by shooting
27 and injuring him.

28 Plaintiff asks for \$425,000 in damages.

1 **III. ANALYSIS**

2 **A. 42 U.S.C. § 1983 Claims**

3 42 U.S.C. § 1983 “provides a cause of action for the ‘deprivation of any rights,
4 privileges, or immunities secured by the Constitution and laws’ of the United States.” Wilder
5 v. Virginia Hosp. Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). § 1983 is not
6 itself a source of substantive rights, but merely provides a method for vindicating federal
7 rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

8 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
9 right secured by the Constitution or laws of the United States was violated, and (2) that the
10 alleged violation was committed by a person acting under the color of state law. See West v.
11 Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir.
12 1987).

13 **B. Fourteenth Amendment – Equal Protection**

14 The Equal Protection Clause “is essentially a direction that all persons similarly
15 situated should be treated alike.” City of Cleburne v. Cleburne Living Center, 473 U.S. 432,
16 439 (1985). “Prisoners are protected under the Equal Protection Clause of the Fourteenth
17 Amendment from invidious discrimination based on race.” Wolff v. McDonnell, 418 U.S. 539,
18 556 (1974). An equal protection claim may be established in two ways. The first method
19 requires a plaintiff to show that the defendant has intentionally discriminated against the
20 plaintiff on the basis of the plaintiff’s membership in a protected class. See, e.g., Lee v. City
21 of Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001). Under this theory of equal protection, the
22 plaintiff must show that the defendant’s actions were a result of the plaintiff’s membership in
23 a suspect class, such as race, religion, or alienage. Thornton v. City of St. Helens, 425 F.3d
24 1158, 1167 (9th Cir. 2005).

25 Plaintiff previously was advised of the deficiencies in his Complaint and what would be
26 necessary to correct them. He has not done so. He has failed to follow the Court’s
27 directions. He still does not allege that he was part of a protected class or that any
28 Defendants’ actions were a result of Plaintiff’s membership in a suspect class. Plaintiff has
failed to state an equal protection claim.

1 If the action does not involve a suspect classification, a plaintiff may establish an
2 equal protection claim by showing that similarly situated individuals were intentionally treated
3 differently without a rational relationship to a legitimate state purpose. Village of Willowbrook
4 v. Olech, 528 U.S. 562, 564 (2000); San Antonio School District v. Rodriguez, 411 U.S. 1
5 (1972); SeaRiver Mar. Fin. Holdings, Inc. v. Mineta, 309 F.3d 662, 679 (9th Cir. 2002). To
6 state an equal protection claim under this theory, a plaintiff must allege that: (1) the plaintiff is
7 a member of an identifiable class; (2) the plaintiff was intentionally treated differently from
8 others similarly situated; and (3) there is no rational basis for the difference in treatment.
9 Village of Willowbrook, 528 U.S. at 564.

10 Plaintiff has not alleged facts to satisfy any of these three factors.

11 No useful purpose would be served by yet again advising Plaintiff of what is necessary
12 to plead a cognizable claim or by giving him further leave to amend.

13 **IV. CONCLUSION AND RECOMMENDATION**

14 Plaintiff's First Amended Complaint fails to state any claims upon which relief may be
15 granted under section 1983. Plaintiff was previously notified of the deficiencies in his claims
16 and given leave to amend. Based on the nature of the deficiencies at issue, the Court finds
17 that further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir.
18 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).

19 Accordingly, the Court HEREBY RECOMMENDS that Plaintiff's action be dismissed
20 for failure to state any claims under 42 U.S.C. § 1983.

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1 These Findings and Recommendations will be submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
3 thirty (30) days after being served with these Findings and Recommendations, Plaintiff may
4 file written objections with the Court. The document should be captioned "Objections to
5 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
6 objections within the specified time may waive the right to appeal the District Court's order.
7 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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10 IT IS SO ORDERED.

11 Dated: April 28, 2014

/s/ Michael J. Seng
12 UNITED STATES MAGISTRATE JUDGE