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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 FEASTER FOSTER,

12 Plaintiff,

13 vs.

14 C. URSENBACH, et al.,

15 Defendants.  
16  
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18

1:12-cv-00380 GSA PC

ORDER DISMISSING COMPLAINT AND  
GRANTING PLAINTIFF LEAVE TO FILE  
AN AMENDED COMPLAINT

AMENDED COMPLAINT DUE  
IN THIRTY DAYS

19 **I. Screening Requirement**

20 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights  
21 action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction  
22 pursuant to 28 U.S.C. § 636(c).<sup>1</sup>

23 The Court is required to screen complaints brought by prisoners seeking relief against a  
24 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
25 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
26 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or  
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28 <sup>1</sup> Plaintiff filed a consent to proceed before a magistrate judge on March 27, 2012 (ECF No 5).

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

## 6 **II. Plaintiff’s Claims**

7 Plaintiff, an inmate in the custody of the California Department of Corrections and  
8 Rehabilitation at Avenal State Prison, brings this civil rights action against defendant  
9 correctional officials employed by the CDCR at Avenal. Plaintiff names the following  
10 defendants: Warden Hartley; Associate Warden Ndoh; Lieutenant C. Ursenbach; Captain  
11 Biaggini. Plaintiff claims that he was subjected to a prison disciplinary process that violated  
12 Plaintiff’s due process rights. Plaintiff also claims that he was subjected to a violation of the  
13 Equal Protection Clause.

14 Plaintiff alleges that on April 11, 2011, he was charged with possession of a cell phone.  
15 On April 15, 2011, Plaintiff appeared before the Senior Hearing Officer, Defendant  
16 Ursenbach. Plaintiff alleges that despite another inmate’s admission of guilt, he was found  
17 guilty “based on the SHO’s objectively unreasonable conclusion that inmate Ferguson failed to  
18 answer questions about the cell phone, leading the SHO to believe that Fersugon was ‘coached’  
19 as to how to answer the questions.” One month later, Defendants Biaggini and Ndoh affirmed  
20 the conviction. Plaintiff alleges that another inmate suffered the same fate – he was found  
21 guilty of cell phone possession despite another inmate’s confession.

### 22 **A. Disciplinary Process**

23 In Edwards v. Balisok, 520 U.S. 641, 644 (1997), the United States Supreme Court  
24 applied the doctrine articulated in Heck v. Humphrey, 512 U.S. 477, 487 (1994), to prison  
25 disciplinary hearings. In Heck, the Court held that a state prisoner’s claim for damages for  
26 unconstitutional conviction or imprisonment is not cognizable under 42 U.S.C. § 1983 if a  
27 judgment in favor of plaintiff would necessarily imply the invalidity of his conviction or  
28 sentence, unless the prisoner can demonstrate that the conviction or sentence has previously

1 been invalidated. 512 U.S. at 487. In applying the principle to the facts of Balisok, the Court  
2 held that a claim challenging the procedures used in a prison disciplinary hearing, even if such  
3 a claim seeks money damages and no injunctive relief, is not cognizable under § 1983 if the  
4 nature of the inmate's allegations are such that, if proven, would necessarily imply the  
5 invalidity of the result of the prison disciplinary hearing. 520 U.S. at 646. Because such a  
6 challenge, if successful, would invalidate the duration of the inmate's confinement, it is  
7 properly brought as a habeas corpus petition and not under § 1983. Heck, 512 U.S. at 487;  
8 Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

9 Plaintiff alleges that, prior to this conviction, he had ten years of disciplinary free  
10 behavior. Plaintiff also alleges that the conviction occurred just ten months before his  
11 scheduled parole hearing. Plaintiff was ultimately denied parole. Therefore, the length of  
12 Plaintiff's sentence is affected. Although the specific facts of Balisok involved allegations of  
13 deceit and bias on the part of a hearing officer, the Court's reasoning applies to any claim  
14 which, if proven, would have the effect of invalidating the result of a disciplinary hearing. The  
15 Ninth Circuit has recently applied the Balisok rule to a case in which a prisoner sought  
16 damages based on allegations that prison officials relied on false information to find him  
17 ineligible for parole. Butterfield v. Bail, 120 F.3d 1023 (9th Cir. 1997). Because the claim  
18 necessarily implied the invalidity of the plaintiff's continued confinement, it could not accrue  
19 until the conviction or sentence had been invalidated. Id.

20 In the instant case, plaintiff's core factual allegations are that he was convicted, despite  
21 a confession by another inmate. Because plaintiff's claim necessarily implies the invalidity of  
22 plaintiff's continued confinement as a result of his disciplinary hearing, plaintiff's claim will  
23 not accrue until the conviction or sentence has been invalidated. Plaintiff has not alleged that  
24 the conviction has been reversed, expunged or otherwise invalidated. Plaintiff's due process  
25 claim should therefore be dismissed.

## 26 **B. Equal Protection**

27 The Equal Protection Clause requires that persons who are similarly situated be treated  
28 alike. City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985); Shakur v.

1 Schiriro, 514 F.3d 878, 891 (9<sup>th</sup> Cir. 2008). A plaintiff may establish an equal protection claim  
2 by showing that the plaintiff was intentionally discriminated against on the basis of plaintiff's  
3 membership in a protected class. Comm. Concerning Cmty. Improvement v. City of Modesto,  
4 583 F.3d 960, 702-03 (9<sup>th</sup> Cir. 2009); Serrano v. Francis, 345 F.3d 1071, 1082 (9<sup>th</sup> Cir. 2003),  
5 or that similarly situated individuals were intentionally treated differently without a rational  
6 relationship to a legitimate state purpose, Engquist v. Oregon Dept. of Agr., 553 U.S. 591, 601-  
7 02 (2008); Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); Lazy Y Ranch Ltd. v.  
8 Behrens, 546 F.3d 580, 592 (9<sup>th</sup> Cir. 2008); North Pacifica LLC v. City of Pacifica, 526 F.3d  
9 478, 486 (9<sup>th</sup> Cir. 2008).

10 Here, Plaintiff simply alleges that another inmate suffered the same fate as Plaintiff –  
11 was convicted of cell phone possession despite the confession of another inmate to the offense.  
12 Such an allegation fails to state a claim for an equal protection violation. Plaintiff must allege  
13 some facts that satisfy the above standard. He has failed to do so. This claim must therefore be  
14 dismissed.

### 15 **III. Conclusion**

16 The Court has screened Plaintiff's complaint and finds that it does not state any claims  
17 upon which relief may be granted under section 1983. The Court will provide Plaintiff with the  
18 opportunity to file an amended complaint curing the deficiencies identified by the Court in this  
19 order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9<sup>th</sup> Cir. 1987). Plaintiff is cautioned that he  
20 may not change the nature of this suit by adding new, unrelated claims in his amended  
21 complaint.

22 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what  
23 each named defendant did that led to the deprivation of Plaintiff's constitutional or other  
24 federal rights, Hydrick, 500 F.3d at 987-88. Although accepted as true, the "[f]actual  
25 allegations must be [sufficient] to raise a right to relief above the speculative level . . . ." Bell  
26 Atlantic v. Twombly, 550 U.S. 544, 554 (2007)(citations omitted).

27 Finally, Plaintiff is advised that an amended complaint supersedes the original  
28 complaint, Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9<sup>th</sup> Cir. 1997); King v. Atiyeh, 814

1 F.2d 565, 567 (9<sup>th</sup> Cir. 1987), and must be “complete and in and of itself without reference to  
2 the prior or superseded pleading.” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of  
3 action alleged in an original complaint which are not alleged in an amended complaint are  
4 waived.” King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814  
5 (9<sup>th</sup> Cir. 1981)).

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a  
8 claim;

9 2. The Clerk’s Office shall send to Plaintiff a complaint form;

10 3. Within **thirty** days from the date of service of this order, Plaintiff shall file an  
11 amended complaint;

12 4. Plaintiff may not add any new, unrelated claims to this action via his amended  
13 complaint and any attempt to do so will result in an order striking the amended complaint; and

14 5. If Plaintiff fails to file an amended complaint, the Court will dismiss this action,  
15 with prejudice, for failure to state a claim.

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17 .  
18 IT IS SO ORDERED.

19 Dated: **March 17, 2015**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE