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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

LOUIS JUAREZ AGUIRRE,  
Plaintiff,

v.

CONNIE GIPSON, et al.,  
Defendants.

CASE No. 1:13-cv-00604-LJO-DLB (PC)  
FIRST SCREENING ORDER,  
DISMISSING PLAINTIFF’S COMPLAINT,  
WITH LEAVE TO AMEND  
THIRTY-DAY DEADLINE

**I. Background**

Plaintiff Louis Juarez Aguirre (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff filed his original complaint on April 26, 2013, and is proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983.

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. *Id.* § 1915A(b)(1),(2).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual

1 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting  
2 *Twombly*, 550 U.S. at 570). While factual allegations are accepted as true, legal conclusions are  
3 not. *Id.*

## 4 **II. Summary of Complaint**

5 Plaintiff is incarcerated at California State Prison (“CSP”) in Corcoran, California, where  
6 the events giving rise to this action occurred. Plaintiff names Connie Gipson (warden), C.  
7 Rodriguez (gang investigator), and Craig Hennes, Joseph Hurswill, and Jarrod Foote (sheriff  
8 deputies at Ventura County Jail) as defendants in this action.

9 Plaintiff alleges the following. On October 1, 2009, Plaintiff was placed in Administrative  
10 Segregation (“Ad-Seg”) based on false, illegal, and unsubstantiated information received from  
11 Defendants Hennes, Hurswill, and Jarrod. On October 5, 2009, Defendant Rodriguez interviewed  
12 Plaintiff regarding the information being used to validate him as an associate of the Mexican  
13 Mafia. Defendant Rodriguez made the conclusion that Plaintiff’s claims had no merit and did not  
14 warrant further investigation. On November 18, 2009, Plaintiff was validated as an associate of  
15 the Mexican Mafia based on the false, illegal, and unsubstantiated information received from the  
16 Ventura County Jail. On December 8, 2009, Plaintiff filed an administrative appeal challenging  
17 his validation as a gang member. Plaintiff contends that his rights were violated when defendants  
18 opened his mail for contraband outside his presence, in violation of the Ventura County Jail  
19 policy. Plaintiff exhausted his administrative remedies on June 28, 2010.

20 Plaintiff alleges violations of his due process rights under the Fourteenth Amendment.  
21 Plaintiff requests compensatory damages and injunctive relief to expunge his file and for release  
22 from Ad-Seg.

## 23 **III. Analysis**

### 24 A. Due Process

25 The Due Process Clause protects Plaintiff against the deprivation of liberty without the  
26 procedural protections to which he is entitled under the law. *Wilkinson v. Austin*, 545 U.S. 209,  
27 221, 125 S.Ct. 2384 (2005). To state a claim, Plaintiff must first identify the interest at stake.  
28

1 *Wilkinson*, 545 U.S. at 221. Liberty interests may arise from the Due Process Clause or from state  
2 law. *Id.* The Due Process Clause itself does not confer on inmates a liberty interest in avoiding  
3 more adverse conditions of confinement, *id.* at 221-22 (citations and quotation marks omitted),  
4 and under state law, the existence of a liberty interest created by prison regulations is determined  
5 by focusing on the nature of the condition of confinement at issue, *id.* at 222-23 (citing *Sandin v.*  
6 *Conner*, 515 U.S. 472, 481-84, 115 S.Ct. 2293 (1995)) (quotation marks omitted). Liberty  
7 interests created by prison regulations are generally limited to freedom from restraint which  
8 imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of  
9 prison life. *Wilkinson*, 545 U.S. at 221 (citing *Sandin*, 515 U.S. at 484) (quotation marks omitted);  
10 *Myron v. Terhune*, 476 F.3d 716, 718 (9th Cir. 2007). If a protected interest is identified, the  
11 inquiry then turns to what process is due. *Wilkinson*, 545 U.S. at 224.

13         The assignment of validated gang members and associates to the Security Housing Unit  
14 (“SHU”) is an administrative measure rather than a disciplinary measure, and is “essentially a  
15 matter of administrative discretion.” *Bruce v. Ylst*, 351 F.3d 1283, 1287 (9th Cir. 2003) (quoting  
16 *Munoz v. Rowland*, 104 F.3d 1096, 1098 (9th Cir. 1997)). As a result, prisoners are entitled to the  
17 minimal procedural protections of adequate notice, an opportunity to be heard, and periodic  
18 review. *Bruce*, 351 F.3d at 1287 (citing *Toussaint v. McCarthy*, 801 F.2d 1080, 1100-01 (9th Cir.  
19 1986), *abrogated in part on other grounds by Sandin v. Connor*, 515 U.S. 472, 115 S.Ct. 2293  
20 (1995)). In addition to these minimal protections, there must be “some evidence” supporting the  
21 decision. *Id.* (citing *Superintendent v. Hill*, 472 U.S. 445, 454, 105 S.Ct. 2768 (1985)). Although  
22 discussed in the context of a disciplinary hearing, the Ninth Circuit has stated that under the *Hill*  
23 standard, the evidence should have some indicia of reliability. *Cato v. Rushen*, 824 F.2d 703, 705  
24 (9th Cir. 1987).

27         Here, the Court finds that Plaintiff fails to state a due process claim, in violation of the  
28 Fourteenth Amendment. Based on the exhibits Plaintiff provides with his complaint, Plaintiff

1 received the minimal procedural protections required by due process. Plaintiff received notice and  
2 had the opportunity to be heard before he was validated as a gang member. CSP used three  
3 different types of evidence to validate Plaintiff, including gang tattoos or symbols, an incident  
4 report from the Ventura County Sheriff's Department, and mail communications from CSP. Pl's  
5 Exh. A; ECF No. 1 at 11. Plaintiff has not alleged facts in his complaint that he has been denied  
6 periodic review of his validation. Accordingly, Plaintiff fails to state a due process claim.

7  
8 **B. Supervisory Liability**

9 Plaintiff names Warden Connie Gipson as a defendant.. The term "supervisory liability,"  
10 loosely and commonly used by both courts and litigants alike, is a misnomer. *Iqbal*, 556 U.S. at  
11 677. "Government officials may not be held liable for the unconstitutional conduct of their  
12 subordinates under a theory of *respondeat superior*." *Id.* at 676. Rather, each government  
13 official, regardless of his or her title, is only liable for his or her own misconduct. *Id.* at 677.  
14 When the named defendant holds a supervisory position, the causal link between the defendant  
15 and the claimed constitutional violation must be specifically alleged. *See Fayle v. Stapley*, 607  
16 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978). To state a  
17 claim for relief under § 1983 for supervisory liability, plaintiff must allege some facts indicating  
18 that the defendant either: personally participated in the alleged deprivation of constitutional rights  
19 or knew of the violations and failed to act to prevent them. *Taylor v. List*, 880 F.2d 1040, 1045  
20 (9th Cir. 1989). Plaintiff alleges no facts which indicate that Defendant Gipson personally  
21 participated in the alleged deprivation of constitutional rights or knew of violations and failed to  
22 act to prevent them. Accordingly, Plaintiff fails to state any claims against Defendant Gipson.

23 **IV. Conclusion and Order**

24 Plaintiff's Complaint fails to state any cognizable federal claims against any Defendants.  
25 The Court will provide Plaintiff with an opportunity to file an amended complaint curing the  
26 deficiencies identified by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th  
27 Cir. 1987). Plaintiff may not change the nature of this suit by adding new, unrelated claims in his  
28 amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot"

1 complaints).

2 If Plaintiff decides to amend, Plaintiff's amended complaint should be brief, Fed. R. Civ.  
3 P. 8(a), but must state what each named defendant did that led to the deprivation of Plaintiff's  
4 constitutional or other federal rights. *See Iqbal*, 556 U.S. at 678. Although accepted as true, the  
5 "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level . . . ."  
6 *Twombly*, 550 U.S. at 555.

7 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint,  
8 *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) overruled in part on other grounds,  
9 *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc); *King v. Atiyeh*, 814 F.2d  
10 565, 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior or  
11 superseded pleading," Local Rule 220.

12 Accordingly, it is HEREBY ORDERED that:

- 13 1. The Clerk's Office shall send Plaintiff a complaint form;
- 14 2. Plaintiff's complaint is dismissed for failure to state a claim, with leave to file an  
15 amended complaint within thirty (30) days from the date of service of this order;
- 16 3. Plaintiff may not add any new, unrelated claims to this action via the first amended  
17 complaint and any attempt to do so may result in an order striking the first amended complaint;  
18 and
- 19 4. If Plaintiff fails to file an amended complaint in compliance with this order, this  
20 action will be dismissed, with prejudice, for failure to state a claim.

21 IT IS SO ORDERED.

23 Dated: December 17, 2013

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