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6 **UNITED STATES DISTRICT COURT**  
7 **EASTERN DISTRICT OF CALIFORNIA**  
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9 ZANE HUBBARD,

10 Plaintiff,

11 v.

12 WARDEN OF WASCO STATE PRISON,  
13 et al.,

14 Defendants.  
15

Case No. 1:13-cv-00762 DLB PC

**ORDER DISMISSING SECOND  
AMENDED COMPLAINT WITH  
PREJUDICE FOR FAILURE TO STATE A  
CLAIM**

(ECF No. 10)

16 **I. Background**

17 Plaintiff Zane Hubbard ("Plaintiff") is a prisoner in the custody of the California Department  
18 of Corrections and Rehabilitation ("CDCR"). Plaintiff is proceeding pro se in this civil action  
19 pursuant to 42 U.S.C. § 1983. He consented to the jurisdiction of the Magistrate Judge on June 3,  
20 2013.

21 Plaintiff filed his original complaint on May 22, 2013. (ECF No. 1.) On April 23, 2014, the  
22 Court screened the complaint and dismissed it for failure to state a claim. (ECF No. 7.) On May 8,  
23 2014, Plaintiff filed a First Amended Complaint ("FAC"). (ECF No. 8.) On May 14, 2015, the  
24 Court screened the FAC and dismissed it for failure to state a claim. Plaintiff was granted leave to  
25 file a Second Amended Complaint ("SAC"). On June 9, 2015, Plaintiff filed a SAC. (ECF No. 10.)

26 The Court is required to screen complaints brought by prisoners seeking relief against a  
27 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
28 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally

1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
2 monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b)(1),(2).

3 A complaint must contain “a short and plain statement of the claim showing that the pleader  
4 is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
5 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
6 do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550  
7 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a  
8 claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570). While factual  
9 allegations are accepted as true, legal conclusions are not. *Id.*

## 10 **II. Summary of Second Amended Complaint**

11 Plaintiff was incarcerated at Wasco State Prison (“WSP”) in Wasco, California and Corcoran  
12 State Prison (“CSP”) in Corcoran, California, where the events giving rise to this action occurred.  
13 Plaintiff names the following Defendants in this action: President Barack Obama; California State  
14 Legislator Anthony Calvin Williams; Pope Francis; Correctional Peace Officer Dunn; the Secretary  
15 of Corrections; CDCR Chief Regulation and Policy Manager Timothy Lockwood; Governor  
16 Edmund G. Brown; Plaintiff’s mother Mechele S. Williams; Correctional Peace Officer Marmalejo;  
17 Correctional Lieutenant T. Drew; and Warden Connie Gipson.

18 Plaintiff alleges the following. Plaintiff complains that he is unlawfully convicted. He further  
19 claims he is a gang member who has been wrongfully housed in a transitional housing unit even  
20 though he does not qualify for such housing. He alleges that CSP is transitional housing meant to  
21 house only inmates that have volunteered to debrief, and Plaintiff has not volunteered to debrief. He  
22 claims he should be placed in general population since he is a validated gang member. He alleges he  
23 should not be placed in a disciplinary segregation unit in isolation because he is being deprived of all  
24 privileges.

25 Plaintiff claims that Defendant Marmalejo deliberately housed him with a transitional housing  
26 unit inmate, Noel Garcia, despite the fact that Garcia was not within Plaintiff’s custody level.  
27 Plaintiff alleges Defendant Marmalejo failed to abide by California regulations governing  
28 assignments of inmates to cells. Inmate Garcia was undergoing debriefing but Plaintiff was refusing

1 to undergo debriefing. Because Plaintiff was a gang member and Garcia was undergoing debriefing,  
2 Garcia became Plaintiff's enemy. The housing arrangement resulted in a physical altercation  
3 between Plaintiff and Garcia. The altercation resulted in Plaintiff's placement in the Secured  
4 Housing Unit and validation as a gang member. Plaintiff alleges Marmalejo was the cause.

5 Plaintiff claims that Defendant Gipson has allowed employees under her supervision to  
6 deprive him of all of his privileges, threatened his life, assaulted him, humiliated him, and harassed  
7 him for the purpose of eliciting information from him.

8 Plaintiff alleges that various people, including President Obama and Pope Francis, are  
9 commanding him to join a prison gang called the Twenty-Fivers and be placed in protective custody  
10 based on religious grounds.

11 Plaintiff claims that he has been forced into a "Stepdown Program" that is designed to provide  
12 inmates with an opportunity to debrief or inform officers of illegal conduct. Plaintiff alleges he was  
13 told by Defendant Drew that he would not obtain any relief unless he debriefed. He contends his  
14 placement in this housing classification or transitional housing unit equates to holding his person for  
15 the purpose of self-incrimination.

16 Plaintiff further claims his right to privacy has been breached by the broadcasting of personal  
17 information with the intent to embarrass, degrade, and exploit him, during his stay in the transitional  
18 housing unit. He alleges that unnamed Defendants have used workgroup technologies with the  
19 permission of his family to publish, display, and transmit images of him in violation of his right to  
20 privacy. He claims that the images contain defamatory, false, obscene, pornographic, profane,  
21 sexually harassing, threatening and discriminatory material.

22 Plaintiff claims there was an unauthorized seizure of money from his account by the Wasco  
23 State Prison Accountant. He alleges that Defendant Dunn of CSP went through the computer data  
24 and deleted the transaction. He claims the seizure of money was never recovered.

25 Plaintiff alleges that Defendants and their co-workers repeatedly slander and threaten him. He  
26 contends that Defendants have slandered his facial tattoos and his Mexican-Native American  
27 heritage. He claims Defendants are motivated by racial discrimination. Plaintiff claims Defendant  
28 Drew has threatened to sodomize him and to "debrief or die."

1 Plaintiff claims that he is being electronically surveilled in his cell by Defendants Lockwood,  
2 Brown, Williams, Gipson, Pope Francis, and President Obama. He claims Defendants surveil his  
3 daily activities in a degrading manner and publicize the events with intent to humiliate him into  
4 debriefing.

### 5 **III. Analysis**

#### 6 **A. Eighth Amendment Claims**

7 Plaintiff alleges Defendant Marmalejo deliberately housed him with a transitional housing  
8 unit inmate despite the fact that the inmate was not of the same custody level. Plaintiff states he was  
9 refusing to undergo debriefing and was placed in a cell with an inmate who was being debriefed.  
10 Because Plaintiff was choosing to remain a gang member while the other inmate was choosing to  
11 debrief and withdraw from gang membership, Plaintiff claims this created an issue of incompatibility  
12 which led to a physical altercation. Plaintiff alleges that Defendant Marmalejo knew of the  
13 incompatibility and made the housing assignment regardless of the issue.

14 Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,  
15 clothing, sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir.  
16 2000) (quotation marks and citations omitted), but not every injury that a prisoner sustains while in  
17 prison represents a constitutional violation, Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.  
18 2006) (quotation marks omitted). To maintain an Eighth Amendment claim, a prisoner must show  
19 that prison officials were deliberately indifferent to a substantial risk of harm to his health or safety.  
20 E.g., Farmer v. Brennan, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994); Thomas v. Ponder, 611 F.3d  
21 1144, 1150-51 (9th Cir. 2010); Foster v. Runnels, 554 F.3d 807, 812-14 (9th Cir. 2009); Morgan,  
22 465 F.3d at 1045; Johnson, 217 F.3d at 731; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

23 Plaintiff has not sufficiently linked Defendant Marmalejo to knowledge and disregard of  
24 housing conditions grave enough to support a claim under the Eighth Amendment. Plaintiff cites  
25 only the fact that he was refusing to debrief and his cellmate was not. This fact alone does not  
26 demonstrate an excessive risk to Plaintiff's safety. Also, mere negligence on the part of the prison  
27 official is not sufficient to establish liability, but rather, the official's conduct must have been  
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1 wanton. Farmer, 511 U.S. at 835. There are no allegations showing Defendant Marmalejo's actions  
2 were done in wanton disregard for Plaintiff's safety.

3 B. Challenge to Conviction

4 As before, Plaintiff alleges that he is unlawfully convicted. While a challenge to conditions of  
5 confinement is properly raised in a civil rights action, a challenge to the fact and/or the duration of  
6 confinement must be raised in a petition for writ of habeas corpus. 28 U.S.C. § 2254(a); Badea v.  
7 Cox, 931 F.2d 573, 574 (9th Cir. 1991) (citing Preiser v. Rodriguez, 411 U.S. 475, 485, 93 S.Ct.  
8 1827, 1833 (1973)); accord Beardslee v. Woodford, 395 F.3d 1064, 1068-69 (9th Cir. 2005) (per  
9 curiam). Therefore, to the extent Plaintiff wishes to challenge his conviction, he must do so by filing  
10 a petition for writ of habeas corpus.

11 C. Housing Status

12 Plaintiff again alleges that he should be in general population and not in a segregated housing  
13 unit. He further claims he has been advised that he must go through debriefing in order to gain  
14 placement in a less restrictive housing status. The Due Process Clause protects Plaintiff against the  
15 deprivation of liberty without the procedural protections to which he is entitled under the law.  
16 Wilkinson v. Austin, 545 U.S. 209, 221 (2005). To state a claim, Plaintiff must first identify the  
17 interest at stake. Id. at 221. Liberty interests may arise from the Due Process Clause or from state  
18 law. Id. The Due Process Clause itself does not confer on inmates a liberty interest in avoiding  
19 more adverse conditions of confinement, id. at 221-22 (citations and quotation marks omitted), and  
20 under state law, the existence of a liberty interest created by prison regulations is determined by  
21 focusing on the nature of the condition of confinement at issue, id. at 222-23 (citing Sandin v.  
22 Conner, 515 U.S. 472, 481-84, 115 S.Ct. 2293 (1995)) (quotation marks omitted). Liberty interests  
23 created by prison regulations are generally limited to freedom from restraint which imposes atypical  
24 and significant hardship on the inmate in relation to the ordinary incidents of prison life. Wilkinson,  
25 545 U.S. at 221 (citing Sandin, 515 U.S. at 484) (quotation marks omitted); Myron v. Terhune, 476  
26 F.3d 716, 718 (9th Cir. 2007).

27 Again, there is no support for a finding that Plaintiff has a protected liberty interest in being  
28 incarcerated at a particular correctional facility or on a particular yard level. Myron, 476 F.3d at

1 718; May v. Baldwin, 109 F.3d 557, 565 (9th Cir. 1997); Meachum v. Fano, 427 U.S. 215, 224-25  
2 (1976). That a higher security yard is more restrictive or houses more violent inmates is not  
3 sufficient, in and of itself, to demonstrate that it is a condition which imposes atypical and significant  
4 hardship on an inmate in relation to the ordinary incidents of prison life. Id. Therefore, Plaintiff  
5 fails to state a due process claim.

6 As to Plaintiff's placement in segregated housing, the assignment of validated gang members  
7 and associates to a secured housing unit is an administrative measure rather than a disciplinary  
8 measure, and is "essentially a matter of administrative discretion." Bruce v. Ylst, 351 F.3d 1283,  
9 1287 (9th Cir. 2003) (quoting Munoz v. Rowland, 104 F.3d 1096, 1098 (9th Cir. 1997)); accord  
10 Castro, 712 F.3d at 1310. Considering Plaintiff's allegations in his SAC concerning his placement in  
11 segregated housing, Plaintiff did not have a protected liberty interest at stake and he may not pursue  
12 a due process claim arising from that event. Resnick v. Hayes, 213 F.3d 443, 448-49 (9th Cir.  
13 2000); May v. Baldwin, 109 F.3d 557, 565 (9th Cir. 1997).

14 D. Miscellaneous Conclusory Allegations

15 Plaintiff also raises a number of allegations that are conclusory or fanciful. Under section  
16 1983, Plaintiff must link the named defendants to the participation in the violation at issue. Iqbal,  
17 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010);  
18 Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930,  
19 934 (9th Cir. 2002). Liability may not be imposed under a theory of *respondeat superior*, and some  
20 causal connection between the conduct of each named defendant and the violation at issue must  
21 exist. Iqbal, 556 U.S. at 676-77; Lemire v. California Dep't of Corr. and Rehab., 726 F.3d 1062,  
22 1074-75 (9th Cir. 2013); Lacey v. Maricopa County, 693 F.3d 896, 915-16 (9th Cir. 2012) (en banc);  
23 Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101 (2012).

24 Plaintiff claims that Defendant Gipson allowed her employees under her supervision to  
25 deprive him of all of his privileges, threatened his life, assaulted him, humiliated him, and harassed  
26 him. Plaintiff submits no factual support for these conclusory allegations, and he fails to allege how  
27 Defendant Gipson was responsible for such actions. As noted above, liability may not be imposed  
28 solely on the basis of *respondeat superior*.

1 Plaintiff alleges his privacy rights were breached by the broadcasting, publishing and  
2 displaying of his personal information and images that were defamatory, false, obscene,  
3 pornographic, profane, sexually harassing, threatening, and discriminatory. He does not name any  
4 Defendants, but claims his mother is somehow involved. He further alleges that various people  
5 including President Obama and Pope Francis are commanding him to join a prison gang. He also  
6 claims that unnamed Defendants have slandered him based on his facial tattoos and Mexican-Native  
7 American heritage. Plaintiff claims that Defendant Drew has threatened to sodomize him. Also,  
8 Plaintiff claims that an unauthorized seizure of money took place at Wasco State Prison. He then  
9 claims that Defendant Dunn at CSP went through computer data and deleted the transaction. He  
10 offers no details on the transaction such as when it occurred, what was seized, and by whom.  
11 Finally, he claims he is being electronically surveilled by Defendants Lockwood, Brown, Williams,  
12 Gipson, Pope Francis, and President Obama in violation of his rights in order to humiliate him into  
13 debriefing. Plaintiff's several allegations are entirely conclusory. In addition, the Court is not  
14 required to accept fanciful or otherwise implausible allegations such as his allegations that President  
15 Obama and Pope Francis are electronically surveilling him or commanding him to join a prison  
16 gang. See Dahlia v. Rodriguez, 735 F.3d 1060, 1076 (9th Cir. 2013), *cert. denied*, 134 S.Ct. 1283  
17 (2014); Blantz v. California Dep't of Corr. and Rehab., 727 F.3d 917, 920 (9th Cir. 2013).

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1 **IV. Conclusion and Order**

2 Plaintiff fails to state any cognizable federal claims against any Defendants. Plaintiff was  
3 previously provided with multiple notices of the deficiencies and opportunities to amend, and based  
4 on the nature of the deficiencies at issue, further leave to amend is not warranted. Akhtar v. Mesa,  
5 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

6 Accordingly, IT IS HEREBY ORDERED that the Second Amended Complaint is  
7 DISMISSED WITH PREJUDICE for failure to state a claim. This constitutes a strike within the  
8 meaning of 28 U.S.C. § 1915(g).

9 This terminates this action in its entirety.

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11 IT IS SO ORDERED.

12 Dated: April 20, 2016

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE