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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TONY SLEDGE,

 Plaintiff,

 v.

LT. P. COVELLO, et al.,

 Defendants.

Case No. 1:13-cv-01826 LJO DLB PC

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

THIRTY-DAY DEADLINE

Plaintiff Tony Sledge (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on August 26, 2013, in the United States District Court for the Southern District of California. He names Institution Gang Investigator (“IGI”) Lt. P. Covello, and Assistant Institution Gang Investigators (“AIGI”) T. Turmezei and M. Smith as Defendants.

On October 7, 2013, the Southern District found venue improper in the Southern District and transferred the case to the Central District. On November 7, 2013, the Central District determined that venue was improper in the Central District and transferred the case to the Eastern District. In its ruling, the Central District noted that Plaintiff alleged claims against Defendants Covello and Smith of Ironwood State Prison (“ISP”) in Riverside County, and Defendant Turmezei of California Correctional Institution (“CCI”) in Kern County. The events at issue occurred on May 7, 2008, July

1 23, 2009, and May 16, 2012. The Central District determined that the claims involving the May 7,
2 2008, and July 23, 2009, events were time-barred. [ECF No. 13.] Insofar as the only remaining
3 claims concerned the event on May 16, 2012, in Kern County involving Defendant Turmezei, the
4 matter was transferred to the Eastern District.

5 **A. SCREENING REQUIREMENT**

6 The Court is required to screen complaints brought by prisoners seeking relief against a
7 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
8 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
9 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
10 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).
11 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
12 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
13 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

14 A complaint must contain “a short and plain statement of the claim showing that the pleader
15 is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
16 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
17 do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atl. Corp. v. Twombly,
18 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as true, to
19 ‘state a claim that is plausible on its face.’” Id. (quoting Twombly, 550 U.S. at 555). While factual
20 allegations are accepted as true, legal conclusions are not. Id.

21 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or other
22 federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092
23 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v.
24 Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the actions or
25 omissions of each named defendant to a violation of his rights; there is no respondeat superior
26 liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d
27 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009);
28 Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to state a plausible claim

1 for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).
2 The mere possibility of misconduct falls short of meeting this plausibility standard. Iqbal, 556 U.S.
3 at 678; Moss, 572 F.3d at 969.

4 **B. SUMMARY OF PLAINTIFF’S ALLEGATIONS¹**

5 Plaintiff is currently incarcerated at the California Correctional Institution in Tehachapi,
6 California, which is where the event at issue took place.

7 Plaintiff alleges the following. On May 16, 2012, Plaintiff was served with a gang validation
8 packet concerning Plaintiff’s validation as an associate of the Black Guerrilla Family (“BGF”).
9 Plaintiff contends the packet was authored by Defendant Turmezei and contained false and
10 fabricated allegations. The AIGI pulled Plaintiff out of his cell and stated, “We guess you beat the
11 last one (validation) and we were ordered to serve you a new one.” Plaintiff advised the AIGI that
12 the Director was still reviewing his appeal and he would rather wait for that decision before
13 proceeding. AIGI Ortega stated, “Turmezei is the author of them (“points”) all, we were just
14 ordered to serve them and collect your rebuttal.” Plaintiff states the source items used were authored
15 by Defendant Turmezei and were false.

16 On May 18, 2012, the IGI returned to collect Plaintiff’s rebuttal to the gang validation
17 packet.

18 On June 30, 2012, the appeal was partially granted at the Third Level of Review. According
19 to Plaintiff’s exhibits, the appeal was remanded to the institution for further review of Plaintiff’s
20 gang validation. Pl.’s Compl., Ex. C2. Specifically, it was determined that further research was
21 necessary in order to substantiate the direct link used in his gang validation.

22 On July 19, 2012, Lt. Tyree advised Plaintiff, “We were gonna revalidate you, but decided to
23 just put you up for active-in-active review instead.” According to Plaintiff’s exhibits, it appears his
24 August 28, 2008, validation was updated with additional information whereupon Plaintiff’s
25 validation as an associate of the BGF was continued. Pl.’s Compl. Ex. C3.

26 Plaintiff seeks expungement of all documents in support of validation from his C-file and
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¹ This summary of allegations only includes the event of May 16, 2012, since the claims concerning the previous events were determined by the Central District Court to be time-barred.

1 notification to all government agencies concerned; he seeks restoration of all behavior credits; he
2 asks that he be released from SHU custody immediately; and he seeks an award of punitive damages
3 in excess of a million dollars, plus compensation.

4 **C. DISCUSSION**

5 1. Gang Validation – Due Process

6 The Due Process Clause protects Plaintiff against the deprivation of liberty without the
7 procedural protections to which he is entitled under the law. Wilkinson v. Austin, 545 U.S. 209,
8 221, 125 S.Ct. 2384 (2005). To state a claim, Plaintiff must first identify the interest at stake. Id. at
9 221. Liberty interests may arise from the Due Process Clause or from state law. Id. The Due
10 Process Clause itself does not confer on inmates a liberty interest in avoiding more adverse
11 conditions of confinement, id. at 221-22 (citations and quotation marks omitted), and under state
12 law, the existence of a liberty interest created by prison regulations is determined by focusing on the
13 nature of the condition of confinement at issue, id. at 222-23 (citing Sandin v. Conner, 515 U.S. 472,
14 481-84, 115 S.Ct. 2293 (1995)) (quotation marks omitted). Liberty interests created by prison
15 regulations are generally limited to freedom from restraint which imposes atypical and significant
16 hardship on the inmate in relation to the ordinary incidents of prison life. Wilkinson, 545 U.S. at
17 221 (citing Sandin, 515 U.S. at 484) (quotation marks omitted); Myron v. Terhune, 476 F.3d 716,
18 718 (9th Cir. 2007). If a protected interest is identified, the inquiry then turns to what process is due.
19 Wilkinson, 545 U.S. at 224.

20 The assignment of validated gang members and associates to the Security Housing Unit is an
21 administrative measure rather than a disciplinary measure, and is “essentially a matter of
22 administrative discretion.” Bruce v. Ylst, 351 F.3d 1283, 1287 (9th Cir. 2003) (quoting Munoz v.
23 Rowland, 104 F.3d 1096, 1098 (9th Cir. 1997)). As a result, prisoners are entitled to the minimal
24 procedural protections of adequate notice, an opportunity to be heard, and periodic review. Bruce,
25 351 F.3d at 1287 (citing Toussaint v. McCarthy, 801 F.2d 1080, 1100-01 (9th Cir. 1986), *abrogated*
26 *in part on other grounds by Sandin v. Connor*, 515 U.S. 472, 115 S.Ct. 2293 (1995)). In addition to
27 these minimal protections, there must be “some evidence” bearing “some indicia of reliability”
28 supporting the decision. Castro v. Terhune, 712 F.3d 1304, 1314 (9th Cir. 2013) (citing

1 Superintendent v. Hill, 472 U.S. 445, 456, 105 S.Ct. 2768 (1985) and Bruce, 351 F.3d at 1287)
2 (internal quotation marks omitted).

3 Plaintiff fails to state how any Defendant deprived him of his minimal due process
4 protections during his 2012 active/inactive review. Allegations that Defendant Turmezei falsely
5 documented items in Plaintiff's central file showing that he was a member of a prison gang do not
6 give rise to a claim for relief. Sandin v. Connor, 515 U.S. 472, 484, 115 S.Ct. 2293 (1995);
7 Hernandez v. Johnston, 833 F.2d 1316, 1319 (9th Cir. 1987).

8 In addition, only allegations concerning the May 16, 2012, event are viable. Any allegations
9 concerning the validation which took place in 2008 were determined to be time-barred. In addition,
10 they concern events which took place in another jurisdiction. Therefore, Defendants Covello and
11 Smith, and all claims concerning Defendants Covello and Smith, are dismissed. To the extent
12 Plaintiff wishes to bring a complaint concerning these Defendants, he must do so in a separate action
13 in the Central District of California.

14 2. Placement in Administrative Segregation

15 Although Plaintiff alleges that he was placed in administrative segregation, he does not have
16 a freestanding right to be housed in general population and therefore, his bare allegation that he was
17 placed in administrative segregation does not support a claim. Wilkinson v. Austin, 545 U.S. 209,
18 221, 125 S.Ct. 2384 (2005); Sandin v. Connor, 515 U.S. 472, 484, 115 S.Ct. 2293 (1995); May v.
19 Baldwin, 109 F.3d 557, 565 (9th Cir. 1997).

20 While long-term cell confinement in the SHU may rise to the level of Eighth Amendment
21 violations if the conditions are sufficiently grave, Plaintiff's complaint is devoid of any specific facts
22 regarding these conditions and thus, no basis is presented for a finding that the conditions were
23 sufficiently grave to trigger constitutional scrutiny. Hudson v. McMillian, 503 U.S. 1, 9, 112 S.Ct.
24 995 (1992); Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976); Thomas v. Ponder, 611 F.3d
25 1144, 1151-52 (9th Cir. 2010).

26 3. Free Exercise of Religion

27 The protections of the Free Exercise Clause are triggered when prison officials substantially
28 burden the practice of an inmate's religion by preventing him from engaging in conduct which he

1 sincerely believes is consistent with his faith, Shakur v. Schriro, 514 F.3d 878, 884-85 (9th Cir.
2 2008), and RLUIPA prohibits prison officials from substantially burdening a prisoner’s “religious
3 exercise unless the burden furthers a compelling governmental interest and does so by the least
4 restrictive means,” Alvarez v. Hill, 518 F.3d 1152, 1156 (9th Cir. 2009) (quoting Warsoldier v.
5 Woodford, 418 F.3d 989, 997-98 (9th Cir. 2005)). In this instance, Plaintiff’s complaint sets forth
6 no facts whatsoever in support of his claim that his rights under the Free Exercise Clause and
7 RLUIPA are being violated.

8 4. Retaliation

9 Allegations of retaliation against a prisoner’s First Amendment rights to speech or to petition
10 the government may support a section 1983 claim. Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir.
11 1985); see also Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v. Rowland, 65
12 F.3d 802, 807 (9th Cir. 1995). “Within the prison context, a viable claim of First Amendment
13 retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action
14 against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4)
15 chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably
16 advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005);
17 accord Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009).

18 Although Plaintiff generally alleges retaliation against him, his complaint sets forth
19 insufficient facts to support any viable claims against the named defendants.

20 5. Heck Bar

21 “[A] state prisoner’s § 1983 action is barred (absent prior invalidation) - no matter the relief
22 sought (damages or equitable relief), no matter the target of the prisoner’s suit (state conduct leading
23 to conviction or internal prison proceedings) - if success in that action would necessarily
24 demonstrate the invalidity of confinement or its duration.” Wilkinson v. Dotson, 544 U.S. 74, 81-2,
25 125 S.Ct. 1242, 1248 (2005).

26 Where “success in a . . . [section] 1983 damages action would implicitly question the validity
27 of conviction or duration of sentence, the litigant must first achieve favorable termination of his
28 available state, or federal habeas, opportunities to challenge the underlying conviction or sentence.”

1 Muhammad v. Close, 540 U.S. 749, 751, 124 S.Ct. 1303, 1304 (2004) (citing to Heck v. Humphrey,
2 512 U.S. 477, 114 S.Ct. 2364 (1994)); Edwards v. Balisok, 520 U.S. 641, 648 (1997) (applying Heck
3 to a prison disciplinary hearing where good-time credits were affected).

4 In this case, Plaintiff alleges that his gang validation resulted in the forfeiture of behavior
5 credits, thereby extending the time of his sentence. Pl.'s Compl. at 5. If that is the case, his due
6 process claim is barred until such time as Plaintiff invalidates the result of the hearing.

7 **D. CONCLUSION AND ORDER**

8 Plaintiff's complaint fails to state a claim upon which relief may be granted under section
9 1983. The Court will provide Plaintiff with an opportunity to file an amended complaint. Akhtar v.
10 Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

11 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
12 each named Defendant did that led to the deprivation of Plaintiff's federal rights and liability may
13 not be imposed on supervisory personnel under the theory of mere *respondeat superior*, Iqbal, 556
14 U.S. at 676-77; Starr v. Baca, 652 F.3d 1202, 1205-07 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101
15 (2012). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to
16 relief above the speculative level. . . ." Twombly, 550 U.S. at 555 (citations omitted).

17 Plaintiff is further advised that the complaint cannot present claims pertaining to the 2008
18 and 2009 events, and Defendants Covello and Smith, which as previously noted were determined to
19 be time-barred by the United States District Court for the Central District of California.

20 Finally, an amended complaint supercedes the original complaint, Lacey v. Maricopa
21 County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be "complete in itself without
22 reference to the prior or superceded pleading," Local Rule 220.

23 Accordingly, it is HEREBY ORDERED that:

- 24 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim
25 under section 1983;
- 26 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 27 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
28 amended complaint; and

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4. If Plaintiff fails to file an amended complaint in compliance with this order, this action will be dismissed, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

Dated: October 17, 2014

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE