

1
2
3
4
5
UNITED STATES DISTRICT COURT

6
7 EASTERN DISTRICT OF CALIFORNIA

8 RENO RIOS,

9 Plaintiff,

10 v.

11 C. GIPSON, et al.,

12 Defendants.

13 Case No. 1:14-cv-00520-BAM-PC

14 ORDER DISMISSING CLAIMS

15 ORDER REQUIRING PLAINTIFF TO
16 EITHER FILE SECOND AMENDED
17 COMPLAINT OR NOTIFY COURT OF
18 WILLINGNESS TO PROCEED ONLY ON
19 COGNIZABLE CLAIMS

20 THIRTY-DAY DEADLINE

21 Plaintiff is a state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C.
22 § 1983. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c).¹
23 Currently before the Court is Plaintiff's May 20, 2016, first amended complaint, filed in response
24 to the February 16, 2016, order, dismissing the original complaint with leave to amend. (ECF
25 No. 14.)

26 **I.**

27 **SCREENING REQUIREMENT**

28 The Court is required to screen complaints brought by prisoners seeking relief against a
29 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
30 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
31 legally "frivolous or malicious," that "fail to state a claim on which relief may be granted," or
32 that "seek monetary relief against a defendant who is immune from such relief." 28 U.S.C. §

29 ¹ Plaintiff filed a consent to proceed before a magistrate judge on May 9, 2014. (ECF No. 4.)

1915(e)(2)(B).

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 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.2002).

Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012)(citations omitted). To survive screening, Plaintiff's claims must be facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The "sheer possibility that a defendant has acted unlawfully" is not sufficient, and "facts that are 'merely consistent with' a defendant's liability" falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

II.

COMPLAINT ALLEGATIONS

Plaintiff, an inmate in the custody of the California Department of Corrections and Rehabilitation (CDCR) at Kern Valley State Prison, brings this civil rights action against Defendant correctional officials employed by the CDCR at Corcoran State Prison. Plaintiff names the following individual defendants: Warden Connie Gipson; Captain T. Campbell; Lieutenant A. Johnson; Lt. W. Brodie; Lt. S. Pina; Sergeant M. Cuevas; Sgt. J. C. Garcia; Correctional Officer (C/O) Hiracheta; Correctional Counselor (CCII) D. Goree; CCII A. Pasillas; Institutional Gang Investigator (IGI) J. Ortega; IGI A. Mayo. Plaintiff's claims stem from his classification as a validated gang member. In the order dismissing the original complaint, the Court noted that Plaintiff stated a claim for relief against Defendants Gipson, Mayo, Ortega,

1 Garcia, and Pina for due process violations regarding his gang validation. Plaintiff failed to state
2 a claim for being unlawfully charged with a rules violation.

3 Plaintiff alleges that on July 26, 2006, he was originally validated as an associate member
4 of the Mexican Mafia (EME) prison gang. Plaintiff alleges that this was done without due
5 process and in retaliation for filing inmate grievances. Plaintiff alleges that pursuant to the
6 applicable regulations, he met the criteria for inactive review on the ground that, for a period of
7 six years, there was no reliable gang activity information that would justify he retention in the
8 Security Housing Unit (SHU).

9 Plaintiff alleges that on August 23, 2010, Defendant IGI Assistant Mayo authored a
10 confidential memorandum, indicating that while working in the Corcoran SHU, he intercepted a
11 manila envelope that inmates Berry and Dominguez were passing to each other. The manila
12 envelope included an “outside note” address to “all in good standing.” (ECF No. 14 ¶ 22.)
13 Inside the manila envelope, Mayo discovered a CDCR Form 602 group appeal, including
14 signatures from inmates that supported the appeal. The appeal related to SHU conditions. May
15 indicated that because the grievance was addressed to “all in good standing” it means that “all
16 inmates who signed the CDCR-602 group grievances were in good standing with the Mexican
17 Mafia (EME) prison gang to commit criminal activities.” (Id. ¶ 23.) On the same date, Mayo
18 filed a confidential memorandum in each inmate’s central file “in retaliation for signing the
19 alleged CDCR-602 group appeal because inmates were challenging the CSP-COR-SHU, harsh
20 conditions.” (Id. ¶ 24.)

21 On October 2, 2012, Lt. Pina was assigned as the Institution Gang Investigator (IGI) by
22 Defendant Warden Gipson. On the same date, Lt. Pina assigned Defendant Ortega to assist him.
23 Ortega was assigned by Lt. Pina to disclose any confidential information that constituted gang
24 activity within the past six years that Plaintiff was in the SHU. On October 2, 2012, Ortega
25 disclosed the fact that Mayo had filed a confidential memorandum in his file regarding the group
26 appeal. Plaintiff alleges that Ortega abused his discretion by failing to accurately disclose all
27 information to “adequately rebut such entries.” (Id., ¶ 33.)

28 On October 4, 2012, Ortega told Plaintiff that Lt. Pina did not have time to conduct a

1 hearing within 24 hours, and that Plaintiff would be re-validated as a prison gang associate
2 because he signed the group appeal. Ortega told Plaintiff that “such inmates rebuttals were
3 never considered by the OCS in charge to validate inmates because they never comment or
4 reply.” (Id. ¶ 34.) Plaintiff explained to Ortega that he needed to talk to Lt. Pina to explain
5 why the information that was submitted to validate him was fabricated.

6 On October 18, 2012, Plaintiff filed an inmate grievance (CDCR Form 602) against
7 Defendants Pina, Ortega, and Mayo for using fabricated information on which to validate
8 Plaintiff’s gang affiliation. On November 15, 2012, Sergeant Garcia interviewed Plaintiff
9 regarding his grievance. Plaintiff explained to Sgt. Garcia that he was at the SHU law library
10 when he signed the group appeal. Plaintiff told Garcia that Defendants Pina, Ortega and Mayo
11 altered their report, and refused to provide Plaintiff with information that Plaintiff could have
12 used to rebut the allegations. Garcia told Plaintiff that no matter what Plaintiff says, the IGI
13 would not consider his evidence. Sgt. Garcia told Plaintiff that he was not the only inmate who
14 was validated as a result of the group appeal, that several other inmates were re-validated as a
15 result of the group appeal.

16 On November 1, 2012, at his ICC hearing, Defendants Pina, Ortega, and Mayo elected to
17 retain Plaintiff in the SHU. Plaintiff alleges that Defendants denied his request to call witnesses,
18 or to have an Investigative Employee to assist in his defense. Plaintiff filed another inmate
19 grievance regarding this decision.

20 On January 7, 2013, Plaintiff was interviewed by Defendant Pasillas regarding his
21 grievance. Pasillas told Plaintiff that the ICC could not correct the IGI’s actions, as the only way
22 to be released from the SHU would be to debrief. Plaintiff was told that inmates were not
23 allowed to call witnesses at ICC reviews, because the reviews were meaningless. Pasillas told
24 Plaintiff that inmates must serve six years before they are eligible for inactive review, and that he
25 could not do anything for Plaintiff because Plaintiff had filed several grievances and civil
26 actions, and “inmates like Plaintiff should be kept in the SHU until they debrief.” (Id. ¶ 44.)

27 Plaintiff alleges that he was subjected to retaliation. Specifically, Plaintiff alleges that he
28 was subjected to constant cell searches because of inmate grievances that he filed. Plaintiff also

1 alleges that as a result of his complaints, Lt. Brodie ordered staff to place Plaintiff on single cell
2 status. Lt. Brodie placed Plaintiff in single cell status “because institutional gang investigators
3 alleged that they had received anonymous note by correctional counselor A. Banks-
4 Graves at which Defendants J. Ortega and A. Pasillas could not found any reliable information
5 which justified their action in regard to the anonymous note.” (*Id.* ¶ 45.)

6 Once Plaintiff was placed on single cell status, he was subjected to harsh conditions.
7 Plaintiff alleges that he was “without water for approximately two weeks,” and that he was fed
8 “constantly imitation flavored food served every day.” (Id. ¶ 45.) Plaintiff alleges that there
9 was minimum access to the law library, recreation, yard programs, laundry, showers, cleaning,
10 and ventilation. Plaintiff alleges that these harsh conditions were imposed against him and other
11 inmates in retaliation for their refusal to debrief. Plaintiff alleges that the inmates had no other
12 remedy to challenge their conditions other than a refusal to eat.

13 Plaintiff alleges that in response to the hunger strike, Defendants Johnson, Cuevas, and
14 Hiracheta issued retaliatory counseling chronos (CDCR Form 128A) and a Rules Violation
15 Report (RVR). Plaintiff disagreed with the regulations that define a hunger strike as refusing
16 nine consecutive meals, and indicated that he consumed food that he had purchased from the
17 canteen. Plaintiff alleges that the information in the chrono was fabricated, as he was never
18 interviewed or asked why he refused meals. Plaintiff was not provided with an IE to assist him
19 with collecting evidence to prepare a defense. On July 22, 2013, Lt. Brodie conducted the
20 hearing on the RVR. Plaintiff alleges that Lt. Brodie denied his request to call witnesses and
21 present evidence in his defense.

III.

DISCUSSION

A. Gang Validation

25 As noted, Plaintiff's original complaint stated a claim for relief against Defendants
26 Warden Gipson, Lt. Mayo, Lt. Pina, IGI Ortega, Sergeant Garcia for improper gang validation
27 based on falsified information. The Court noted that Plaintiff sufficiently alleged that
28 Defendants Warden Gipson, IGI Lt. Mayo, IGI Ortega, IGI Sergeant Garcia, Lt. Pina had

1 predetermined that Plaintiff would be re-validated based upon a refusal to de-brief. Plaintiff re-
2 states these allegations in the first amended complaint. For the reasons noted in the February 16,
3 2016, order, the first amended complaint states a claim against these Defendants for improper
4 gang validation.

5 As to the remaining Defendants, in the February 16, 2016, order, Plaintiff was advised
6 that the statute under which this action proceeds requires that there be an actual connection or
7 link between the actions of the defendants, and the deprivation alleged to have been suffered by
8 the plaintiff. See Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423
9 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the
10 deprivation of a constitutional right, within the meaning of section 1983, if he does an
11 affirmative act, participates in another’s affirmative acts, or omits to perform an act which he is
12 legally required to do that causes the deprivation of which complaint is made.” Johnson v.
13 Duffy, 588 F.2d 740, 743 (9th Cir. 1978). (ECF No. 9 at 8:3-10.) Plaintiff fails to correct this
14 deficiency in the first amended complaint. Based upon the allegations in Plaintiff’s original and
15 first amended complaint, the Court is persuaded that Plaintiff is unable to allege any additional
16 facts that would support a claim for improper gang validation by Defendants Campbell, Johnson,
17 Brodie, Cuevas, Hiracheta, Goree, and Pasillas, and further amendment would be futile. See
18 Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) (“A district court may deny leave to
19 amend when amendment would be futile.”) Based on the nature of the deficiencies at issue, the
20 Court finds that further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130
21 (9th. Cir. 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9th Cir. 1987). Plaintiff’s improper gang
22 validation claim as to these Defendants should therefore be dismissed for failure to state a claim
23 upon which relief could be granted.

24 **B. Rules Violation Report**

25 Plaintiff’s claims that he was unlawfully charged with a serious rules violation report in
26 retaliation because he refused meals. Plaintiff’s central claim is that he was falsely convicted. It
27 is unclear whether Plaintiff suffered the loss of any credits as a result of his disciplinary charge.

28 State prisoners may not challenge the fact or duration of their confinement in a section

1 1983 action and their sole remedy lies in habeas corpus relief. Wilkinson, 544 U.S. at 78. Often
2 referred to as the favorable termination rule, this limitation applies whenever state prisoners
3 “seek to invalidate the duration of their confinement – either directly through an injunction
4 compelling speedier release or indirectly through a judicial determination that necessarily
5 implies the unlawfulness of the state’s custody.” Id. at 81, Heck v. Humphrey, 512 U. S. 477
6 (1994). Accordingly, “a state prisoner’s § 1983 action is barred (absent prior invalidation) – no
7 matter the relief sought (damages or equitable relief), no matter the target of the prisoner’s suit
8 (state conduct leading to conviction or internal prison proceedings) – if success in that action
9 would necessarily demonstrate the invalidity of confinement or its duration.” Id. at 81-82. The
10 favorable termination rule applies to prison disciplinary proceedings if those proceedings
11 resulted in the loss of good-time or behavior credits. Edwards v. Balisok, 520 U.S. 641, 646-68
12 (1997).

13 Here, the allegations indicate that the charges were filed against Plaintiff in retaliation
14 and that officials conspired to violate Plaintiff’s rights by failing to consider evidence and
15 witnesses. A favorable finding on this claim would necessarily imply the invalidity of Plaintiff’s
16 conviction. There are no allegations that Plaintiff’s disciplinary conviction has been reversed,
17 expunged, or otherwise invalidated. Further, it is unclear whether Plaintiff was assessed any loss
18 of credits or any punishment that affected the length of his sentence. Plaintiff was advised of this
19 deficiency in the order dismissing the original complaint. (ECF No. 9 at 9:5-8.) Plaintiff fails to
20 correct this deficiency in the first amended complaint. An allegation that Plaintiff was not
21 allowed to call witnesses or to present evidence in his defense necessarily implies the invalidity
22 of Plaintiff’s conviction. In the first amended complaint, Plaintiff does not allege that his
23 conviction was reversed, expunged, or otherwise invalidated. Further, Plaintiff was specifically
24 advised that the complaint was vague as to whether Plaintiff suffered the loss of any credits as a
25 result of his disciplinary conviction. Plaintiff fails to correct this deficiency in the first amended
26 complaint. Plaintiff does not allege what punishment was imposed, or whether it resulted in the
27 loss of any credits. Based upon the allegations in Plaintiff’s original and first amended
28 complaint, the Court is persuaded that Plaintiff is unable to allege any additional facts that would

1 support a claim for an illegal rules violation hearing, and further amendment would be futile.
2 See Hartmann, 707 F.3d at 1130. Based on the nature of the deficiencies at issue, the Court
3 finds that further leave to amend is not warranted. Lopez, 203 F.3d at 1130; Noll, 809 F.2d at
4 1446-1449. Plaintiff's claims regarding due process violations at his disciplinary hearing are
5 therefore dismissed for failure to state a claim upon which relief could be granted.

6 **C. Retaliation**

7 A plaintiff may state a claim for a violation of his First Amendment rights due to
8 retaliation under section 1983. Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995). A viable
9 claim of retaliation in violation of the First Amendment consists of five elements: "(1) an
10 assertion that a state actor took some adverse action against an inmate (2) because of (3) that
11 prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First
12 Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal."
13 Rhodes v. Robinson, 408 F.3d 559, 567 (9th Cir. 2005); accord Watison v. Cartier, 668 F.3d
14 1108, 1114 (9th Cir. 2012); Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009).

15 **1. Hunger Strike**

16 In the order dismissing the original complaint, Plaintiff was advised that to the extent that
17 he set forth a claim of retaliation for engaging in a hunger strike, such a claim was inconsistent
18 with a claim that Plaintiff was not in fact participating in a hunger strike. Though participating
19 in a hunger strike can, in certain circumstances, constitute activity protected by the First
20 Amendment, the basis of Plaintiff's claim appeared to be that he was not participating in a
21 hunger strike, but falsely charged with participating in a hunger strike. Plaintiff's retaliation
22 claim was therefore dismissed with leave to file an amended complaint in which he alleges that
23 he was in fact participating in a hunger strike. Liberally construed, the first amended complaint
24 alleges that Plaintiff was participating in a hunger strike to protest Defendants' policy of
25 retaining him in the SHU in order to get him to debrief, and that he was charged with a serious
26 rules violation in retaliation for participating in the hunger strike. Plaintiff therefore states a
27 claim for relief against Defendants Johnson, Cuevas, and Hiracheta for retaliating against
28 Plaintiff for participation in a hunger strike in violation of the First Amendment.

2. Conditions of Confinement

2 Plaintiff alleges that he and other inmates were subjected to harsh conditions of
3 confinement “in retaliation because 4B facility 4R building was assigned to house only gang
4 validated inmates to enforce them to debrief.” (ECF No. 14, ¶ 45.) The Court finds this
5 allegation fails to state sufficient factual matter to assert a claim. As noted above, Plaintiff must
6 link each individual defendant with specific conduct that deprived Plaintiff of a protected
7 interest. Johnson, 588 F.2d at 743. A bare allegation that defendants in general subjected
8 Plaintiff to unconstitutional conditions of confinement because he was in a housing unit where
9 inmates were “enforced to debrief” is insufficient to state a claim for retaliation. There are no
10 facts alleged indicating that any of the named Defendants caused any of the specific conditions
11 that Plaintiff complained of, or any facts suggesting that a particular condition of Plaintiff’s
12 confinement was imposed on him in response to Plaintiff’s exercise of a protected activity.
13 Plaintiff’s retaliation claim regarding the conditions of his confinement should therefore be
14 dismissed. Because Plaintiff raises this claim for the first time in the first amended complaint, he
15 will be granted an opportunity to file a second amended complaint that cures this defect.

16 Regarding any challenge to the conditions of confinement imposed on Plaintiff while in
17 the SHU on Eighth Amendment grounds, he is advised of the following legal standards for an
18 Eighth Amendment conditions of confinement claim.

19 The Eighth Amendment protects prisoners from inhumane methods of punishment and
20 from inhumane conditions of confinement. Farmer v. Brennan, 511 U.S. 825 (1994); Morgan v.
21 Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006). “[R]outine discomfort inherent in the prison
22 setting” does not rise to the level of a constitutional violation. Johnson v. Lewis, 217 F.3d 726,
23 731 (9th Cir. 2000). Rather, extreme deprivations are required to make out a conditions of
24 confinement claim, and only those deprivations denying the minimal civilized measure of life’s
25 necessities are sufficiently grave to form the basis of an Eighth Amendment violation. Farmer,
26 511 U.S. at 834; Hudson v. McMillian, 503 U.S. 1, 9 (1992). In order to state a claim, Plaintiff
27 must allege facts sufficient to show that prison officials knew of and disregarded a substantial
28 risk of serious harm to the plaintiff. Farmer, 511 U.S. at 847; Thomas v. Ponder, 611 F.3d 1144,

1 1150-51 (9th Cir. 2010); Richardson v. Runnels, 594 F.3d 666, 672 (9th Cir. 2010).

2 **IV.**

3 **CONCLUSION AND ORDER**

4 Plaintiff's first amended complaint states a cognizable claim against Defendants Gipson,
5 Mayo, Ortega, Garcia and Pina for due process violations regarding his gang validation, and
6 against Defendants Johnson, Cuevas, and Hiracheta for retaliating against Plaintiff for engaging
7 in a hunger strike. Plaintiff's claims regarding due process violations at his disciplinary hearing
8 are dismissed, without leave to amend, for failure to state a claim upon which relief could be
9 granted. Plaintiff's gang validation claims against Defendants Campbell, Johnson, Brodie,
10 Cuevas, Hiracheta, Goree, and Pasillas are dismissed, without leave to amend, for failure to state
11 a claim upon which relief could be granted. The Court will provide Plaintiff with the
12 opportunity to file an amended complaint regarding his conditions of confinement, curing the
13 deficiencies identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th
14 Cir. 1987).

15 If Plaintiff does not wish to file an amended complaint and is agreeable to proceeding
16 only against Defendants Gipson, Mayo, Ortega, Garcia and Pina on his due process gang
17 validation claim and against Defendants Johnson, Cuevas, and Hiracheta on his retaliation claim,
18 Plaintiff may so notify the Court in writing. The other defendants and claims will then be
19 dismissed for failure to state a claim. Plaintiff will then be provided eight summons and eight
20 USM-285 forms for completion and return. Upon receipt of the forms, the Court will direct the
21 United States Marshal to initiate service of process on Defendants Gipson, Mayo, Ortega,
22 Garcia, Pina, Johnson, Cuevas and Hiracheta.

23 If Plaintiff elects to amend, his amended complaint should be brief, Fed. R. Civ. P. 8(a),
24 but must state what each named defendant did that led to the deprivation of Plaintiff's
25 constitutional or other federal rights, Iqbal, 556 U.S. at 678-679; Jones, 297 F.3d at 934.
26 Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to relief
27 above the speculative level . . . Twombly, 550 U.S. at 555 (citations omitted). The mere
28 possibility of misconduct is insufficient to state a claim. Iqbal, 556 U.S. at 678. Further,

1 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his amended
2 complaint. George v. Smith, 507 F.3d 1467, 1474 (7th Cir. 2007)(no “buckshot” complaints).

3 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and
5 must be “complete in itself without reference to the prior or superseded pleading,” Local Rule
6 220.

7 Based on the foregoing, IT IS HEREBY ORDERED that:

- 8 1. The Clerk’s Office shall send to Plaintiff a civil rights complaint form;
- 9 2. Plaintiff’s claims regarding due process violations at his disciplinary hearing are
10 dismissed, without leave to amend, for failure to state a claim upon which relief
11 could be granted;
- 12 3. Plaintiff’s gang validation claims against Defendants Campbell, Johnson, Brodie,
13 Cuevas, Hiracheta, Goree, and Pasillas are dismissed, without leave to amend, for
14 failure to state a claim upon which relief could be granted;
- 15 4. Within **thirty (30) days** from the date of service of this order, Plaintiff must
16 either:
 - 17 a. File a second amended complaint curing the deficiencies identified by the Court
18 in this order, or
 - 19 b. Notify the Court in writing that he does not wish to file a second amended
20 complaint and is willing to proceed only against Defendants Gipson, Mayo,
21 Ortega, Garcia and Pina on his due process gang validation claims and against
22 Defendants Johnson, Cuevas, and Hiracheta on his retaliation claim; and
- 23 5. If Plaintiff fails to comply with this order, this action will be dismissed for failure
24 to prosecute and to obey a court order.

25 IT IS SO ORDERED.

26 Dated: October 18, 2016

27 /s/ *Barbara A. McAuliffe*

28 UNITED STATES MAGISTRATE JUDGE