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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARCUS LEWIS GARRETT,
Plaintiff,
v.
T. PEREZ, et al.,
Defendants.

Case No. 1:14-cv-00751-SKO (PC)
FIRST SCREENING ORDER DISMISSING
AMENDED COMPLAINT, WITH LEAVE
TO AMEND, FOR FAILURE TO STATE A
CLAIM UNDER SECTION 1983
(Doc. 6)
THIRTY-DAY DEADLINE

First Screening Order

I. Screening Requirement and Standard

Plaintiff Marcus Lewis Garrett, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 19, 2014. On August 20, 2014, Plaintiff filed an amended complaint as a matter of right. Fed. R. Civ. P. 15(a)(1).

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an 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. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court

1 shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to
2 state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the
4 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937
7 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and
8 courts “are not required to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572
9 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual
10 allegations are accepted as true, legal conclusions are not. *Iqbal*, 556 U.S. at 678.

11 Under section 1983, Plaintiff must demonstrate that each defendant personally participated
12 in the deprivation of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). This
13 requires the presentation of factual allegations sufficient to state a plausible claim for relief. *Iqbal*,
14 556 U.S. at 678-79; *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). Prisoners
15 proceeding pro se in civil rights actions are entitled to have their pleadings liberally construed and
16 to have any doubt resolved in their favor, *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)
17 (citations omitted), but nevertheless, the mere possibility of misconduct falls short of meeting the
18 plausibility standard, *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969.

19 **II. Discussion**

20 **A. Summary of Allegations**¹

21 Plaintiff is currently incarcerated at California State Prison-Corcoran (“CSP”) in the
22 Security Housing Unit (“SHU”). While at California State Prison-Sacramento in 2005, Plaintiff
23 was found guilty of battery on an inmate with a weapon and sentenced to serve a twenty-four
24 month SHU term at CSP. During service of that twenty-four month term, Plaintiff received eleven
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26 ¹ Plaintiff supported his original complaint with exhibits that were not included with his amended complaint. (Doc. 1,
27 Comp., court record pp.11-23.) The Court may take judicial notice of its own records, and in screening Plaintiff’s
28 amended complaint, the Court considers the exhibits, which are prison records from Plaintiff’s central file, to the
extent they are relevant to the analysis of his claims. *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980); *see also Akhtar v. Mesa*, 698 F.3d 1202, 1208-09 (9th Cir. 2012).

1 additional SHU terms for misconduct, resulting in a minimum eligible release date (“MERD”) of
2 March 12, 2013.² On March 13, 2013, Plaintiff informed Defendant Paprzycki that his SHU term
3 expired the day before and he should be released. Plaintiff alleges that Defendant Paprzycki was
4 responsible for preparing inmates’ case factors for presentation to the Institutional Classification
5 Committee (“ICC”) thirty days prior to the expiration of a determinate SHU term, and neither
6 Defendant Paprzycki nor Defendant Pacillas brought Plaintiff before the ICC or otherwise
7 reviewed his continued retention in the SHU.

8 On March 22, 2013, Plaintiff appeared in person before the ICC for his pre-MERD review,
9 although his MERD date expired ten days earlier. Plaintiff addressed his retention in the SHU
10 beyond the expiration of his MERD and Defendant Perez told him they could do what they
11 wanted. Plaintiff responded that he had been disciplinary-free for the past eighteen months and
12 requested the basis for giving him an indeterminate SHU term, in violation of procedural
13 requirements. Defendant Pacillas told Plaintiff they could give him whatever term they wanted to
14 and his recourse was to file an inmate appeal. Plaintiff thereafter received a 128G chrono
15 documenting the ICC’s action on March 22, 2013, and attributing the untimely review to an
16 unspecified administrative error. (Doc. 1, Comp., p. 15.)

17 Plaintiff filed an inmate appeal of the ICC’s action. (*Id.*, p. 20.) Defendant Pacillas
18 reviewed the appeal at the first level, which Plaintiff alleges circumvented proper procedure given
19 that Plaintiff was appealing an ICC action and Defendant Pacillas was an ICC member. (*Id.*)
20 Defendant Pacillas denied the appeal but failed to address the issue of notice.

21 Plaintiff subsequently received a Rules Violation Report (“RVR”) for indecent exposure.³
22 The alleged violation involved a female officer, and Plaintiff filed another inmate appeal
23 challenging the RVR on the ground that it was impossible for the officer to have viewed his cell
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25 _____
26 ² Plaintiff uses the term “medium” eligible release date in his amended complaint. (Doc. 6, Amend. Comp., court
27 record p. 7.) However, under Title 15 prison regulations, MERD is defined as *minimum* eligible release date and
28 MERD is distinguished from *maximum* release date. Cal. Code. Reg., tit. 15, § 3341.5(c)(2)(B)(3). Plaintiff’s
exhibits, attached to his original complaint, confirm that March 12, 2013, was his MERD, or minimum eligible release
date. (Doc. 1, Comp., court record p. 15.)

³ Also known as a CDC 115.

1 from her location. The appeal was screened out, which Plaintiff alleges is a “device” used to
2 retaliate and justify his retention in the SHU. (Doc. 6, Amend. Comp., p. 10.)

3 Plaintiff was found guilty of the RVR and sentenced to a determinate nine month SHU
4 term. On December 13, 2013, after Plaintiff served his determinate term, the ICC imposed an
5 indeterminate SHU term for program failure.

6 On May 30, 2013, Defendants Perez, Pacillas, and Paprzycki conducted an “R” suffix
7 evaluation using “a California statute to classify Plaintiff as a convicted sex offender,” despite lack
8 of formal charges, conviction, or a *Miranda* warning. (Doc. 6, Amend. Comp., p. 11.) Plaintiff
9 alleges that his RVRs stated “handle administratively.” (*Id.*) Further, Plaintiff alleges that
10 Defendant Pacillas affixed the “R” suffix “without procedural review,” and altered the regulations
11 and misapplied the “R” suffix criteria.

12 Plaintiff filed an inmate appeal, which caused defendants to take notice, and the appeal was
13 partially granted in that Plaintiff was afforded a procedural review. (Doc. 1, Comp., p. 12, 16-19.)
14 Plaintiff alleges that the “R” suffix designation was in place “illegally” for two years, and the
15 designation could cause him to register as a sex offender despite the absence of any arrest or
16 conviction for sex-related charges. Plaintiff alleges that further, the “R” suffix designation
17 endangered his safety with general population inmates.

18 Plaintiff alleges in his amended complaint that since the filing of his original complaint, he
19 has not been afforded notice and a review for release from the SHU to general population, in
20 accordance with prison regulations. Plaintiff alleges that Defendants Johnson, Oliveira, and Felix
21 are violating his rights to due process and equal protection by failing to release him from the SHU,
22 and Defendant Felix is responsible for preparing Plaintiff’s case factors for presentation to the
23 ICC. Plaintiff alleges the ICC assessed him an indeterminate SHU term on December 31, 2013,
24 and it was approved by a CSR (classification services representative) on February 17, 2014.
25 Plaintiff asserts he was entitled to review of the ICC’s action within one-hundred eighty days from
26 December 31, 2013, but he did not receive a timely review.

27 In June, the month Plaintiff expected his review, he submitted several CDC GA-22 inmate
28 requests to Defendant Felix, and Defendant told him he would appear before the ICC in a timely

1 manner. However, Plaintiff did not receive a review until July 29, 2014, which was one month
2 late. During the ICC review, Defendant Felix recommended Plaintiff's continued retention on an
3 indeterminate SHU term, and Defendant Johnson told Plaintiff he would not be released to general
4 population. Plaintiff addressed the ICC and asked why he was not reviewed in June, and
5 Defendant Johnson told him the review could be late and it was not a big deal. Plaintiff stated the
6 ICC was retaining him on an indeterminate SHU term beyond six months in the absence of an
7 RVR (CDC 115). Defendant Johnson informed Plaintiff they could retain him for up to one year
8 per regulations. Plaintiff responded that they were impermissibly retaining him in the SHU for
9 program failure but applying a gang validation regulation against him. Defendant Johnson said he
10 would document Plaintiff's dissatisfaction and Plaintiff could file an inmate appeal, but there was
11 no due process issue.

12 **B. Claims**

13 **1. Due Process Claims**

14 In his amended complaint, Plaintiff focuses heavily on the language of Title 15 prison
15 regulations, the procedural rights afforded him under the regulations, and Defendants' violation of
16 those rights. However, Plaintiff is proceeding under section 1983, and he improperly conflates his
17 rights under state prison regulations with his federal constitutional rights. *See Nurre v. Whitehead*,
18 580 F.3d 1087, 1092 (9th Cir. 2009) (section 1983 claims must be premised on violation of federal
19 constitutional right); *Sweaney v. Ada Cnty., Idaho*, 119 F.3d 1385, 1391 (9th Cir. 1997) (section
20 1983 creates cause of action for violation of federal law); *Lovell v. Poway Unified Sch. Dist.*, 90
21 F.3d 367, 370-71 (9th Cir. 1996) (Federal and state law claims should not be conflated; to the
22 extent the violation of a state law amounts to a deprivation of a state-created interest that reaches
23 beyond that guaranteed by the federal Constitution, section 1983 offers no redress.) (quotation
24 marks omitted). A federal due process claim does not arise out of the mere violation of state
25 prison regulations; the inquiries as to the creation of a protected liberty interest and to the process
26 due if a protected liberty interest is at stake are undertaken independently of prison regulation
27 language. *Wilkinson v. Austin*, 545 U.S. 209, 221-29, 125 S.Ct. 2384 (2005).

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a. **Liberty Interest**

1) **SHU Confinement**

Plaintiff alleges that prison officials retained him in the SHU following the expiration of his determinate SHU term, sentenced him to an indeterminate SHU term, and affixed an “R” suffix to his custody designation without due process.⁴ The Fourteenth Amendment’s Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake. *Wilkinson*, 545 U.S. at 221 (quotation marks omitted). The Due Process Clause itself confers no liberty interest in freedom from the SHU or from “R” suffix status. *Id.* at 221. While a liberty interest in avoiding particular conditions of confinement *may* arise from state policies or regulations, the touchstone of the inquiry into the existence of a protected, state-created liberty interest in avoiding restrictive conditions of confinement is *not* the language of the regulations regarding those conditions but the nature of those conditions themselves in relation to the ordinary incidents of prison life. *Wilkinson*, 545 U.S. at 222-23 (citing *Sandin v. Conner*, 515 U.S. 472, 484, 115 S.Ct. 2293 (1995)) (quotation marks omitted); *Brown v. Oregon Dep’t of Corr.*, 751 F.3d 983, 987 (9th Cir. 2014). Only those conditions which impose “atypical and significant hardship . . . in relation to the ordinary incidents of prison life” give rise to a protected state-created liberty interest. *Wilkinson*, 545 U.S. at 222-23 (citing *Sandin*, 515 U.S. at 484) (internal quotation marks omitted); *Brown*, 751 F.3d at 987.

In his amended complaint, Plaintiff alleges that since the expiration of his determinate SHU term on March 12, 2013, he has been in solitary confinement in the SHU; he is confined to his cell twenty-four hours a day five days a week; and he is deprived of general population activities, credit-earning status, a job, exercise, phone privileges, and freedom from handcuffs. Long-term solitary confinement imposes atypical and significant hardship on inmates, and although the baseline for determining what length of confinement will give to a liberty interest

⁴ It does not appear Plaintiff is attempting to state any due process claims arising out of the inmate appeals process, but in the event Plaintiff disagrees with that interpretation of his allegations, he is informed that inmates lack a protected liberty interest with respect to the appeals process and they cannot base a claim on how their appeals were processed or on their dissatisfaction with the result. *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003).

1 remains unsettled, the period of Plaintiff's confinement was seventeen months at a minimum and
2 it may be ongoing to date. *Wilkinson*, 545 U.S. at 223-24; *Brown*, 751 F.3d at 988. Given the
3 length of Plaintiff's SHU confinement and at the pleading stage, the Court finds Plaintiff's
4 allegations are sufficient to demonstrate the existence of a protected liberty interest in remaining
5 free from the SHU. *Brown*, 751 F.3d at 988.

6 **2) "R" Suffix Custody Designation**

7 Plaintiff's allegations do not support the existence of a protected liberty interest in
8 remaining free from an "R" suffix designation, however. An "R" suffix is an inmate custody
9 designation assigned to inmates with a history of sex offenses as outlined in California Penal Code
10 § 290, and "R" suffix inmates are housed in accordance with placement score. Cal. Code Regs.,
11 tit. 15, § 3377.1(b). Section 3377.1(b)(3)(A) provides that "[a]n inmate found guilty in a
12 disciplinary hearing of a Division A-1, A-2, or B offense that is equivalent to an offense listed in
13 PC Section 290 shall have an 'R' suffix evaluation completed by a classification committee."
14 Plaintiff was classified as an "R" suffix inmate based on three RVRs involving masturbation.
15 Although the designation may be stigmatizing for inmates, the designation is nevertheless merely
16 an administrative prison custody classification, and the mere reputational stain of an "R" suffix
17 does not impose "atypical and significant hardship on the inmate in relation to the ordinary
18 incidents of prison life." *Wilkinson*, 545 U.S. at 223 (citing *Sandin*, 515 U.S. at 484) (internal
19 quotation marks omitted); *Grandison v. Stainer*, No. 1:11-cv-01506-LJO-MJS (PC), 2012 WL
20 4026849, at *1 (E.D.Cal. Sep. 10, 2012); *Gaston v. Hedgepeth*, No. C 10-4068 LHK (PR), 2012
21 WL 3903920, at *3 (N.D.Cal. Sep. 7, 2012); *Boyden v. Small*, No. 09-2850 DMS (JMA), 2011
22 WL 455683, at *3 (S.D.Cal. Feb. 3, 2011); *see also Neal v. Shimoda*, 131 F.3d 818, 828-29 (9th
23 Cir. 1997) (discussing sex offender designation in context of extensive, mandatory treatment
24 program).

25 Plaintiff's additional assertion that designating him an "R" suffix inmate amounted to
26 charging and convicting him criminally and in the absence of a *Miranda* warning lack merit. The
27 designation may arise out of conduct in prison, as it did for Plaintiff, and there is no support for
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1 Plaintiff's bare allegation that it results in the imposition of punishment under the penal code
2 reserved for those criminally convicted.⁵ Tit. 15, § 3377.1(b).

3 **b. Process Due**

4 Having determined that Plaintiff has a protected liberty interest at stake with respect to
5 long-term SHU confinement, the inquiry turns to what process is due under federal law and
6 whether it was provided to Plaintiff. *Wilkinson*, 545 U.S. at 224. Teasing out the purported
7 procedural violations from Plaintiff's amended complaint is somewhat challenging given that
8 Plaintiff's pro se status and his due process claims arise out of different events -- some of which
9 are related to Plaintiff's long-term SHU confinement. Based on Plaintiff's focus on the violation
10 of various prison regulations, he appears to be challenging his retention in the SHU for ten days
11 following his MERD without a timely pre-MERD hearing and the indeterminate SHU term he was
12 assessed following the expiration of his nine-month determinate term for indecent exposure. The
13 Court will also briefly address that nine-month determinate SHU term.

14 **1) Ten-Day Retention Following Expiration of MERD**

15 Beginning with period between March 12, 2013, and March 22, 2013, while Plaintiff
16 alleges that his determinate SHU term *expired* on March 12, 2013, Plaintiff's exhibits and the
17 applicable regulations do not support his assertion that he was entitled to release from the SHU on
18 March 12, 2013. Rather, Plaintiff's MERD, or *minimum* eligible release date, was March 12,
19 2013. Even assuming March 12, 2013, was Plaintiff's maximum eligible release date, federal due
20 process entitles Plaintiff to notice and an opportunity to be heard, and his exhibits indicate he was
21 provided with written notice on March 13, 2013, via a CDCR form 114-D,⁶ and he was heard on
22 March 22, 2013, when he personally appeared for his ICC hearing. *See Mathews v. Eldridge*, 424

23 _____
24 ⁵ The Court notes that in his inmate appeal, Plaintiff argued at the second and third levels of review that he was
25 convicted in prison disciplinary proceedings of Division D offenses while the regulation provides that Division A-1,
26 A-2, and B offenses are eligible for "R" suffix evaluation. (Doc. 1, Comp., pp. 17, 19.) Plaintiff included only the
27 first level response memorandum as an exhibit, so it is unknown how prison officials responded to the argument that
28 his prison disciplinary convictions did not subject him to "R" suffix evaluation under applicable prison regulations.
Regardless, however, liberty interests are not created by state prison regulation language, Plaintiff has provided no
factual support for his conclusory assertion that the classification somehow subjects him to criminal penalties, and the
general stigma that accompanies an "R" suffix classification does not give rise to a protected liberty interest.

⁶ A 114-D is an "Order and Hearing on Segregated Housing" form. Tit. 15, § 3336(a).

1 U.S. 319, 335, 96 S.Ct. 893 (1976) (adequate notice and meaningful opportunity to be heard are
2 hallmarks of procedural due process); *Toussaint v. McCarthy*, 801 F.2d 1080, 1099-1100 (9th Cir.
3 1986) (segregation for administrative reasons requires some notice and an opportunity to be
4 heard), *abrogated in part on other grounds by Sandin*, 515 U.S. 472. (Doc. 1, Comp., p. 15.)
5 While it appears Plaintiff was supposed to have a pre-MERD hearing under state prison
6 regulations and the ICC acknowledged Plaintiff did not receive a timely pre-MERD hearing,
7 prison regulations do not define the process due under federal law. Tit. 15, § 3341.5(c)(2)(B)(10).
8 Federal due process requires, in addition to notice and the opportunity to be heard, that prison
9 officials hold a hearing “within a reasonable time after the prisoner is segregated,” and a mere ten-
10 day delay between the expiration of Plaintiff’s MERD and the ICC hearing on his continued
11 segregation is simply not of constitutional magnitude because it was not unreasonable. *Toussaint*,
12 801 F.2d at 1099-1100.

13 **2) Nine-Month Determinate Term**

14 Next, at the ICC hearing on March 22, 2013, the committee elected to refer the matter to
15 the CSR with the recommendation that Plaintiff be given an indeterminate SHU term based on his
16 disciplinary history, identified by the ICC as disruptive behavior arising out of the three prior
17 RVRs for masturbation in 2010 and 2011. (Doc. 1, Comp., p. 15.) The ICC also apparently
18 considered Plaintiff’s refusal to sign a CDCR form 2260 “Advisement of Expectations regarding
19 Security Threat Groups (STG) in CDCR,” within the context of the eleven additional SHU terms
20 Plaintiff received after he was sentenced to the SHU in 2005. (*Id.*) Although the exact dates are
21 unclear, shortly after the March 22, 2013, ICC meeting, Plaintiff received another RVR for
22 masturbation. (Amend. Comp., p. 10.) Plaintiff was found guilty and assessed a nine-month
23 determinate SHU term, which expired in December 2013. (*Id.*)

24 Prison disciplinary proceedings require procedural protections beyond those required for
25 administrative segregation, but nonetheless, “[p]rison disciplinary proceedings are not part of a
26 criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not
27 apply.” *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963 (1974). With respect to Plaintiff’s
28 disciplinary hearing, his amended complaint is devoid of any facts which suggest he was deprived

1 of the minimal procedural protections he was due under federal law. *Superintendent v. Hill*, 472
2 U.S. 445, 455, 105 S.Ct. 2768 (1985); *Wolff*, 418 U.S. at 563-71; *Cato v. Rushen*, 824 F.2d 703,
3 705 (9th Cir. 1987). While Plaintiff filed an appeal challenging evidence against him, there is no
4 indication he was deprived of any federal due process protections and it does not appear Plaintiff
5 is challenging his nine-month determinate term. Rather, Plaintiff's allegations indicate his
6 challenges are to the delay in receiving his MERD hearing in March 2013, and his continued
7 retention in the SHU after December 2013. In any event, there is no support for a finding that
8 Plaintiff was deprived of federal procedural due process with respect to the nine-month
9 determinate SHU term assessed against him for masturbation.

10 **3) Indeterminate Term for Program Failure**

11 Finally, following the expiration of his nine-month determinate SHU term in December
12 2013, Plaintiff was retained in the SHU on an indeterminate term for "program failure." (Amend.
13 Comp., p. 10.) Plaintiff alleges his case factors should have been reviewed by a CSR within one-
14 hundred eighty days from December 31, 2013. (Amend. Comp., pp. 13-14.) However, Plaintiff
15 did not appear before the ICC until July 29, 2014, one month after the review should have
16 occurred in accordance with state prison regulations. (*Id.*, p. 14.)

17 Again, Plaintiff's focus is on prison officials' alleged violation of the letter of the law as
18 defined by state prison regulations. Plaintiff challenges prison officials' review because it
19 occurred in July 2014 rather than in June 2014, and because he contends prison regulations
20 preclude officials from retaining him in the SHU on indeterminate status for program failure. (*Id.*,
21 pp. 14-16.) The Court declines to find that Plaintiff was deprived of the procedural due process
22 protections he was due under federal law merely because his periodic review was conducted one
23 month late, within two-hundred ten days rather than within one-hundred eighty days. This thirty-
24 day delay, without more, does not rise to a constitutional violation. Likewise, Plaintiff's mere
25 disagreement with prison officials' interpretation of state prison regulations regarding the
26 legitimacy of the basis for his confinement does not demonstrate he was deprived of federal
27 process.

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1 Finally, Plaintiff's amended complaint lacks any facts suggesting that Plaintiff was treated
2 differently than other similarly situated inmates. E.g., *City of Cleburne v. Cleburne Living Center,*
3 *Inc.*, 473 U.S. 432, 439, 105 S.Ct. 3249 (1985); *Hartmann v. California Dep't of Corr. & Rehab.*,
4 707 F.3d 1114, 1123 (9th Cir. 2013); *Furnace v. Sullivan*, 705 F.3d 1021, 1030 (9th Cir. 2013);
5 *Shakur v. Schriro*, 514 F.3d 878, 891 (9th Cir. 2008). In the absence of disparate treatment
6 between similarly situated groups or individuals, no claim lies. *Arizona Dream Coalition v.*
7 *Brewer*, 757 F.3d 1053, 1063-64 (9th Cir. 2014); *Hartmann*, 707 F.3d at 1123; *Furnace*, 705 F.3d
8 at 1030; *Shakur*, 514 F.3d at 891.

9 **III. Conclusion and Order**

10 Plaintiff's amended complaint fails to state any claims upon which relief may be granted
11 under section 1983. The Court will provide Plaintiff with an opportunity to file a second amended
12 complaint in the event he is able to cure any of the deficiencies. *Akhtar*, 698 F.3d at 1212-13;
13 *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

14 Plaintiff's second amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state
15 what each named defendant did that led to the deprivation of Plaintiff's federal rights. *Jones*, 297
16 F.3d at 934. Plaintiff must demonstrate a causal connection between each defendant's conduct
17 and the violation of his rights, and liability may not be imposed on supervisory personnel under
18 the theory of mere *respondeat superior*. *Iqbal*, 556 U.S. at 676-77; *Starr v. Baca*, 652 F.3d 1202,
19 1205-07 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101 (2012). Further, although accepted as true,
20 the "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level..."
21 *Twombly*, 550 U.S. at 555 (citations omitted).

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

25 Accordingly, it is HEREBY ORDERED that:

- 26 1. Plaintiff's amended complaint is dismissed, with leave to amend, for failure to state
27 a claim under section 1983;
- 28 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;

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3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a second amended complaint; and

4. If Plaintiff fails to file a second 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: November 19, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE