



1 Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or  
2 immunities secured by the Constitution and laws of the United States.” *Wilder v. Virginia Hosp.*  
3 *Ass’n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of  
4 substantive rights, but merely provides a method for vindicating federal rights conferred  
5 elsewhere. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989).

6 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a  
7 right secured by the Constitution or laws of the United States was violated and (2) that the alleged  
8 violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487  
9 U.S. 42, 48 (1988); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1245 (9th Cir. 1987).

### 10 **B. Second Amended Complaint**

11 Though he is now housed at California Correctional Institute, Plaintiff complains of acts  
12 that occurred while he was housed at Pleasant Valley State Prison at the hands of Defendants  
13 Warden, PD Brazelton, Lieutenants A. Shimmin and Duty, and Correctional Officer M. Seese.  
14 Plaintiff seeks monetary and declaratory relief.

15 Plaintiff identifies the following three “Counts” in which he asserts multiple constitutional  
16 claims: (1) due process violation, discrimination based on race, and intentional infliction of  
17 emotional distress; (2) cruel and unusual punishment, failure to protect/safety, negligence; and (3)  
18 defamation and libel. Though there are other substantial defects in his pleading, as discussed  
19 below, Plaintiff’s claims are **DISMISSED** because they are barred by the statute of limitations.

#### 20 **1. Summary of Allegations**

21 Plaintiff alleges that, prior to and upon entering CDCR, he was recognized as a member of  
22 the Crips gang and CDCR classified him as a Crip. (Doc. 23, p. 8.) Plaintiff alleges that, on  
23 April 23, 2009, C/O Seese submitted a false and fraudulent 128-B chrono (based on a drawing of  
24 a gorilla found in Plaintiff cell) associating Plaintiff with the BGF. (*Id.*) Thereafter, C/O Seese  
25 used the drawing to inappropriately cell Plaintiff with BGF, who were his known enemies. (*Id.*)  
26 Prior to this, Plaintiff had only ever been housed with Crips as cellmates as they are a “rival  
27 faction to all other gang [sic] that are not Crips, espically [sic] BGF.” (*Id.*) C/O Seese is an ISU  
28 officer and as such, part of his duties include reviewing Plaintiff’s Central File (C-File) which

1 contained documentation that labeled Plaintiff as a Crip. (*Id.*) On this basis, C/O Seese allegedly  
2 knew, or should have known the ramifications of the chrono he generated which changed  
3 Plaintiff's status. (*Id.*)

4 When C/O Seese wrongly identified Plaintiff as a BGF, Plaintiff's "bed card," reflecting  
5 who he could be placed with, was changed which put his life in danger. (*Id.*, p. 9.) Plaintiff  
6 alleges that, as a result of this wrong gang identification, he was sliced on the arm, stabbed in the  
7 torso, and had numerous other violent altercations with members of both the BGF and Crips.  
8 (*Id.*)

9 In February 2010, Plaintiff was informed by the psychiatrist during an evaluation for his  
10 hearing with the Parole Board, that he was labeled both a BGF and a Crip. (*Id.*, p. 9.)  
11 Subsequently, Plaintiff approached Lt. Duty as he was leaving the yard and questioned him about  
12 the false chrono generated by C/O Seese since he would have had to okay it. (*Id.*) Plaintiff  
13 informed Lt. Duty he was being treated badly by other inmates and that the false chrono had  
14 come up in his parole hearing. (*Id.*) Lt. Duty said he fully agreed with C/O Seese's chrono and  
15 that there was nothing Plaintiff could do to change it. (*Id.*, pp. 10-11.)

16 Thereafter, Plaintiff wrote a letter to Warden Brazelton, explaining the situation. (*Id.*, p.  
17 10.) An Associate Warden responded and told Plaintiff to use the inmate appeal (IA) process to  
18 raise the concern. Plaintiff filed IA number PVSP-S-12-02521. (*Id.*) On November 16, 2012,  
19 Plaintiff stated to the Institutional Classification Committee (ICC) that he was tired of the prison  
20 politics and wanted to transfer to a sensitive needs yard because he believed he was not safe and  
21 felt that CDCR could not protect him under his current living circumstances. (*Id.*) On November  
22 21, 2012, Plaintiff appeared before the Ad-Seg ICC and was placed "on the 128-G under gang -  
23 no gang status." (*Id.*)

24 On March 19, 2013, Lt. Shimmin interviewed Plaintiff for the second level of his IA and  
25 conceded in writing that there was not enough proof to validate Plaintiff as a BGF member or  
26 associate and that, regardless of the accuracy of the allegations, Plaintiff should be housed  
27 immediately in Ad-Seg to await processing for placement in the secured housing unit (SHU).  
28 (*Id.*)

1 On September 17, 2013, CDCR contacted Plaintiff and supplied him with “an expert in  
2 Black Gangs” who found that “Plaintiff is an early and/or foundational member of the Inland  
3 Empire Garden (IEG), currently using the Crips designation to represent the gang membership.”  
4 (*Id.*) On December 21, 2013, Plaintiff appeared before the “Security Threat Group Classification  
5 Committee” who validated Plaintiff as a “Crip-California Garden.” (*Id.*)

6 **C. Pleading Requirements**

7 **1. Federal Rule of Civil Procedure 8(a)**

8 "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited  
9 exceptions," none of which applies to section 1983 actions. *Swierkiewicz v. Sorema N. A.*, 534  
10 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). A complaint must contain "a short and plain  
11 statement of the claim showing that the pleader is entitled to relief . . . ." Fed. R. Civ. Pro. 8(a).  
12 "Such a statement must simply give the defendant fair notice of what the plaintiff's claim is and  
13 the grounds upon which it rests." *Swierkiewicz*, 534 U.S. at 512.

14 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a  
15 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556  
16 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
17 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is  
18 plausible on its face.’” *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual  
19 allegations are accepted as true, but legal conclusions are not. *Iqbal*. at 678; *see also Moss v. U.S.*  
20 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

21 While “plaintiffs [now] face a higher burden of pleadings facts . . . ,” *Al-Kidd v. Ashcroft*,  
22 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally  
23 and are afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).  
24 However, "the liberal pleading standard . . . applies only to a plaintiff's factual allegations," *Neitze*  
25 *v. Williams*, 490 U.S. 319, 330 n.9 (1989), "a liberal interpretation of a civil rights complaint may  
26 not supply essential elements of the claim that were not initially pled," *Bruns v. Nat'l Credit*  
27 *Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*, 673 F.2d 266,  
28 268 (9th Cir. 1982), and courts are not required to indulge unwarranted inferences, *Doe I v. Wal-*

1 *Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation  
2 omitted). The “sheer possibility that a defendant has acted unlawfully” is not sufficient, and  
3 “facts that are ‘merely consistent with’ a defendant’s liability” fall short of satisfying the  
4 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

5 It is under this rubric that Plaintiff’s allegations are evaluated.

6 **D. Statute of Limitations**

7 Federal law determines when a claim accrues, and “[u]nder federal law, a claim accrues  
8 when the plaintiff knows or has reason to know of the injury which is the basis of the action.”  
9 *Maldonado v. Harris*, 370 F.3d 945, 955 (9th Cir. 2004); *Fink v. Shedler*, 192 F.3d 911, 914 (9th  
10 Cir. 1999). Because section 1983 contains no specific statute of limitation, federal courts should  
11 apply the forum state’s statute of limitations for personal injury actions. *Jones v. Blanas*, 393  
12 F.3d 918, 927 (9th Cir. 2004); *Maldonado*, 370 F.3d at 954; *Fink*, 192 F.3d at 914. California’s  
13 statute of limitations for personal injury actions was extended to two years effective January 1,  
14 2003. Cal. Civ. Proc. Code § 335.1 (West 2007); *Jones*, 393 F.3d at 927; *Maldonado*, 370 F.3d at  
15 954-55.

16 In actions where the federal court borrows the state statute of limitation, the court should  
17 also borrow all applicable provisions for tolling the limitations period found in state law. *Jones*,  
18 393 F.3d at 927. Under California law, prisoners who at the time the cause of action accrued  
19 were either imprisoned on a criminal charge or serving a sentence of less than life for a criminal  
20 conviction enjoy a two-year tolling provision for damages actions. Cal. Civ. Proc. Code § 352.1  
21 (West 2007). Thus, Plaintiff had a total of four years from when he knew, or had reason to know  
22 about the action taken by C/O Seese to file his action.

23 Nevertheless, Plaintiff admits that in February of 2010, he was informed during a  
24 psychiatric evaluation for his Parole Board hearing that he had recently been labeled as both a  
25 BGF and a Crip. (Doc. 23, p. 9, ¶ 14.) Thus, to be timely, Plaintiff would have had to file this  
26 action no later than the end of February of 2014. However, Plaintiff did not file this action until  
27 March 5, 2015 (*see* Doc. 1) -- more than a year after the statute of limitations had lapsed.

28 The merits of Plaintiff’s claims need not be addressed since the statute of limitations is

1 dispositive. However, it is noteworthy that when the allegations of the SAC are viewed along  
2 with the documents which Plaintiff attached as exhibits to his original Complaint, it is evident  
3 that the information before Defendants at the time they labeled Plaintiff as a BGF associate, did  
4 not show he was a long-time member of the Crips. (*See e.g.*, Doc. 1, p. 141 (February 28, 1998  
5 Rules Violation Report indicates Plaintiff stated “I’m not a crip and I don’t run with crips.”); *see*  
6 *also* p. 142 (Classification: ICC-Ad/Seg Committee Action Report, dated February 15, 1998,  
7 states “ICC is electing to modify [Plaintiff’s] CDC-182, which indicates he is a member of the  
8 ‘Crips.’ However, ICC does not find any documentation to support his being gang affiliated,  
9 based on this information, ICC is electing to adjust the CDC-812 to reflect no gang affiliation.  
10 His confidential file is noted.”); *see also Id.*, p. 66 (Work/Gang history report/general chrono  
11 dated March 9, 2010, in which a correctional officer states that Plaintiff worked as his crew “Lead  
12 Man” and that, during his supervision of Plaintiff, Plaintiff interacted with several different races  
13 and several different black gangs on the yard; when he questioned Plaintiff about his gang status  
14 or affiliation Plaintiff always responded that he was **not** a Blood or BGF and definitely **not** a Crip  
15 and that Plaintiff expressed disdain towards Crips on numerous occasions; and that Plaintiff  
16 assisted correctional staff whenever there was tension amongst Black inmates and would act as a  
17 “go-between” staff and inmates to resolve issues, even if the issues was with another race or  
18 between rival gangs.) Thus, there is no showing that the Defendants had reason to know that  
19 classifying him as a BGF would place Plaintiff at risk of serious harm.

20 Prison officials have a duty under the Eighth Amendment "to take reasonable measures to  
21 guarantee the safety of inmates, which has been interpreted to include a duty to protect prisoners."  
22 *Labatad v. Corrections Corp. of America*, 714 F.3d 1155, 1160 (citing *Farmer v. Brennan*, 511  
23 U.S. 825, 832-33 (1994); *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005)). To establish  
24 a violation of this duty, the prisoner must “show that he is incarcerated under conditions posing a  
25 substantial risk of serious harm,” *Farmer*, at 834, quoting *Rhodes v. Chapman*, 452 U.S. 337, 349  
26 (1981), that the prison officials knew of and disregarded. *Id.* at 837; *Anderson v. County of Kern*,  
27 45 F.3d 1310, 1313 (9th Cir. 1995). Liability may follow only if a prison official "knows that  
28 inmates face a substantial risk of serious harm and disregards that risk by failing to take

1 reasonable measures to abate it." *Id.* at 847.

2 Plaintiff's allegations, when combined with the exhibits to his original complaint,  
3 demonstrate that Plaintiff cannot make the above showing. Further, in Plaintiff's inmate appeal  
4 (IA No. PVSP-S-12-02521) in which he asserted that the one drawing of a gorilla was insufficient  
5 evidence to affiliate him with the BGF, he complained *only* of the negative impact that the  
6 information had on his parole hearing. He did not make any claim that he was placed at risk of  
7 physical harm by being identified as a BGF given the fact that he was, in truth, affiliated with the  
8 Crips criminal gang. (*See* Doc. 1, pp. 56-63.)

9 In any event, the Court finds this action is barred by the statute of limitations. Further,  
10 since Plaintiff has already had two opportunities to correct the defects in his pleading and he still  
11 has not stated a claim—and his documents demonstrate that he cannot do so—further leave to  
12 amend will not be granted. *Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012).

13 **II. CONCLUSION & ORDER**

14 Accordingly, the Court **ORDERS**:

- 15 1. This action is **DISMISSED** with prejudice; and
- 16 2. The Clerk of the Court is ordered to close this action.

17  
18 IT IS SO ORDERED.

19 Dated: June 29, 2016

/s/ Jennifer L. Thurston  
20 UNITED STATES MAGISTRATE JUDGE