



1     **I.     Pleading Standard**

2             A complaint must contain “a short and plain statement of the claim showing that the pleader  
3 is entitled to relief. . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
5 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,  
6 550 U.S. 544, 555 (2007)). Plaintiffs must set forth “sufficient factual matter, accepted as true, to  
7 state a claim to relief that is plausible on its face.” Iqbal, 556 U.S. at 678. Facial plausibility  
8 demands more than the mere possibility that a defendant committed misconduct and, while factual  
9 allegations are accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 677-78.

10            Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or  
11 immunities secured by the Constitution and laws of the United States.” Wilder v. Virginia Hosp.  
12 Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). To state a claim under section 1983,  
13 a Plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws  
14 of the United States was violated and (2) that the alleged violation was committed by a person  
15 acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v.  
16 Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

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

25     **II.     Plaintiff’s Allegations**

26            Plaintiff brings this action against several individuals for conduct occurring while he was  
27 housed at California State Prison in Corcoran, California. He names Chief Deputy Warden J.  
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1 Castro, Correctional Counselor D. DeAcedo, Correctional Counselor J. Perez, Correctional  
2 Officer M. Riley, Correctional Sergeant E. Magallanes, and Correctional Lieutenant J. Amaya.  
3 Plaintiff seeks \$52,000 in damages.

4 Plaintiff's allegations can be fairly summarized as follows:

5 **A. Search of Plaintiff's Cell**

6 On March 4, 2017, Defendant Riley searched Plaintiff's cell and attempted to confiscate a  
7 pair of Plaintiff's prescription eyeglasses. Plaintiff told Riley that it would be illegal for him to  
8 take the glasses, and Riley responded that he "was the law" while tossing them. When Plaintiff  
9 told Riley that he would file a 602 inmate grievance, Riley warned him to be careful "cause this is  
10 his house and he'll do what he ... pleases."

11 **B. False Charge**

12 On March 5, 2017, Plaintiff and a second inmate were handcuffed and placed in a holding  
13 cage without explanation. Defendant Magallanes, Riley's supervisor, then approached Plaintiff  
14 with an Administrative Segregation Placement Notice accusing Plaintiff and the second inmate of  
15 "Extortion by Means of Threat by Way of GBI [Great Bodily Injury]." When Plaintiff refused to  
16 sign this fabricated notice, which was authored by Riley, Magallanes said, "You Blacks make  
17 yourselves look guilty when you don't cooperate." When Plaintiff told Magallanes that the report  
18 was fabricated by Riley after Plaintiff threatened to file an inmate grievance, Magallanes slapped  
19 the door of Plaintiff's holding case and warned Plaintiff to "stay in his place" because "this is our  
20 house." Magallanes also said, "All you Blacks hiding out over here in the E.O.P. (Enhanced Out  
21 Patient) Program should be ashamed of yourselves preying on these little white boys." As this  
22 Defendant was leaving, he laughed and said, "You monkeys won't be that long in the hole."

23 **C. Administrative Segregation Placement Committee Hearing**

24 On March 15, 2017, Plaintiff appeared before Defendants Perez, DeAcedo, and Castro  
25 for an administrative segregation placement hearing. Even though Plaintiff informed these  
26 Defendants of the fabricated notice, Castro told him that "Here at Corcoran it is just not smart of a  
27 Black inmate to be making waves." DeAcedo said, "you will sit back here 60 days so you  
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1 might get a little pail [sic] but the time for you to file anymore 602's (grievance forms) will run  
2 out." Lastly, Perez told Plaintiff not to cry "cause even if these charges are false, this hole time  
3 will help him fix his skills to not get caught the next time."

4 In administrative segregation, Plaintiff was housed with 70-80 other EOP inmates in very  
5 noisy conditions ("the majority of these prisoners ... kick[ed] on their cell doors all day and all  
6 night") in a cell that was "invaded with rats and flies." On "a few different occurrences [sic],"  
7 Plaintiff killed a rat to show staff and asked for an exterminator to no avail.

#### 8 **D. RVR Hearing**

9 On April 11, 2017, Defendant Amaya held a hearing on the Rules Violation Report  
10 drafted by Riley. Amaya denied Plaintiff certain due process rights, including the ability to call  
11 any witnesses and to present documentary evidence. Additionally, Amaya was not an impartial  
12 fact finder since he did not in fact hold a hearing at all.

### 13 **III. Discussion**

#### 14 **A. Retaliation**

15 "Within the prison context, a viable claim of First Amendment retaliation entails five  
16 basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2)  
17 because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's  
18 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate  
19 correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted).  
20 Accord Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995) (prisoner suing prison officials under  
21 § 1983 for retaliation must allege that he was retaliated against for exercising his constitutional  
22 rights and that the retaliatory action did not advance legitimate penological goals, such as  
23 preserving institutional order and discipline). The prisoner must show that the type of activity he  
24 was engaged in was constitutionally protected, that the protected conduct was a substantial or  
25 motivating factor for the alleged retaliatory action, and that the retaliatory action advanced no  
26 legitimate penological interest. Hines v. Gomez, 108 F.3d 265, 267-68 (9th Cir. 1997) (inferring  
27 retaliatory motive from circumstantial evidence).  
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1 Plaintiff accuses Riley of initiating a false charge against him after Plaintiff stated that he  
2 would file an inmate grievance following March 4, 2017 the cell search. He also claims that, even  
3 though Magallanes was aware of the circumstances surrounding the false charge, he warned  
4 Plaintiff to “stay in his place” because “this is our house.” Finally, Plaintiff claims that after he  
5 informed them of the false charge and the reason it was issued, Castro said, “here at Corcoran it is  
6 just not smart of a Black inmate to be making waves”; DeAcedo said, “you will sit back here  
7 60 days so you might get a little pail [sic] but the time for you to file anymore 602’s (grievance  
8 forms) will run out”; and Perez said, “he shouldn’t cry now cause even if these charges are false,  
9 this hole time will help him fix his skills to not get caught the next time.” These allegations are  
10 sufficient to proceed against each of these Defendants on a First Amendment retaliation claim.

11 **B. Due Process**

12 **1. False Charge**

13 Plaintiff again asserts allegations regarding the filing of false charges against him. He was  
14 previously informed that false charges alone are not actionable under § 1983 because falsely  
15 accusing a person of misconduct does not violate a right secured by the Constitution or laws of  
16 the United States. For a false accusation to be potentially actionable, the false charge must  
17 implicate some constitutional right, such as the Fourteenth Amendment’s right to due process. An  
18 allegation of a false charge that results in discipline that is not severe enough to amount to a  
19 deprivation of a protected liberty interest under Sandin – that is, by imposing an atypical and  
20 significant hardship or by inevitably affecting the duration of confinement – does not state a claim  
21 under § 1983. See Smith v. Mensinger, 293 F.3d 641, 653-54 (3d Cir. 2002) (no § 1983 claim  
22 was stated for allegedly false charges because the disciplinary confinement imposed was too short  
23 to amount to an atypical and significant hardship under Sandin). Even if the false charge does  
24 result in discipline that amounts to the deprivation of a protected liberty interest under Sandin, a  
25 § 1983 claim is not stated if the inmate is afforded the procedural protections required by federal  
26 law at the disciplinary hearing. See Smith, 293 F.3d at 654; Sprouse v. Babcock, 870 F.2d 450,  
27 452 (8th Cir. 1989); Freeman v. Rideout, 808 F.2d 949, 951 (2d Cir. 1986); Hanrahan v. Lane,

1 747 F.2d 1137, 1140-41 (7th Cir. 1984). Plaintiff has thus not stated a claim based on a false  
2 charge.

## 3 **2. Administrative Segregation**

4 Plaintiff next asserts a due process claim premised on his placement in administrative  
5 segregation for 60 days. The Due Process Clause of the Fourteenth Amendment of the U.S.  
6 Constitution protects individuals against governmental deprivations of life, liberty or property  
7 without due process of law. Interests that are procedurally protected by the Due Process Clause  
8 may arise from two sources: the Due Process Clause itself and laws of the states. See Meachum v.  
9 Fano, 427 U.S. 215, 223-27 (1976). In the prison context, these interests are generally ones  
10 pertaining to liberty. Changes in conditions so severe as to affect the sentence imposed in an  
11 unexpected manner implicate the Due Process Clause itself, whether they are authorized by state  
12 law. See Sandin v. Conner, 515 U.S. 472, 484 (1995) (citing Vitek v. Jones, 445 U.S. 480, 493  
13 (1980) (transfer to mental hospital), and Washington v. Harper, 494 U.S. 210, 221-22 (1990)  
14 (involuntary administration of psychotropic drugs)). Deprivations that are less severe or more  
15 closely related to the expected terms of confinement may also amount to deprivations of a  
16 procedurally protected liberty interest, provided that the liberty in question is one of “real  
17 substance.” See Sandin, 515 U.S. at 477-87. An interest of “real substance” will generally be  
18 limited to freedom from restraint that imposes an “atypical and significant hardship on the inmate  
19 in relation to the ordinary incidents of prison life” or “will inevitably affect the duration of [a]  
20 sentence.” Id. at 484, 487.

21 A due process claim might be made for some administrative segregation placement  
22 decisions. When prison officials initially determine whether a prisoner is to be segregated for  
23 administrative reasons and a liberty interest of real substance is implicated, due process requires  
24 that prison officials hold an informal nonadversary hearing within a reasonable time after the  
25 prisoner is segregated, inform the prisoner of the charges against him or the reasons segregation is  
26 being considered, and allow the prisoner to present his views. Toussaint v. McCarthy, 801  
27 878y77F.2d 1080, 1100 (9th Cir. 1986), abrogated in part on other grounds by Sandin, 515 U.S.  
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1 472. Due process also requires that there be some evidence to support the prison officials'  
2 decision. Superintendent v. Hill, 472 U.S. 445, 455 (1985); Toussaint, 801 F.2d at 1104-05.

3 Assuming that the conditions of administrative segregation that Plaintiff describes in the  
4 pleading (daily excessive noise and a vermin infestation) implicate a liberty interest of real  
5 substance, Plaintiff fails to state a due process claim because his allegations demonstrate that he  
6 received notice on March 5, 2017, an informal nonadversary hearing ten days later, and an  
7 opportunity to present his views. In addition, there appears to have been some evidence to support  
8 the transfer to administrative segregation in the form of the RVR initiated by Defendant Riley.  
9 Therefore, Plaintiff received all the process that he was due under the circumstances.

### 10 3. Administrative Hearing

11 Plaintiff brings a due process claim premised on the process that he received in the context  
12 of the RVR hearing on the extortion charge. “Prison disciplinary proceedings are not part of a  
13 criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not  
14 apply.” Wolff v. McDonnell, 418 U.S. 539, 556 (1974) (citation omitted). However, an inmate  
15 subject to disciplinary sanctions that include the loss of good time credits must receive (1)  
16 twenty-four-hour advanced written notice of the charges against him, id. at 563-64; (2) “a ‘written  
17 statement by the factfinders as to the evidence relied on and the reasons’ for the disciplinary  
18 action,” id. at 564 (citation omitted); (3) an opportunity to call witnesses and present documentary  
19 evidence where doing so “will not be unduly hazardous to institutional safety or correctional  
20 goals,” id. at 566; (4) assistance at the hearing if he is illiterate or if the matter is complex, id. at  
21 570; and (5) a sufficiently impartial fact finder, id. at 570-71. A finding of guilt must also be  
22 supported by “some evidence in the record.” Superintendent v. Hill, 472 U.S. 445, 454 (1985).

23 Plaintiff claims that his due process rights were violated with respect to the RVR hearing  
24 in that defendant Amaya found Plaintiff guilty after failing to hold a hearing or accepting  
25 Plaintiff’s written statement. While these allegations are generally sufficient to state a due process  
26 claim, Plaintiff’s prior pleading included detailed allegations describing how he filed an  
27 administrative grievance following his guilty finding, that he was granted a re-hearing, and that  
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1 the guilty finding was reversed. The previous screening order held that these allegations  
2 demonstrated Plaintiff's due process claim related to the first RVR hearing failed. See, e.g.,  
3 Shotwell v. Brandt, 2012 WL 6569402, at \*3 (N.D. Cal. Dec. 17, 2012) (no due process violation  
4 where Plaintiff's RVR was ordered reissued and reheard, the Plaintiff was found not guilty at the  
5 second hearing, and the Plaintiff suffered no credit loss or any other punishment).

6 By omitting allegations in the second amended complaint regarding the second RVR  
7 hearing and the reversal of the guilty finding, Plaintiff paints an incomplete picture related to his  
8 due process rights. In any event, the Court will accept these allegations as true for purposes of this  
9 screening order. PAE Gov't Servs. v. MPRI, Inc., 514 F.3d 856 (9th Cir. 2007). However, As  
10 described in the concurring opinion in Shirley v. University of Idaho, College of Law, 800 F.3d  
11 1193, 1194, a finding that a claim can proceed despite inconsistent allegations does not preclude  
12 the availability of "collateral consequences in the litigation, including possible sanctions under  
13 Rule 11 or undermining the Plaintiff's credibility." **Thus, Plaintiff should consider long and**  
14 **hard whether he wants to proceed on this claim.** Notably, if the defense files a motion for  
15 summary adjudication and demonstrates that the guilty finding on the RVR was overturned and  
16 demonstrates that the plaintiff has violated Rule 11 by filing a false pleading, the conditions  
17 would be ripe for the Court to award monetary or other sanctions, which could be enforced no  
18 matter the ultimate outcome of this litigation. Should Plaintiff choose not to proceed on this  
19 claim, he may file a notice that he voluntarily dismisses this claim before any defendant appears  
20 in this action.

### 21 C. Equal Protection

22 Plaintiff also presents an equal protection claim based on comments made by several of  
23 the Defendants regarding Plaintiff's race. "The Equal Protection Clause of the Fourteenth  
24 Amendment provides that '[n]o State shall ... deny to any person within its jurisdiction the equal  
25 protection of the laws.'" Angelotti Chiropractic v. Baker, 791 F.3d 1075, 1085 (9th Cir. 2015)  
26 (quoting U.S. Const. amend. XIV, § 1). "The Equal Protection Clause requires the State to treat  
27 all similarly situated people equally. This does not mean, however, that all prisoners must receive  
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1 identical treatment and resources.” Hartmann v. Cal. Dep’t of Corr. & Rehab., 707 F.3d 1114,  
2 1123 (9th Cir. 2013) (citations omitted). To state an equal protection claim, a claimant “must  
3 allege facts plausibly showing that ‘the defendants acted with an intent or purpose to discriminate  
4 against [them] based upon membership in a protected class’” such as race, religion, or national  
5 origin. Id. (alteration in original) (quoting Thornton v. City of St. Helens, 425 F.3d 1158, 1166  
6 (9th Cir. 2005)); see also New Orleans v. Dukes, 427 U.S. 297, 303 (1975) (noting that “suspect  
7 distinctions such as race, religion, or alienage” are protected classes for equal protection  
8 purposes). “Intentional discrimination means that a defendant acted at least in part because of a  
9 Plaintiff’s protected status.” Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003) (emphasis in  
10 original) (quoting Maynard v. City of San Jose, 37 F.3d 1396, 1404 (9th Cir. 1994)).

11 Plaintiff’s equal protection claim is directed at Perez, DeAcedo, and Castro, who are  
12 accused of placing Plaintiff in administrative segregation because of his race. However, of the  
13 comments attributed to these Defendants, only Castro referenced Plaintiff’s race (“Here at  
14 Corcoran it is just not smart of a Black inmate to be making waves.”). While DeAcedo told  
15 Plaintiff that he “might get a little pail [sic],” this does not suggest that his decision to retain  
16 Plaintiff in administrative segregation was based on Plaintiff’s race. Furthermore, the comment  
17 attributed to Perez do not reference Plaintiff’s race at all, and the Court declines to attribute racial  
18 motivation or discrimination to DeAcedo or Perez based on comments made by Castro.

19 Although Plaintiff does not formally assert this claim against Magallanes, liberally  
20 construing the pleading leads the Court to conclude that Plaintiff states a colorable equal  
21 protection claim against this Defendant as well based on his comments that “All you Blacks  
22 hiding out over here in the E.O.P. (Enhanced Out Patient) program should be ashamed of  
23 yourselves preying on these little white boys,” and “you monkeys won’t be that long in the hole.”  
24 Accordingly, this claim may proceed against Castro and Magallanes.

#### 25 **IV. Conclusion**

26 Based on the foregoing, the Court **RECOMMENDS** that Plaintiff be allowed to proceed  
27 only on the following claims: (1) a First Amendment retaliation claim against Riley, Magallanes,  
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1 Castro, Perez, and DeAcedo; (2) a Fourteenth Amendment due process claim against Amaya;  
2 and (3) a Fourteenth Amendment equal protection claim against Castro and Magallanes. All other  
3 claims should be dismissed as not cognizable.

4 These findings and recommendations will be submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 14 days after  
6 being served with the findings and recommendations, the parties may file written objections with  
7 the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and  
8 Recommendation.” A party may respond to another party’s objections by filing a response within  
9 14 days after being served with a copy of that party’s objections. The parties are advised that failure  
10 to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson  
11 v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th  
12 Cir. 1991)).

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14 IT IS SO ORDERED.

15 Dated: June 20, 2019

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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