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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

ROSENDO BUENO,	)	Case No.: 1:21-cv-01522-SAB (PC)
	)	
Plaintiff,	)	
	)	ORDER DIRECTING CLERK OF COURT TO
v.	)	RANDOMLY ASSIGN A DISTRICT JUDGE TO
	)	THIS ACTION
CHRISTIAN PFEIFFER, et al.,	)	
	)	FINDINGS AND RECOMMENDATIONS
Defendants.	)	RECOMMENDING DISMISSAL OF ACTION
	)	FOR FAILURE TO STATE A COGNIZABLE
	)	CLAIM FOR RELIEF
	)	
	)	(ECF No. 5)

Plaintiff Rosendo Bueno is appearing pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s first amended complaint, filed December 6, 2021.

**I.**

**SCREENING REQUIREMENT**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or 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 on which relief may be granted,” or that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); see also 28 U.S.C. § 1915A(b).

1 A complaint must contain “a short and plain statement of the claim showing that the pleader is  
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
4 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,  
5 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally  
6 participated in the deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.  
7 2002).

8 Prisoners proceeding *pro se* in civil rights actions are entitled to have their pleadings liberally  
9 construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121  
10 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be facially plausible,  
11 which requires sufficient factual detail to allow the Court to reasonably infer that each named  
12 defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service,  
13 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant has acted unlawfully” is not  
14 sufficient, and “facts that are ‘merely consistent with’ a defendant’s liability” falls short of satisfying  
15 the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

## 16 II.

### 17 SUMMARY OF ALLEGATIONS

18 The Court accepts Plaintiff’s allegations in his complaint as true *only* for the purpose of the  
19 screening requirement under 28 U.S.C. § 1915.

20 On or around July 26, 2019, in preparation of his disciplinary hearing, Plaintiff submitted a  
21 GA-22 Form to the Senior Hearing Officer (SHO) requesting for the video surveillance footage to be  
22 made available at his hearing. Plaintiff never received a response.

23 On or around July 27, 2019, Plaintiff was served with a written notice of a Rules Violation  
24 Report (RVR) for delaying a peace officer in the performance of his duties. Plaintiff requested the  
25 video surveillance to be made available at his hearing, but he never received a response to this request.

26 On July 29, 2019, the disciplinary hearing in regards to the excessive contact with visitor RVR  
27 was convened by Defendant Velasco, as the SHO. During the hearing, Plaintiff put Velasco on notice  
28 that he was seeking to present the video records to prove that the alleged violation did not occur.

1 Defendant Velasco ignored the request for the video surveillance footage. Plaintiff was denied due  
2 process because he was unable to present evidence and the failure to review the video footage was  
3 unjustified. Despite these circumstances, the SHO held that Plaintiff failed to present any evidence on  
4 his behalf which could provide any mitigation. Plaintiff was found guilty based on the preponderance  
5 of the evidence. Plaintiff was assessed a loss of 30 days good time credit and his visitation privileges  
6 were suspended for 90 days.

7 On July 31, 2019, a disciplinary hearing was convened by Defendant SHO A. Martinez with  
8 regard to Plaintiff's RVR for delaying a peace officer. Plaintiff was not called to attend the  
9 disciplinary hearing nor was he aware that the hearing took place. Defendant Martinez documented  
10 that Plaintiff declined to make a statement. Defendant Martinez found Plaintiff guilty based on  
11 information not described in the written notice. Defendant Martinez claimed he relied on an RVR  
12 authored by officer G. Hunter which states he was informed by officer Gonzales that Plaintiff's visit  
13 was being terminated due to excessive touching and his visitor was leaving immediately. The officer  
14 proceeded to open the visiting room door and gave Plaintiff a moment to say goodbye. After five  
15 minutes, Hunter claims that Gonzales told Plaintiff that he had other tasks to perform and his time to  
16 say goodbye was over. Hunter said Plaintiff continued talking to his visitor and another five minutes  
17 elapsed. Martinez stated that Plaintiff failed to present on his behalf, and Plaintiff should have  
18 reasonably known that officer Avalos was performing or attempting to perform his duties.

19 The written notice of the RVR at no point suggest, implies or accuses Plaintiff in delaying  
20 officers Gonzales or Avalos. The reporting officer that accused Plaintiff was in fact officer Garrett.  
21 Officer Garrett's written notice of the RVR was never mentioned during the disciplinary hearing for  
22 which Plaintiff was charged. Defendant Martinez also made no mention of Plaintiff's request for  
23 video footage which would have corroborated Plaintiff's defense that he did not violate prison  
24 regulations. Plaintiff was subsequently deprived of 90 days good time credits. Plaintiff only became  
25 aware of the Martinez's hearing after receiving his disciplinary hearing results, learning for the first  
26 time he was found guilty.

1 On or around August 28, 2019, Plaintiff lost his job, was expelled from self-help classes,  
2 prohibited from going to main recreational yard to exercise, lost telephone privileges, reduction in  
3 spending money, and was expelled from college courses.

### 4 III.

### 5 DISCUSSION

#### 6 A. Due Process-Rules Violation Reports

7 “[A] prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his  
8 confinement. He must seek federal habeas corpus relief (or appropriate state relief) instead.”

9 Wilkinson v. Dotson, 544 U.S. 74, 78 (2005) (citations and internal quotation marks omitted). In Heck  
10 v. Humphrey, 512 U.S. 477, 486-87 (1994), the United States Supreme Court held that to recover  
11 damages for “harm caused by actions whose unlawfulness would render a conviction or sentence  
12 invalid,” a § 1983 plaintiff must prove that the conviction or sentence was reversed, expunged, or  
13 otherwise invalidated. This “favorable termination rule” preserves the rule that federal challenges,  
14 which, if successful, would necessarily imply the invalidity of confinement or its duration, must be  
15 brought by way of petition for writ of habeas corpus, after exhausting appropriate avenues of relief.  
16 Muhammad v. Close, 540 U.S. 749, 750-751 (2004). Accordingly, “a state prisoner's § 1983 action is  
17 barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter  
18 the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—*if*  
19 success in that action would necessarily demonstrate the invalidity of confinement or its duration.”  
20 Wilkinson, 544 U.S. at 81-82.

21 While claims challenging the conditions of an inmate's confinement are cognizable under  
22 Section 1983, an inmate's challenges to the fact or duration of confinement, which seek a speedier  
23 release from custody, sound only in habeas. Heck, 512 U.S. 477; Preiser v. Rodriguez, 411 U.S. 475,  
24 500 (1973); see also Wilkinson, 544 U.S. at 78 (A “prisoner in state custody cannot use a § 1983  
25 action to challenge ‘the fact or duration of his confinement.’ ” (citation omitted)). Under the  
26 “favorable termination doctrine,” the district court must dismiss a state prisoner's Section 1983 claim  
27 for damages if “judgment in favor of the plaintiff would necessarily imply the invalidity of his  
28 conviction or sentence ... unless the plaintiff can demonstrate that the conviction or sentence has

1 already been invalidated.” Heck, 512 U.S. at 486-87. duration of time to be served; Nonnette v. Small,  
2 316 F.3d 872, 875 (9th Cir. 2002), and if the restoration of those credits “necessarily” would “affect  
3 the duration of time to be served.” Muhammed, 540 U.S. at 754; see also Nettles v. Grounds, 830 F.3d  
4 922, 929 n.4 (9th Cir. 2016) (en banc) (“Heck applies only to administrative determinations that  
5 ‘necessarily’ have an effect on ‘the duration of time to be served[,]’ ” (citations omitted)).

6 Prisoners do not have a liberty interest in being free from false accusations of misconduct. This  
7 means that the falsification of a report, even when intentional, does not alone give rise to a claim under  
8 § 1983. Freeman v. Rideout, 808 F.2d 949, 951 (2d Cir. 1986) (“The prison inmate has no  
9 constitutionally guaranteed immunity from being falsely or wrongly accused of conduct which may  
10 result in the deprivation of a protected liberty interest.”); Buckley v. Gomez, 36 F. Supp. 2d 1216,  
11 1222 (S.D. Cal. 1997) (stating that “a prisoner does not have a constitutional right to be free from  
12 wrongfully issued disciplinary reports[ ]”).

13 Plaintiff is also advised that violations of state prison rules and regulations, such as section  
14 54100.20.3, without more, do not support any claims under § 1983. Ove v. Gwinn, 264 F.3d 817, 824  
15 (9th Cir.2001); Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir.1997). Only if the events  
16 complained of rise to the level of a federal statutory or constitutional violation may Plaintiff pursue  
17 them under § 1983. Patel v. Kent School Dist., 648 F.3d 965, 971 (9th Cir.2011); Jones v. Williams,  
18 297 F.3d 930, 934 (9th Cir.2002).

19 Here, Plaintiff challenges two RVRs for excessive contact with a visitor and delaying a peace  
20 officer which resulted in the loss of good time credits. Because reversal of the RVR findings would  
21 necessarily result in a restoration of good time credits, it would also necessary affect the duration of  
22 Plaintiff’s confinement. Therefore, it is not cognizable in a section 1983 action, and the instant action  
23 must be dismissed, without prejudice, for failure to state a cognizable claim for relief without further  
24 leave to amend. See Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc); Cato v.  
25 United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given leave to amend his  
26 or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the deficiencies  
27 of the complaint could not be cured by amendment.”) (citing Noll v. Carlson, 809 F.2d 1446, 1448  
28 (9th Cir. 1987)).

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IV.

**ORDER AND RECOMMENDATION**

Based on the foregoing, it is HEREBY ORDERED that the Clerk of Court shall randomly assign a District Judge to this action.

Further, it is HEREBY RECOMMENDED that the instant action be dismissed, without prejudice, for failure to state a cognizable claim for relief.

This Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with this Findings and Recommendation, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: December 15, 2021



UNITED STATES MAGISTRATE JUDGE