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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

RUBEN VALDEZ,

No. 2:12-cv-1352-CMK-P

Plaintiff,

vs.

ORDER

MATTHEW CATE, et al.,

Defendant.

\_\_\_\_\_ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action. Pending before the court is plaintiff’s complaint (Doc. 1) and motion requesting the court to authorize service thereof (Doc. 16).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover,

1 the Federal Rules of Civil Procedure require that complaints contain a “short and plain statement  
2 of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means  
3 that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172,  
4 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the  
5 complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon which it  
6 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege  
7 with at least some degree of particularity overt acts by specific defendants which support the  
8 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
9 impossible for the court to conduct the screening required by law when the allegations are vague  
10 and conclusory.

#### 11 **I. PLAINTIFF’S ALLEGATIONS**

12 Plaintiff names nineteen individual defendants, alleging each has been involved in  
13 some fashion in identifying him as a gang member, validating him as a gang member, and  
14 deciding to place him and retain him in administrative segregation based on that validation. He  
15 claims he has been denied due process throughout the validation and hearing process. He also  
16 alleges the policies, practices and procedures violate his due process rights.

#### 17 **II. DISCUSSION**

18 The Due Process Clause protects prisoners from being deprived of life, liberty, or  
19 property without due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to  
20 state a claim of deprivation of due process, a plaintiff must allege the existence of a liberty or  
21 property interest for which the protection is sought. See Ingraham v. Wright, 430 U.S. 651, 672  
22 (1977); Bd. of Regents v. Roth, 408 U.S. 564, 569 (1972). Due process protects against the  
23 deprivation of property where there is a legitimate claim of entitlement to the property. See Bd.  
24 of Regents, 408 U.S. at 577. Protected property interests are created, and their dimensions are  
25 defined, by existing rules that stem from an independent source – such as state law – and which  
26 secure certain benefits and support claims of entitlement to those benefits. See id.

1 Liberty interests can arise both from the Constitution and from state law. See  
2 Hewitt v. Helms, 459 U.S. 460, 466 (1983); Meachum v. Fano, 427 U.S. 215, 224-27 (1976);  
3 Smith v. Sumner, 994 F.2d 1401, 1405 (9th Cir. 1993). In determining whether the Constitution  
4 itself protects a liberty interest, the court should consider whether the practice in question “. . . is  
5 within the normal limits or range of custody which the conviction has authorized the State to  
6 impose.” Wolff, 418 U.S. at 557-58; Smith, 994 F.2d at 1405. Applying this standard, the  
7 Supreme Court has concluded that the Constitution itself provides no liberty interest in good-  
8 time credits, see Wolff, 418 U.S. at 557; in remaining in the general population, see Sandin v.  
9 Conner, 515 U.S. 472, 485-86 (1995); in not losing privileges, see Baxter v. Palmigiano, 425  
10 U.S. 308, 323 (1976); in staying at a particular institution, see Meachum, 427 U.S. at 225-27; or  
11 in remaining in a prison in a particular state, see Olim v. Wakinekona, 461 U.S. 238, 245-47  
12 (1983).

13 In determining whether state law confers a liberty interest, the Supreme Court has  
14 adopted an approach in which the existence of a liberty interest is determined by focusing on the  
15 nature of the deprivation. See Sandin v. Connor, 515 U.S. 472, 481-84 (1995). In doing so, the  
16 Court has held that state law creates a liberty interest deserving of protection only where the  
17 deprivation in question: (1) restrains the inmate’s freedom in a manner not expected from the  
18 sentence; and (2) “imposes atypical and significant hardship on the inmate in relation to the  
19 ordinary incidents of prison life.” Id. at 483-84. Prisoners in California have a liberty interest in  
20 the procedures used in prison disciplinary hearings where a successful claim would not  
21 necessarily shorten the prisoner’s sentence. See Ramirez v. Galaza, 334 F.3d 850, 853, 859 (9th  
22 Cir. 2003) (concluding that a due process challenge to a prison disciplinary hearing which did not  
23 result in the loss of good-time credits was cognizable under § 1983); see also Wilkinson v.  
24 Dotson, 544 U.S. 74, 82 (2005) (concluding that claims which did not seek earlier or immediate  
25 release from prison were cognizable under § 1983).

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1 Here, plaintiff alleges most of the defendants were personally involved in the gang  
2 validation process and decision to place him in administrative segregation. However, he claims  
3 three individual defendants, Foston, Stark and Mayhew, were only involved in the review of his  
4 inmate grievance appeal, and were not involved in the actual determinations.

5 Prisoners have no stand-alone due process rights related to the administrative  
6 grievance process. See Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988); see also Ramirez v.  
7 Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (holding that there is no liberty interest entitling  
8 inmates to a specific grievance process). Because there is no right to any particular grievance  
9 process, it is impossible for due process to have been violated by ignoring or failing to properly  
10 process grievances. Numerous district courts in this circuit have reached the same conclusion.  
11 See Smith v. Calderon, 1999 WL 1051947 (N.D. Cal 1999) (finding that failure to properly  
12 process grievances did not violate any constitutional right); Cage v. Cambra, 1996 WL 506863  
13 (N.D. Cal. 1996) (concluding that prison officials' failure to properly process and address  
14 grievances does not support constitutional claim); James v. U.S. Marshal's Service, 1995 WL  
15 29580 (N.D. Cal. 1995) (dismissing complaint without leave to amend because failure to process  
16 a grievance did not implicate a protected liberty interest); Murray v. Marshall, 1994 WL 245967  
17 (N.D. Cal. 1994) (concluding that prisoner's claim that grievance process failed to function  
18 properly failed to state a claim under § 1983). Prisoners do, however, retain a First Amendment  
19 right to petition the government through the prison grievance process. See Bradley v. Hall, 64  
20 F.3d 1276, 1279 (9th Cir. 1995). Therefore, interference with the grievance process may, in  
21 certain circumstances, implicate the First Amendment.

22 There are no allegations that plaintiff was unable to petition his grievance.  
23 Rather, he only claims defendants Foston, Stark and Mayhew denied his grievances. This is  
24 insufficient to state claim, and defendants Foston, Stark and Mayhew will be dismissed from this  
25 action.

26 ///

1 **III. CONCLUSION**

2 The complaint appears to state a cognizable claim for relief pursuant to 42 U.S.C.  
3 § 1983 and 28 U.S.C. § 1915A(b) against defendants Cate, Virga, Johnson-Dovey, Villasenor,  
4 Ventimiglia, Beeson, Jakabosky, Wallace, Cannedy, Finnegan, May, O’Brian, Jubb, Guzman,  
5 Rothchild and Kokkonen. If the allegations are proven, plaintiff has a reasonable opportunity to  
6 prevail on the merits of this action. The court, therefore, finds that service is appropriate and will  
7 direct service by the U.S. Marshal without pre-payment of costs. Plaintiff is informed, however,  
8 that this action cannot proceed further until plaintiff complies with this order. Plaintiff is warned  
9 that failure to comply with this order may result in dismissal of the action. See Local Rule 110.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. Plaintiff’s motion for service of the complaint (Doc. 16) is granted to the  
12 extent consistent with this order;

13 2. Plaintiff fails to state a cognizable claim against defendants Foston, Stark  
14 and Mayhew, , who are dismissed from this action;

15 3. The court authorizes service on the following defendant(s): CATE,  
16 VIRGA, JOHNSON-DOVEY, VILLASENOR, VENTIMIGLIA, BEESON, JAKABOSKY,  
17 WALLACE, CANNEDY, FINNEGAN, MAY, O’BRIAN, JUBB, GUZMAN, ROTHCHILD and  
18 KOKKONEN;

19 4. The Clerk of the Court shall send plaintiff one USM-285 form for each  
20 defendant identified above, one summons, an instruction sheet, and a copy of the complaint; and

21 5. Within 30 days of the date of service of this order, plaintiff shall complete  
22 the attached Notice of Submission of Documents and submit the following documents to the  
23 court:

- 24 a. The completed Notice of Submission of Documents;
- 25 b. One completed summons;

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- c. Sixteen completed USM-285 form(s); and
- d. Seventeen copies of the endorsed complaint.

DATED: September 30, 2013

  
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**CRAIG M. KELLISON**  
UNITED STATES MAGISTRATE JUDGE

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Defendant.

\_\_\_\_\_ /

NOTICE OF SUBMISSION OF DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's  
order:

- 1   completed summons form;
- \_\_\_\_\_ completed USM-285 form(s); and
- \_\_\_\_\_ copies of the complaint.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff