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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALEJANDRO ALVE,
CDCR #B-77176,

Plaintiff,

vs.

D. EDWARDS; R. SILVAS;
J. SIGLER; J. ESPINOZA,

Defendants.

Civil No. 10-1389 DMS (POR)

**ORDER DISMISSING FIRST
AMENDED COMPLAINT FOR
FAILURE TO STATE A CLAIM
PURSUANT TO 28 U.S.C. § 1915A**

I.

PROCEDURAL HISTORY

On July 1, 2010, Alejandro Alve, a state inmate currently incarcerated at Calipatria State Prison located in Calipatria, California, submitted a civil action pursuant to 42 U.S.C. § 1983. In addition, Plaintiff filed a “Motion to Proceed *In Forma Pauperis*” which was denied by the Court due to sufficient funds in his inmate trust account. *See* July 14, 2010 Order at 2. Plaintiff has now filed the required \$350.00 initial civil filing fee in order to proceed in this matter.

On August 11, 2010, the Court conducted a sua sponte screening and dismissed Plaintiff’s Complaint for failing to state a claim upon which relief could be granted. *See* Aug. 11, 2010

1 Order at 4-5. Plaintiff was granted leave to file a First Amended Complaint in order to correct
2 the deficiencies of pleading identified by the Court. *Id.* On August 31, 2010, Plaintiff filed his
3 First Amended Complaint (“FAC”).

4 II.

5 SUA SPONTE SCREENING PURSUANT TO 28 U.S.C. § 1915A(b)

6 As the Court previously informed Plaintiff, the Prison Litigation Reform Act (“PLRA”),
7 28 U.S.C. § 1915A, obligates the Court to review complaints filed by anyone “incarcerated or
8 detained in any facility who is accused of, sentenced for, or adjudicated delinquent for,
9 violations of criminal law or the terms or conditions of parole, probation, pretrial release, or
10 diversionary program,” “as soon as practicable after docketing” and regardless of whether the
11 prisoner prepays filing fees or moves to proceed IFP. *See* 28 U.S.C. § 1915A(a), (c). The Court
12 must sua sponte dismiss prisoner complaints, or any portions thereof, which are frivolous,
13 malicious, or fail to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b);
14 *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

15 A. Constitutional Claims

16 Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person
17 acting under color of state law committed the conduct at issue, and (2) that the conduct deprived
18 the claimant of some right, privilege, or immunity protected by the Constitution or laws of the
19 United States. *See* 42 U.S.C. § 1983; *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on*
20 *other grounds by Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Haygood v. Younger*, 769 F.2d
21 1350, 1354 (9th Cir. 1985) (en banc).

22 B. Fourteenth Amendment Due Process Claims - Disciplinary Hearing

23 Plaintiff, once again, alleges his due process rights were violated when he was subjected
24 to a disciplinary hearing wherein he was found guilty of having contraband. “The requirements
25 of procedural due process apply only to the deprivation of interests encompassed by the
26 Fourteenth Amendment’s protection of liberty and property.” *Board of Regents v. Roth*, 408
27 U.S. 564, 569 (1972). State statutes and prison regulations may grant prisoners liberty interests
28 sufficient to invoke due process protections. *Meachum v. Fano*, 427 U.S. 215, 223-27 (1976).

1 However, the Supreme Court has significantly limited the instances in which due process can
2 be invoked. Pursuant to *Sandin v. Conner*, 515 U.S. 472, 483 (1995), a prisoner can show a
3 liberty interest under the Due Process Clause of the Fourteenth Amendment only if he alleges
4 a change in confinement that imposes an “atypical and significant hardship . . . in relation to the
5 ordinary incidents of prison life.” *Id.* at 484 (citations omitted); *Neal v. Shimoda*, 131 F.3d 818,
6 827-28 (9th Cir. 1997).

7 In this case, Plaintiff has failed to establish a liberty interest protected by the Constitution
8 because he has not alleged, as he must under *Sandin*, facts related to the conditions or
9 consequences of his disciplinary hearing which show “the type of atypical, significant
10 deprivation [that] might conceivably create a liberty interest.” *Id.* at 486. For example, in
11 *Sandin*, the Supreme Court considered three factors in determining whether the plaintiff
12 possessed a liberty interest in avoiding disciplinary segregation: (1) the disciplinary versus
13 discretionary nature of the segregation; (2) the restricted conditions of the prisoner’s
14 confinement and whether they amounted to a “major disruption in his environment” when
15 compared to those shared by prisoners in the general population; and (3) the possibility of
16 whether the prisoner’s sentence was lengthened by his restricted custody. *Id.* at 486-87.

17 Therefore, to establish a due process violation, Plaintiff must first show the deprivation
18 imposed an atypical and significant hardship on him in relation to the ordinary incidents of
19 prison life. *Sandin*, 515 U.S. at 483-84. The exhibits attached to Plaintiff’s First Amended
20 Complaint indicates that he was temporarily placed for thirty (30) days in privilege group “C.”
21 See FAC, Rules Violation Report dated May 19, 2010. There are simply no facts to show that
22 a thirty day placement in privilege group “C” is “atypical or significant.” As the Court
23 previously informed Plaintiff, he must allege “a dramatic departure from the basic conditions”
24 of his confinement that would give rise to a liberty interest before he can claim a violation of due
25 process. *Sandin*, 515 U.S. at 485; see also *Keenan v. Hall*, 83 F.3d 1083, 1088-89 (9th Cir.
26 1996), *amended by* 135 F.3d 1318 (9th Cir. 1998). He has not; therefore the Court finds that
27 Plaintiff has failed to allege a liberty interest, and thus, has failed to state a due process claim.
28 See *May*, 109 F.3d at 565; *Hewitt*, 459 U.S. at 466; *Sandin*, 515 U.S. at 486 (holding that placing

1 an inmate in administrative segregation for thirty days “did not present the type of atypical,
2 significant deprivation in which a state might conceivably create a liberty interest.”).

3 **C. Fourteenth Amendment Due Process Claims - Grievance Procedures**

4 In addition, to the extent Plaintiff challenges the procedural adequacy of CDCR inmate
5 grievance procedures, his First Amended Complaint fails to state a due process claim. *See* 28
6 U.S.C. § 1915A(b)(1); *Resnick*, 213 F.3d at 446. This is because the Ninth Circuit has held that
7 prisoners have no protected *property* interest in an inmate grievance procedure arising directly
8 from the Due Process Clause. *See Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988) (finding
9 that the due process clause of the Fourteenth Amendment creates “no legitimate claim of
10 entitlement to a [prison] grievance procedure”); *accord Adams v. Rice*, 40 F.3d 72, 75 (4th Cir.
11 1994) (1995); *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993).

12 Thus, Plaintiff’s entire First Amended Complaint must be dismissed for failing to state
13 a claim upon which section 1983 relief may be granted. *See* 28 U.S.C. § 1915A(b)(1).

14 **III.**

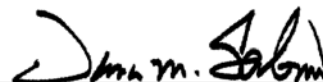
15 **CONCLUSION AND ORDER**

16 Good cause appearing, **IT IS HEREBY ORDERED:**

17 Plaintiff’s First Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.
18 § 1915A(b). However, Plaintiff is **GRANTED** forty five (45) days leave from the date this
19 Order is “Filed” in which to file a Second Amended Complaint which cures all the deficiencies
20 of pleading noted above. Plaintiff’s Amended Complaint must be complete in itself without
21 reference to the superseded pleading. *See* S.D. Cal. Civ. L. R. 15.1. Defendants not named and
22 all claims not re-alleged in the Amended Complaint will be deemed to have been waived. *See*
23 *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

24 **IT IS SO ORDERED.**

25 DATED: November 19, 2010

26 

27 HON. DANA M. SABRAW
28 United States District Judge