

1 **A. Background¹**

2 Mr. Vaster is an inmate at Coyote Ridge Corrections Center
3 ("Coyote Ridge"). While at Coyote Ridge, Mr. Vaster worked at the
4 Correctional Industries (CI) Laundry from August 2010 to May 2011. ECF
5 No. 46 at 1; ECF No. 41 at 9. When he was hired for this Laundry
6 position, Mr. Vaster signed the employee documents: Pay Levels,
7 Infractable Offenses, and Shop Rules and Regulations. ECF No. 40,
8 Attach. B.

9 These documents advised Mr. Vaster, in pertinent part, that he
10 would be subject to an infraction and/or termination for stealing
11 goods or materials, a violation of the employment rules, and any
12 abusive or distracting behavior. ECF No. 40, Attach. B at 22, 28 & 29;
13 ECF No. 40, Attach. A at 20 (Facility staff and CI Class II
14 Supervisors have the "authority to suspend or terminate an offender
15 who poses a threat to security or is disruptive to the work
16 environment, either temporarily pending investigation or
17 permanently."). He was warned that if he was terminated that he would
18 be ineligible for CI work for at least six months. ECF No. 40, Attach.
19 B at 23.

20
21 ¹ When considering this motion and creating this factual section, the Court
22 1) believed the undisputed facts and the non-moving party's evidence, 2)
23 drew all justifiable inferences therefrom in the non-moving party's
24 favor, 3) did not weigh the evidence or assess credibility, and 4) did
25 not accept assertions made by the non-moving party that were flatly
26 contradicted by the record. *See Anderson v. Liberty Lobby, Inc.*, 477
U.S. 242, 255 (1986); *Scott v. Harris*, 550 U.S. 372, 380 (2007).

1 In 2010 and early 2011, Mr. Vaster received positive performance
2 evaluations from his CI Supervisor Louise Byng. ECF No. 19, Attach. C.
3 at 59-60 & 67-68. Charles Hudgins, who was at that time the CI
4 Assistant General Manager and the Site Manager for all CI shops at
5 Coyote Ridge, signed Mr. Vaster's 2011 evaluation in February 2011.
6 *Id.* at 60.

7 Notwithstanding his good employment record, Mr. Vaster was
8 accused of stealing a pair of thermals from the Laundry on May 31,
9 2011. At approximately 7:50 a.m. on May 31, Officer Lamar Nelson
10 observed Mr. Vaster wearing a new thermal top and bottom as he entered
11 the CI screening station. ECF No. 41 ¶ 10; ECF No. 47, Ex. 3. This
12 caught Officer Nelson's attention because Mr. Vaster had previously
13 worn old thermals. Officer Nelson completed an Incident Report
14 regarding his observations and sent it to Officer Carlos Sabala, who
15 also worked at the CI entry screening station. ECF No. 41 ¶ 2; ECF No.
16 47, Ex. 3.

17 Officer Sabala observed Mr. Vaster and shared Officer Nelson's
18 concern that Mr. Vaster was wearing different thermals than he had
19 previously worn. ECF No. 41 ¶ 10 & Attach. D. Officer Sabala and
20 Sergeant Wayne Russell, who was also working at the CI entry screening
21 station, reviewed Mr. Vaster's clothing inventory report; each inmate
22 has a clothing report, or matrix. ECF No. 41 ¶ 5 & Attach. A at 15.
23 Mr. Vaster's clothing report indicates that Mr. Vaster was issued one
24 thermal shirt and one thermal bottom on October 14, 2010, and that his
25 "balance" for each of those items was "1." ECF No. 41 ¶ 12 & Attach.
26 C. However, Mr. Vaster, who was in custody before October 14, 2010,

1 did not sign for this particular clothing transaction, as is required
2 by the prison policies. ECF No. 41, Attach. C at 16 ("The offender
3 will be permitted to review the completed [form] before signing. The
4 designated staff will witness the signature."). Officer Sabala,
5 Officer Nelson, and Sergeant Russell read the clothing record to
6 indicate that Mr. Vaster had only been issued one thermal top and one
7 thermal bottom. ECF No. 47, Ex. 5.

8 Officer Sabala contacted Officer Calcado, who was stationed in
9 Mr. Vaster's living unit, and requested that Officer Calcado inspect
10 Mr. Vaster's cell to determine if there were other thermals present.
11 ECF No. 19, Attach. C at 57; ECF No. 41 ¶ 10. Officer Calcado found a
12 pair of thermals in Mr. Vaster's cell; he advised Officer Sabala of
13 his finding. ECF No. 47, Ex. 1.

14 Officer Sabala and Sergeant Russell then escorted Mr. Vaster to
15 the Laundry staff restroom and required Mr. Vaster to remove his
16 thermals so that they, along with Officer Nelson, could inspect
17 whether the thermals had an inmate number. ECF No. 47 ¶¶ 4 & 5 & Ex.
18 1; ECF No. 46 at 2. Pursuant to Coyote Ridge policy, each item of an
19 inmate's personal property is to be marked with his offender number in
20 permanent ink. ECF No. 41 ¶ 6. It is the offender's responsibility to
21 ensure his number is legible on his state-issued clothing; therefore,
22 before a number becomes illegible, the offender must contact the
23 clothing room to have his DOC number re-stamped on the clothing item.
24 ECF No. 41, Attach. B at 31-32. Neither thermal that Mr. Vaster was
25 wearing had his inmate number. ECF No. 41 ¶ 11. Mr. Vaster informed
26 them that the thermals were his, they were not new, and they were not

1 stolen but rather his inmate number had simply washed out. ECF No. 47
2 ¶ 5.

3 At the direction of Sergeant Russell, Officer Sabala escorted
4 Mr. Vaster to his cell. ECF No. 41 ¶ 13; ECF No. 47 ¶ 6. Mr. Vaster
5 produced a receipt for the older pair of thermals in his cell but did
6 not produce a receipt for the newer thermals he was wearing. ECF No.
7 41 ¶ 13.

8 Mr. Vaster told Officer Sabala that he was being harassed and
9 therefore he was going to file a staff misconduct grievance against
10 Officers Sabala and Nelson and Sergeant Russell. ECF No. 47 ¶ 8.
11 Officer Sabala informed Mr. Vaster that he would be infracted for
12 theft of the newer thermals, and later that day, Officer Sabala did
13 file a disciplinary infraction against Mr. Vaster for theft of the
14 newer thermals. ECF No. 41 ¶ 14 & Attach. D; ECF No. 47 ¶ 3. Officer
15 Sabala placed the newer pair of thermals into evidence. ECF No. 41 ¶
16 14. Sergeant Russell and Officer Nelson also filed incident reports.
17 ECF No. 47, Exs. 2 & 3. CI Manager Hudgins was informed later that day
18 that Mr. Vaster was issued an infraction for theft while working at CI
19 Laundry. ECF No. 40 ¶ 11.

20 Mr. Vaster was terminated of his Laundry employment as a result
21 of the infraction. ECF No. 47 ¶ 11; ECF No. 40 ¶ 5. Because an
22 infraction was filed, Mr. Vaster was unable to grieve the incident
23 pursuant to Coyote Ridge policy. ECF No. 47 ¶ 10.

24 A disciplinary hearing regarding the infraction was held on June
25 9, 2011. ECF No. 47 ¶ 12; ECF No. 19, Attach. C at 50. Mr. Vaster
26 participated and told the hearing officer that he had been issued his

1 "newer" thermals on May 17, 2010, at another facility and that his
2 offender number came out in the wash. ECF No. 19, Attach. C at 50 &
3 57; ECF No. 47 ¶ 12. The hearing officer dismissed the theft
4 infraction determining there was no evidence to support a finding that
5 Mr. Vaster stole the newer thermals, but rather confirmed that the
6 clothing matrix indicated that he was issued two thermals and that the
7 "new" shirt was not new as it had stains. *Id.*; ECF No. 47 ¶ 12.

8 Later that day, Mr. Vaster filed a grievance, claiming that
9 Officers Sabala and Nelson and Sergeant Russell conspired to accuse
10 him of theft. ECF No. 46 at 1; ECF No. 47 ¶ 13; ECF No. 19, Attach. C
11 at 48. The response to his grievance advised that the issue was a non-
12 grieveable work-assignment issue, which must be addressed by the
13 Correctional Program Manager. ECF No. 19, Attach. C.

14 Because the infraction had been dismissed, Mr. Vaster sought to
15 return to work. ECF No. 47 ¶ 13. In his complaint, Mr. Vaster alleges
16 that Sergeant Russell and Officers Sabala and Nelson contacted CI
17 Manager Hudgins and advised him that Mr. Vaster should not be
18 permitted to continue working at Laundry even though the infraction
19 had been dismissed. ECF No. 47 ¶ 13 (citing ECF No. 6 ¶ 4.13).
20 However, in response to the summary-judgment motion, Mr. Vaster did
21 not produce any evidence indicating that Sergeant Russell or Officers
22 Sabala or Nelson contacted Manager Hudgins in regard to Mr. Vaster's
23 employment. And Manager Hudgins declares that he was not requested by
24 Officers Sabala or Nelson or Sergeant Russell to terminate Mr.
25 Vaster's Laundry employment. ECF No. 40 ¶ 15. Officer Sabala declares
26 similarly. ECF No. 41 ¶ 15.

1 Nonetheless, Mr. Vaster was not permitted to return to work at
2 CI Laundry. ECF No. 47 ¶¶ 15, 21, & 28. Mr. Vaster sought help from
3 his counselor in order to return to work. And on June 14, 2011,
4 Counselor Robideau emailed Laundry Supervisor Byng on Mr. Vaster's
5 behalf to advise her that Mr. Vaster's infraction had been dismissed
6 and that he wanted to return to work. ECF No. 19, Attach. C at 63.

7 The same day, Supervisor Byng responded that Mr. Vaster would
8 not return to the Laundry until an investigation regarding a suspected
9 clothing theft ring was complete; Manager Hudgins was copied in on the
10 email. ECF No. 19, Attach. C at 63. Manager Hudgins responded by email
11 to both Counselor Robideau and Supervisor Byng, stating that offenders
12 have reported that Mr. Vaster had been forcing other inmates to steal
13 laundry and that with Mr. Vaster's absence from the laundry, the
14 laundry was more peaceful. Manager Hudgins concludes with a statement
15 that Mr. Vaster was not performing to CI standards. ECF No. 19,
16 Attach. C at 63. Manager Hudgins declares that it was June 14, 2011—
17 the same date as these emails—that he learned that Mr. Vaster was
18 requesting to return to the Laundry. ECF No. 40 ¶ 6.

19 No documentation, emails, or declarations were provided to the
20 Court that specified the type of investigation conducted, when it
21 ended, or the findings made. The most detailed information as provided
22 by Manager Hudgins is:

23 Over the prior couple of months [before June 2011], I had
24 received complaints from the clothing room that new
25 clothing items that had been received in CI Laundry were
26 missing when the clothing room received new clothes from CI
Laundry. At the time of Offender Vaster's infraction,
Correctional Industries Supervisor Louise Byng and Laundry
Officer Linda Smith had been conducting an investigation

1 for approximately one month trying to determine where and
2 how the new clothes "went missing." Supervisor Byng and
3 Officer Smith kept me updated concerning their
4 investigation.

5 ECF No. 40 ¶ 12. Yet, Manager Hudgins also admitted that he did not
6 hear about or believe that Mr. Vaster was stealing clothes from
7 Laundry before his disciplinary infraction. ECF No. 47, Ex. 8, RFA
8 Nos. 6 & 8. Manager Hudgins reports that he stopped receiving
9 complaints from the clothing room that clothing was missing after Mr.
10 Vaster was no longer working at CI Laundry. ECF No. 40 ¶ 18. Whether
11 the reported theft of clothing stopped because Mr. Vaster no longer
12 had access to Laundry clothing or because the other CI Laundry workers
13 were now aware that CI management was taking a closer look at the
14 activity in the Laundry is unknown by the Court. Mr. Vaster maintains
15 he was not involved in any clothing theft ring. ECF No. 47 ¶ 16.

16 On June 16, 2011, Mr. Vaster filed another grievance regarding
17 the May 31, 2011 incident and asking that Sergeant Russell and
18 Officers Sabala and Nelson attend a retraining course on governing
19 policies and to have a misconduct notation added to their employment
20 file. ECF No. 19, Attach. C at 53. The Grievance Coordinator responded
21 that formal grievance paperwork was being prepared. ECF No. 19,
22 Attach. C at 53.

23 On June 20, 2011, Mr. Vaster contacted Counselor Nichoel Rickard
24 to assist him with returning to work. ECF No. 47 ¶ 18. Counselor
25 Rickard had not received any termination paperwork as would be typical
26 under the prison's policies following a termination. ECF No. 47 ¶ 18;
see ECF No. 19-3 at 59 & 60. Therefore, Counselor Rickard emailed

1 Manager Hudgins to inform him that Mr. Vaster was found not guilty of
2 the infraction and requested that Mr. Vaster be returned to work in
3 the Laundry. ECF No. 19, Attach. C at 59 & 61. In response, Manager
4 Hudgins stated that the Laundry was a safer place for staff and
5 offenders without Mr. Vaster working there as he was reported to be
6 leading a clothing theft ring. ECF No. 19, Attach. C at 61. Manager
7 Hudgins also forwarded to Counselor Rickard the email he had
8 previously sent to the other counselor and Supervisor Byng on June 14.
9 ECF No. 19, Attach. C at 62.

10 In his declaration in support of summary judgment, Manager
11 Hudgins stated that Supervisor Byng and Officer Smith expressed that
12 they were concerned for their physical safety if Mr. Vaster was
13 permitted to return to work at CI Laundry. ECF No. 40 ¶ 14. In CI
14 Laundry, there is one staff member and one officer to supervise
15 approximately thirty-five offender workers. *Id.* The laundry carts,
16 when full, weigh approximately 500-600 pounds. *Id.* There are blind
17 spots within CI Laundry that surveillance cameras do not cover. *Id.*
18 Because the safety and security of the staff and offenders is the
19 "most important fact in all decisions related to CI," and CI has a
20 zero-tolerance policy for theft, Manager Hudgins states that Mr.
21 Vaster was not permitted to return to work at Laundry. ECF No. 40 ¶¶
22 1, 5, & 6.

23 On June 22, 2011, Supervisor Byng sent an email to DOC employees
24 Amy McCabe and Eileen Sawyer, and copied in Manager Hudgins, asking
25 that Mr. Vaster be removed from the Laundry worker list. ECF No. 19,
26 Attach. C at 64. Ms. McCabe, who works in the Assignments Office,

1 indicated that when she receives the termination paperwork from
2 Supervisor Byng that she would send a copy to Mr. Vaster's counselor.
3 *Id.* Counselor Rickard did not obtain a copy of the termination
4 paperwork. ECF No. 19, Attach. C at 59. And neither did Manager
5 Hudgins, as he states in his declaration that he did not review the
6 termination paperwork at the time it was processed.² ECF No. 40 ¶ 17 &
7 Attach. D. The termination paperwork was signed by Supervisor Byng on
8 October 24, 2011. See ECF No. 40, Attach. A at 20 ("Site Manager
9 approval and signature is required for temporary suspension or
10 termination.").

11 Mr. Vaster filed a second grievance on July 21, 2011, asking
12 that his initial June 16, 2011-filed grievance be refiled. ECF No. 49,
13 Attach. C at 52. Mr. Vaster filed a third grievance on August 1, 2011,
14 claiming that Officers Nelson and Sabala and Sergeant Russell falsely

15
16 ² When he reviewed the paperwork in preparation of his
17 declaration, Manager Hudgins observed the following errors on the
18 termination paperwork:

19 The "effective date" section contains a typographical
20 error, as the termination effective date should be
21 backdated to "5/31/11" which was the date Offender Vaster's
22 suspension began. In addition, the reason for termination
23 does not accurately reflect the basis for my decision.
24 While Offender Vaster was suspended for receiving the
25 infraction, neither the infraction nor the result of the
26 disciplinary hearing had anything to do with my decision to
27 terminate Offender Vaster. Offender Vaster was terminated
28 based on the theft ring investigation by Supervisor Byng
29 and Officer Smith, as well as safety and security concerns
30 related to Offender Vaster returning to work in CI Laundry.

31 ECF No. 40 ¶ 17.

1 accused him of stealing thermals and asking, in part, that he be
2 reinstated to his employment and receive back pay for the days missed.
3 ECF No. 19, Attach. C at 51; ECF No. 47 ¶¶ 13 & 26. In response, on
4 August 1, 2011, the Grievance Coordinator stated:

5 Staff members, like all people are human and at times will
6 make wrong decisions or errors in judgement [sic]. The fact
7 that you were exonerated from the infractions is proof that
8 the system has the proper checks and balances installed to
9 correct such errors. The grievance office would like to
10 extend an apology for troubles and time lost that this
11 incident has caused. The fact that you have been cleared of
12 the infraction charges allows you the right to contact job
13 assignments to begin the process to regain your employment
14 status that you had before the infraction was levied.

15 ECF No. 19, Attach. C. at 51. On August 2, 2011, Mr. Vaster appealed
16 the initial grievance decision because the defamation of his character
17 was not addressed as part of the suggested remedy. ECF No. 19 at 69.

18 On August 3, 2011, Ms. Sawyer emailed Steven Salsbury, advising
19 that she was going to put Mr. Vaster back on CI Laundry duty. ECF No.
20 65, Attach. C at 65. Mr. Salsbury forwarded this email to Manager
21 Hudgins, asking, "She can't do this, can she? He was caught stealing
22 out of the laundry I don't want him back." *Id.* Manager Hudgins then
23 emailed Mr. Salsbury, Ms. Sawyer, and three other DOC employees,
24 stating that Mr. Vaster:

25 [is] not welcome back in the CI shops, As the site Manager
26 for CI at CRCC. the policy 710.400 states that the Site
27 Manger can Suspend a Offender if the Offender does Not meet
28 the goals of the CI shop in performance of the job. The
29 Laundry Officer has requested as well as the Laundry Staff
30 that Offender Vaster not be allowed back into CI. Please
31 follow this request.

32 ECF No. 19, Attach. C at 65 (punctuation and spelling errors in
33 original).

1 On August 8, 2011, Counselor Robideau was assigned to
2 investigate Mr. Vaster's grieved matter. ECF No. 19, Attach. C at 56.
3 On August 12, 2011, Counselor Harmon sent an email to the work-
4 assignment division requesting that Mr. Vaster be put back on CI
5 Laundry duty. ECF No. 19, Attach. C at 59. There is no information in
6 the record as to what response, if any, this email received.

7 Following his investigation, Counselor Robideau prepared a
8 report dated August 24, 2011. ECF No. 19, Attach. C at 59-60.
9 Counselor Robideau concluded, "There is some bias against offender
10 Vaster by Staff. I recommend that offender Vaster be given his job
11 back and because of the length of time of his termination that he be
12 given his incentive pay up to this point. I have no documentation that
13 would indicate that he was part of any clothing ring; furthermore he
14 was adjudicated from his infraction." ECF No. 19, Attach. C at 60.

15 On September 27, 2011, an Appeal to Level II was prepared,
16 contending that the falsification and defamation of Mr. Vaster's
17 character was not addressed as part of the suggested remedy to his
18 earlier grievance. ECF No. 19, Attach. C at 54. On September 30, 2011,
19 the Superintendent responded: "Your level II grievance was
20 investigated by [Counselor] Robideau. In conclusion of the
21 investigation, there is no documentation to support the allegation of
22 biased behavior from staff towards you. The proper procedures were
23 followed by staff. You have the choice to reapply for a CI job.
24 Contact your counselor for the CI application and the referral
25 process." ECF No. 19, Attach. C at 54.

1 On October 4, 2011, Mr. Vaster appealed the Level II grievance
2 decision as the defamation of his character was not included as part
3 of the Level I and II suggested remedies. ECF No. 19 at 70, 71, & 73.

4 On November 3, 2011, DOC Investigator Katelyn Daugherty
5 responded to Mr. Vaster:

6 There was no information to support your allegation that
7 Sergeant Russell and Officers Sabala and Nelson "conspired
8 to falsely accuse you of theft, nor that they acted with
9 intentional "malice" toward you. Staff were within their
10 job responsibilities to question you when you were found in
11 possession of clothing without your DOC number on the.
12 Additionally, the investigation indicates that your closing
13 matrix was incomplete and appears to have been
14 misinterpreted as a result. Your frustration over having
15 been infracted is understandable; however, it appears the
16 proper procedures were followed and you were subsequently
17 found not guilty and the infraction was dismissed. You were
18 offered an apology for the inconvenience this caused you.

19 In regard to the additional issues you raised at Level
20 III regarding your job assignment, Classification issues
21 have a separate appeal process and I cannot respond to
22 those concerns here.

23 ECF No. 19, Ex. C. at 74.

24 On November 14, 2011, the Deputy Secretary responded to Mr.
25 Vaster's Level III grievance, advising that he agreed with
26 Investigator Daugherty's response. ECF No. 19, Ex. C at 72 (signature
illegible).

27 In January 2012, Manager Hudgins advised Mr. Vaster's counselor
28 that Mr. Vaster was eligible to reapply for CI employment. ECF No. 40
29 ¶ 20. At some date thereafter but before October 2012, Mr. Vaster
30 obtained CI employment as a barber.

31 Mr. Vaster filed this lawsuit in 2013, alleging that Defendants
32 Hudgins, Russell, Nelson, and Sabala violated his First Amendment
33 rights by retaliating against him for filing grievances against them.

1 Manager Hudgins and Officer Sabala state that until they received a
2 copy of this lawsuit they were unaware of any grievances filed by Mr.
3 Vaster against them regarding his termination from CI Laundry. ECF No.
4 40 ¶ 19; ECF No. 41 ¶ 15. Defendants filed the instant summary-
5 judgment motion, and briefing ensued.

6 **B. Standard**

7 Summary judgment is appropriate if the record establishes "no
8 genuine dispute as to any material fact and the movant is entitled to
9 judgment as a matter of law." Fed. R. Civ. P. 56(a). Mr. Vaster, as
10 the party opposing summary judgment, must point to specific facts
11 establishing a genuine dispute of material fact for trial. *See Celotex*
12 *Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Matsushita Elec. Indus.*
13 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). If the non-
14 moving party fails to make such a showing for any of the elements
15 essential to his case for which he bears the burden of proof, the
16 court will grant the summary-judgment motion. *Celotex Corp.*, 477 U.S.
17 at 322.

18 **C. Analysis**

19 Defendants argue that 1) the Eleventh Amendment bars any claim
20 against them in their individual capacity, 2) Mr. Vaster's
21 retaliation-based 42 U.S.C. § 1983 claim fails to survive summary
22 judgment because he cannot establish a genuine issue of material fact
23 that his grievances were the cause of any adverse action taken against
24 him and because any adverse action taken against him was not caused by
25 Defendants Nelson, Russell, and Sabala, and 3) the Defendants are
26 entitled to qualified immunity.

1 **1. Official Capacity: Eleventh Amendment**

2 To the extent that Mr. Vaster asserts Defendants acted in their
3 official capacity, the Court agrees that such a claim under § 1983 is
4 barred by the Eleventh Amendment. *See Will v. Mich. Dep't of State*
5 *Police*, 491 U.S. 58, 71 (1989) (ruling that the state, its agencies,
6 and state officials sued in their official capacities are not persons
7 subject to suit under 42 U.S.C. § 1983 for damages or other
8 retrospective relief). Accordingly, consistent with *Will*, the Court
9 dismisses Mr. Vaster's claims asserted against each of the Defendants
10 in their official capacity. Defendants' motion is granted in this
11 regard.

12 **2. Individual Capacity: Retaliation Claim**

13 Under 42 U.S.C. § 1983, Mr. Vaster asserts that Defendants,
14 acting in their individual capacity, violated his First Amendment
15 right to file a prison grievance, by retaliating against him for
16 filing prison grievances against them. To survive summary judgment,
17 Mr. Vaster must establish a triable issue of fact as to whether his
18 First Amendment right to file grievances was violated by Defendants
19 when they were acting under color of state law. *See* 42 U.S.C. § 1983³;

21 ³ Section 1983 provides:

22 Every person who, under color of any statute, ordinance,
23 regulation, custom, or usage, of any State . . . subjects, or
24 causes to be subjected, any citizen of the United States . . . to
25 the deprivation of any rights, privileges, or immunities secured
26 by the Constitution and laws, shall be liable to the party
injured in an action at law, suit in equity, or other proper
proceeding for redress

42 U.S.C. § 1983.

1 *West v. Atkins*, 487 U.S. 42, 48 (1988). Defendants do not dispute that
2 they were acting under color of law; accordingly, the focus is on
3 whether Mr. Vaster presented sufficient evidence that Manager Hudgins,
4 Sergeant Russell, and/or Officers Nelson and Sabala violated his First
5 Amendment right to file a prison grievance. *See Rhodes v. Robinson*,
6 408 F.3d 559, 567 (9th Cir. 2005) (recognizing that a prisoner has a
7 First Amendment right to file a prison grievance free from retaliatory
8 action by a prison official).

9 To prove this § 1983-based retaliation claim, Mr. Vaster must
10 establish (1) a state-actor Defendant took adverse action against him
11 (2) because of (3) Mr. Vaster's protected conduct, and that such
12 action (4) chilled Mr. Vaster's exercise of his First Amendment
13 rights. *See Rhodes*, 408 F.3d at 567-68. It is undisputed that
14 termination of employment for six months was an adverse action. *See*
15 *Brodheim v. Cry*, 584 F.3d 1262, 1270 (9th Cir. 2009) (recognizing that
16 a threat of discipline or transfer is an adverse action). The "because
17 of" causation element is satisfied if Mr. Vaster shows that his
18 protected conduct was the substantial or motivating factor behind the
19 Defendant's conduct, i.e., that a Defendant either personally
20 participated or set in motion a series of acts by others, which the
21 Defendant knew or reasonably should have known would cause others to
22 inflict the constitutional injury. *Id.* at 1271; *Johnson v. Duffy*, 588
23 F.2d 740, 743 (9th Cir. 1980). An objective standard is used to
24 determine whether the adverse action would chill the desire of a
25 person of ordinary firmness to engage in future First Amendment
26 activities. *Brodheim*, 584 F.3d at 1271; *Rhodes*, 408 F.3d at 568

1 (recognizing that speech can be chilled even when not completely
2 silenced). A successful retaliation claim also requires Mr. Vaster to
3 establish that "the prison authorities' retaliatory action did not
4 advance legitimate goals of the correctional institution or was not
5 tailored narrowly enough to achieve such goals." *Rizzo v. Dawson*, 778
6 F.2d 527, 532 (9th Cir. 1985). The district court is to "'afford
7 appropriate deference and flexibility' to prison officials in the
8 evaluation of proffered legitimate penological reasons for conduct
9 alleged to be retaliatory." *Pratt v. Rowland*, 65 F.3d 802, 807 (9th
10 Cir. 1995) (quoting *Sandlin v. Conner*, 515 U.S. 472, 482 (1995)).

11 After closing scrutinizing the file and viewing the evidence in
12 the light most favorable to Mr. Vaster, the Court concludes that Mr.
13 Vaster failed to establish a triable issue of fact that Sergeant
14 Russell and Officers Sabala and Nelson retaliated against him. These
15 individuals were involved in the May 31, 2011 incident, wherein they
16 believed, based on their observations, the misleading notations on the
17 clothing report, the lack of marking on the thermals worn by Mr.
18 Vaster, and the other information they possessed that day, that Mr.
19 Vaster was wearing a pair of thermals that had not been issued to him.
20 After Officer Sabala wrote the infraction against Mr. Vaster on May 31
21 for wearing thermals that Officers Sabala and Nelson and Sergeant
22 Russell believed had not been issued to Mr. Vaster by the Department
23 of Corrections (DOC), there is no information in the record that
24 Officers Sabala and Nelson or Sergeant Russell communicated with
25 either Manager Hudgins, Supervisor Byng, or Officer Smith that they
26 desired Mr. Vaster's suspension from CI Laundry. Instead, Mr. Vaster's

1 initial suspension from the Laundry was simply because of DOC policy
2 that requires a worker against whom an infraction is brought to be
3 suspended. Following the June 9 dismissal of the infraction, these
4 Defendants did not physically permit Mr. Vaster to return to the
5 Laundry. However, the decision to prohibit Mr. Vaster from returning
6 to the Laundry was made by Manager Hudgins. Officers Sabala and Nelson
7 and Sergeant Russell did not have the authority to permit Mr. Vaster
8 to enter the Laundry without Manager Hudgins' approval. Mr. Vaster
9 failed to establish a genuine dispute of material fact that the
10 adverse action taken by Officers Sabala and Nelson and Sergeant
11 Russell, i.e., 1) providing information and documentation to support
12 the May 31, 2011 theft infraction, and 2) preventing him from
13 returning to the Laundry following the dismissal of the infraction,
14 was because of Mr. Vaster's statement to Officer Sabala that he would
15 file a grievance pertaining to his May 31, 2011 treatment or his
16 later-filed grievances.

17 In regard to Manager Hudgins, the Court is concerned about the
18 lack of documentation provided to the Court regarding the purported
19 investigation that was conducted regarding the suspected clothing
20 theft ring. Manager Hudgins declares that he received complaints that
21 clothing items were being stolen from the Laundry a couple of months
22 before May 2011. However, there is no documentation, emails, or other
23 correspondence hinting at the loss of clothing, Mr. Vaster's
24 involvement in the loss, or an investigation into the loss, before May
25 31, 2011.

1 DOC's employment policy granted Manager Hudgins, as the Site
2 Manager, the authority to suspend or terminate any offender who posed
3 a threat to security or was disruptive to the work environment.
4 Manager Hudgins received word from Supervisor Byrd that Mr. Vaster was
5 a security threat and a disruptive force given the stolen clothing.
6 Yet, the employment policy required a supervisor to "document
7 substandard performance prior to a decision to terminate" so that the
8 worker had an opportunity to correct his performance, ECF No. 40,
9 Attach. A at 19. This policy was not followed in regard to Mr. Vaster.
10 And he reasonably was upset with this course of conduct, especially
11 since the reason for his termination was not reported to him or his
12 counselors in a timely and proper manner, such as on termination
13 paperwork.

14 The Laundry Supervisor and staff were reasonable in their
15 purported concern for safety in light of the recent murder of a DOC
16 employee in another facility by an inmate, the heaviness of the carts,
17 the ratio of offenders to staff in the Laundry, and the blind spots
18 not covered by cameras in the Laundry. *Cf. Mt. Healthy City Bd. Of*
19 *Educ.*, 429 U.S. 274, 287 (1977) (placing burden on the state to show
20 that it would have taken the same adverse action even in the absence
21 of the protected conduct); *Rhodes v. Robinson*, 408 F.3d at 568
22 (inquiring as to whether the state's challenged action reasonably
23 advanced a legitimate correctional goal). Yet, without 1)
24 documentation indicating that a clothing-theft concern existed, and a
25 related investigation was conducted, before May 31, 2011, or 2) an
26 employee review indicating that Mr. Vaster's work and behavior were

1 substandard, the Court is unable to conclude as a matter of law that
2 Manager Hudgins' decision to terminate Mr. Vaster's Laundry employment
3 advanced Coyote Ridge's legitimate safety goal.

4 Nonetheless, there is no evidence to support a finding that
5 Manager Hudgins' directive that Mr. Vaster not return to work at the
6 Laundry was based on Mr. Vaster's exercise of his First Amendment
7 right to file grievances. There is no hint in the record that Manager
8 Hudgins was aware that Mr. Vaster filed the grievances until this
9 lawsuit was filed. See *Pratt*, 65 F.3d at 806 (highlighting the
10 defendants' sworn statements that they were unaware of the plaintiff's
11 protected conduct). Accordingly, Mr. Vaster fails to present
12 sufficient evidence to establish a triable issue of fact as to all of
13 the retaliation elements.

14 For the above-reasons, each of the Defendants is granted summary
15 judgment on Mr. Vaster's § 1983 retaliation claim.

16 **3. Qualified Immunity**

17 Defendants also argue that summary judgment is appropriate
18 because they are entitled to qualified immunity. A state actor is
19 protected from § 1983 liability, i.e., he is entitled to qualified
20 immunity, if he shows his "conduct does not violate clearly
21 established statutory or Constitutional rights of which a reasonable
22 person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818
23 (1982).

24 As mentioned above, Mr. Vaster's constitutional right to be free
25 from retaliation for filing a prison grievance was clearly
26 established. And, based on the record before the Court, the Court

1 finds that Officers Nelson and Sabala and Sergeant Russell are
2 entitled to qualified immunity as they acted objectively reasonable
3 under the circumstances. See *Graham*, 490 U.S. at 397 (utilizing an
4 objectively reasonable test under the totality of the circumstances).
5 Before issuing an infraction for theft (or filing reports in support
6 of a theft infraction), Officers Nelson and Sabala and Sergeant
7 Russell spoke to Mr. Vaster, examined his thermals for his inmate
8 number, had another officer inspect Mr. Vaster's cell for other
9 thermals, and reviewed the clothing report, which erroneously stated
10 that Mr. Vaster's balance was one thermal top and bottom. Based on the
11 information they possessed, it was objectively reasonable for them to
12 infract Mr. Vaster for theft and to prevent him from returning to the
13 Laundry once Manager Hudgins decided to change the suspension to a
14 termination.

15 In regard to Manager Hudgins, the better course may have been to
16 require Supervisor Byng to document her concerns regarding Mr.
17 Vaster's suspected theft of clothing before deciding that Mr. Vaster
18 was terminated from working at the Laundry, especially since there is
19 no documentation in the record regarding the nature and scope of the
20 investigation into the suspected clothing theft ring before June 9,
21 2011. Accordingly, the Court cannot find, as a matter of law, that
22 Manager Hudgins acted reasonably in his decision to terminate
23 Mr. Vaster's Laundry position. Therefore, if Mr. Vaster had provided
24 evidence that Manager Hudgins' decision to terminate Mr. Vaster was
25 motivated by Mr. Vaster's exercise of his First Amendment right to
26 file grievances, Mr. Vaster's claim against Manager Hudgins would have

1 survived summary judgment; however, for the reasons above, Mr. Vaster
2 did not provide such evidence and therefore summary judgment in
3 Manager Hudgins' favor is appropriate even though the matter of
4 qualified immunity is resolved in Mr. Vaster's favor.

5 **D. Conclusion**

6 For the above-given reasons, **IT IS HEREBY ORDERED:**

7 1. Defendants' Motion for Summary Judgment, **ECF No. 38**, is
8 **GRANTED.**

9 2. Judgment is to be entered in Defendants' favor with
10 prejudice.

11 3. All pending dates and deadlines are **STRICKEN.**

12 4. This file shall be **CLOSED.**

13 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
14 Order and provide copies to Mr. Vaster and counsel.

15 **DATED** this 18th day of February 2016.

16
17 s/Edward F. Shea
EDWARD F. SHEA
18 Senior United States District Judge
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