

THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

ALEX LAMOTA MARTI, Plaintiff, v. F. PADILLA, et al., Defendants. 1:07-cv-00066 LJO GSA PC FINDINGS AND RECOMMENDATION RE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (ECF No. 173) OBJECTIONS DUE IN THIRTY DAYS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. Pending before the Court is Defendants' motion for summary judgment. Plaintiff has opposed the motion.<sup>1</sup>

I. Procedural History

This action proceeds on the July 9, 2007, first amended complaint. Plaintiff, an inmate in the custody of the California Department of Corrections and Rehabilitation (CDCR) at Mule Creek State Prison, brings this lawsuit against 22 individual defendants employed by the CDCR at the California Substance Abuse Treatment Facility at Corcoran (SATF) where the events at issue occurred. All of the Defendants have been served with the first amended complaint, and all

1 On March 26, 2010, the Court issued and sent to Plaintiff the summary judgment notice required by Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998), and Klingele v. Eikenberry, 849 F.2d 409 (9th Cir. 1988) The order was reserved on Plaintiff on August 23, 2012, in response to the Ninth Circuit's decision in Woods v. Carey, 684 F.3d 934 (9th Cir. 2012).

1 of the Defendants have filed the motion for summary judgment that is before the Court. Plaintiff  
2 names the following individual defendants: Associate Warden and Acting Chief Deputy Warden  
3 Fulks; Chief Deputy Warden Polk; Captain Hansen; Capt. Lais; Capt. Reynoso; Capt. Santoro;  
4 Lieutenant and Acting Facility E Captain Tolson; Lt. Baires; Lt. Wadkins; Sergeant Munoz; Sgt.  
5 Smith; Correctional Officer (C/O) Boos; C/O Gardner; C/O Hulse; C/O Jordt; C/O Knight; C/O  
6 McGuirt; C/O Padilla; C/O Ramirez; C/O Williams; Supervising Correctional Counselor Smart;  
7 Correctional Counselor Arline. Plaintiff claims that Defendants improperly placed in and kept  
8 him in Administrative Segregation (AdSeg) in retaliation for filing inmate grievances. For  
9 clarity, the Court will analyze the incidents at issue in the order in which they occurred. The  
10 allegations of the first amended complaint follow.

11 **February 8, 2005.** Plaintiff was out to court “pertaining to a writ of habeas corpus on  
12 conditions of confinement at the California Substance Abuse Treatment Facility and State  
13 Prison.” When he returned, Defendants Padilla and Knight threatened Plaintiff with retaliation  
14 “for having taken the CDCR to court and was cautioned to go easy on the CDCR witnesses.”  
15 Defendants Padilla and McGuirt demoted Plaintiff from a pay position to a non-pay position.  
16 Plaintiff alleges that the non-pay position “was going to be deleted, effectively leaving plaintiff  
17 in line for being laid off.” Plaintiff alleges that he was demoted in retaliation for “having a court  
18 action against the CDCR.”

19 **May 18, 2005.** Defendant McGuirt threatened Plaintiff with retaliation for having asked  
20 a sergeant about a pending administrative appeal. While McGuirt was escorting Plaintiff to get  
21 his stored legal materials, he told Plaintiff “that he should refrain from addressing grievances to  
22 the sergeant or suffer the consequences.”

23 **July 15, 2005.** Defendant Knight falsified a Rules Violation Report (RVR) in retaliation  
24 for “the grievances” and court action filed by Plaintiff. Plaintiff alleges that Knight did so at the  
25 behest of Defendant McGuirt.

26 **August 14, 2005.** Defendant Ramirez terminated Plaintiff’s visit with his mother.  
27 Plaintiff alleges that Ramirez had no valid reason to do so. Plaintiff and his mother filed  
28 grievances against Ramirez. Plaintiff alleges that Ramirez retaliated by filing a false RVR.

1           **September 2, 2005.** Defendants Williams, Wadkins, Smart, Hansen, Smith and Gardner  
2 segregated Plaintiff based on false allegations from a confidential informant. Defendant  
3 Williams authored a false RVR in concert with the informant, and with no corroboration.  
4 Defendant Wadkins authored the lock up order (CDC 114D) and Defendant Hansen  
5 “intimidated, threatened, ordered the segregation and also made references to plaintiff’s history  
6 of numerous administrative appeals as justification for plaintiff’s segregation.” Defendant Smart  
7 “made loud references to plaintiff such as ‘we got the 602 king.’”

8           **September 15, 2005.** Plaintiff alleges that between September 2, 2005, and September  
9 15, 2005, Defendants Wadkins, Boos, Hulse and Tolson “further presented plaintiff with false  
10 assertions of multiple confidential sources to cause plaintiff’s segregation, when in fact his  
11 segregation was caused by a single uncorroborated source.” Defendant Tolson “obscured” the  
12 fact that a single confidential source was the basis for Plaintiff’s segregation. Defendant Hansen  
13 assigned Defendant Knight as Plaintiff’s investigative employee. Hansen eventually recused  
14 himself from reviewing Plaintiff’s segregation order due to Plaintiff’s allegation of bias.  
15 Nevertheless, Hansen participated in the Institution Classification Committee (ICC) that retained  
16 Plaintiff in AdSeg.

17           At the September 15, 2005, ICC hearing, it was decided that Plaintiff would be retained  
18 in AdSeg. The committee consisted of Defendants Fulks, Arline and Hansen. Defendant Smart,  
19 who presented the case to the committee, “was abusive, lied . . . and denied Plaintiff the right to  
20 address the committee.” Plaintiff alleges that the committee did not assess the reliability of the  
21 confidential information and based their decision “on the false pretext of multiple sources.”

22           **November 22, 2005.** While housed in Unit E1 of AdSeg, Plaintiff received a court order  
23 from the Second District Court of Appeals, “pertaining to conditions of incarceration in  
24 administrative segregation.” The next day, Plaintiff presented the order to Defendant Jordt, “to  
25 have said court order on record for further access to legal services.” Within an hour, Plaintiff  
26 was informed that he was being moved to a more restrictive housing unit within AdSeg. Plaintiff  
27 alleges that Defendant Munoz “retaliated against Plaintiff by effecting this transfer solely as an  
28

1 act of retaliation for the Court action filed by plaintiff in the Court of Appeals.” Plaintiff had  
2 “presented numerous grievances against Defendant Jordt” before his transfer to AdSeg.

3 **January 8, 2006.** Plaintiff alleges that he was found not guilty of the RVR that was the  
4 basis for his placement in AdSeg on September 2, 2005. Defendant Baires, acting as the Senior  
5 Hearing Officer, found Plaintiff not guilty. Defendants Baires and Hansen “held the final  
6 disposition of the RVR from 1-8-06 till 3-15-06, effectively prolonging Plaintiff’s housing in  
7 administrative segregation.” On February 1, 2006, Defendant Baires prepared a CDC Form  
8 128G that recommended continued Placement in AdSeg and a future transfer to another  
9 institution. On March 31, 2006, Defendant Baires authored a CDC Form 114D (lock up order),  
10 to continue Plaintiff’s placement in AdSeg , “and recommending a transfer for false reasons.”  
11 Defendant Arline, Plaintiff’s correctional counselor, failed to schedule Plaintiff for ICC for  
12 release from segregation, and “ignored the Classification Staff Representative (CSR) action  
13 dated 3-3-06 to “return to CSR no later than 3/18/06 with status update, effectively leaving  
14 plaintiff in segregation for no valid reason.”

15 **April 3, 2006.** Defendant Lais reviewed the 114D, and “violated plaintiff’s procedural  
16 protections purposely obstructing any possibility of uncovering the fact that no valid reason  
17 existed at this time to retain plaintiff in segregation.” Specifically, Defendant Lais denied  
18 Plaintiff an investigative employee, witnesses and documentary evidence to allow Plaintiff to  
19 prepare for the ICC hearing that could release him from AdSeg.

20 **April 10, 2006.** Plaintiff appeared before an ICC comprised of Defendants Santoro,  
21 Reynoso and Polk. Based on the February 1, 2006, chrono and the March 31, 2006, lock up  
22 order, the ICC ordered that Plaintiff be retained in AdSeg for 90 days and transferred to another  
23 institution.

24 **May 11, 2006.** Plaintiff alleges that after he filed an administrative appeal, he was  
25 released from segregation to Facility D. The administrative appeal “uncovered that no reason  
26 existed for plaintiff’s retention in segregation and transfer.” Plaintiff’s privileges and status were  
27 restored by ICC action. Upon arrival at Facility D, Defendants Smart and Williams ordered that  
28 Plaintiff be placed on orientation status, extending his segregation until May 26, 2006. Plaintiff

1 alleges that Defendants Smart and Williams had no authority to order Plaintiff on to orientation  
2 status, and acted “for the sole purpose of retaliating against plaintiff.”

3 **II. Summary Judgment**

4 **A. Exhaustion of Administrative Remedies**

5 Defendants seek summary judgment on the ground that Plaintiff has failed to exhaust his  
6 available administrative remedies prior to filing suit, and that they are entitled to qualified  
7 immunity.

8 The failure to exhaust in compliance with section 1997e(a) is an affirmative defense  
9 under which Defendants have the burden of raising and proving the absence of exhaustion.  
10 Jones, 549 U.S. at 216; Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003). On April 3,  
11 2014, the United States Court of Appeals for the Ninth Circuit issued a decision overruling  
12 Wyatt with respect to the proper procedural device for raising the affirmative defense of  
13 exhaustion under § 1997e(a). Albino v. Baca, 747 F.3d 1162, 1168–69 (9th Cir. 2014) (en banc).  
14 Following the decision in Albino, defendants may raise exhaustion deficiencies as an affirmative  
15 defense under § 1997e(a) in either (1) a motion to dismiss pursuant to Rule 12(b)(6)<sup>2</sup> or (2) a  
16 motion for summary judgment under Rule 56. Id. If the Court concludes that Plaintiff has failed  
17 to exhaust, the proper remedy is dismissal without prejudice of the portions of the complaint  
18 barred by § 1997e(e). Jones, 549 U.S. at 223–24; Lira v. Herrera, 427 F.3d 1164, 1175–76 (9th  
19 Cir. 2005).

20 Summary judgment is appropriate when it is demonstrated that there “is no genuine  
21 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.  
22 R. Civ. P. 56(a); Albino, 747 F.3d at 1169 (“If there is a genuine dispute about material facts,  
23 summary judgment will not be granted.”) A party asserting that a fact cannot be disputed must  
24 support the assertion by “citing to particular parts of materials in the record, including  
25 depositions, documents, electronically stored information, affidavits or declarations, stipulations  
26 (including those made for purposes of the motion only), admissions, interrogatory answers, or

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28 <sup>2</sup> Motions to dismiss under Rule 12(b)(6) are only appropriate “[i]n the rare event a failure to exhaust is clear on the face of the complaint.” Albino, 747 F.3d at 1162.

1 other materials, or showing that the materials cited do not establish the absence or presence of a  
2 genuine dispute, or that an adverse party cannot produce admissible evidence to support the  
3 fact.” Fed. R. Civ. P. 56(c)(1). The Court may consider other materials in the record not cited to  
4 by the parties, but is not required to do so. Fed. R. Civ. P. 56(c)(3); Carmen v. San Francisco  
5 Unified School Dist., 237 F.3d 1026, 1031 (9th Cir. 2001); accord Simmons v. Navajo County,  
6 Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010). In judging the evidence at the summary judgment  
7 stage, the Court “must draw all reasonable inferences in the light most favorable to the  
8 nonmoving party.” Comite de Jornaleros de Redondo Beach v. City of Redondo Beach, 657  
9 F.3d 936, 942 (9th Cir. 2011). The Court must liberally construe Plaintiff’s filings because he is  
10 a pro se prisoner. Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010) (quotation marks and  
11 citations omitted).

12 In a summary judgment motion for failure to exhaust administrative remedies, the  
13 defendants have the initial burden to prove “that there was an available administrative remedy,  
14 and that the prisoner did not exhaust that available remedy.” Albino, 747 F.3d at 1172. If the  
15 defendants carry that burden, “the burden shifts to the prisoner to come forward with evidence  
16 showing that there is something in his particular case that made the existing and generally  
17 available administrative remedies effectively unavailable to him.” Id. The ultimate burden of  
18 proof remains with defendants, however. Id. “If material facts are disputed, summary judgment  
19 should be denied, and the district judge rather than a jury should determine the facts.” Id. at  
20 1166.

21 The Court takes judicial notice of the fact that the State of California provides its  
22 prisoners and parolees the right to appeal administratively “any policy, decision, action,  
23 condition, or omission by the department or its staff that the inmate or parolee can demonstrate  
24 as having a material adverse effect upon his or her health, safety, or welfare.” Cal.Code Regs.  
25 tit. 15 § 3084.1(a). The process is initiated by submitting a CDCR Form 602. Id. at § 3084.2(a).

26 At the time of the events giving rise to the present action, California prisoners were  
27 required to submit appeals within fifteen working days of the event being appealed, and the  
28 process was initiated by submission of the appeal to the informal level, or in some

1 circumstances, the first formal level. Id. at §§ 3084.5, 3084.6(c) (2009). Four levels of appeal  
2 were involved, including the informal level, first formal level, second formal level, and third  
3 formal level. Id. at § 3084.5 (2009). A final decision at the third level<sup>3</sup> of review satisfies the  
4 exhaustion requirement under 42 U.S.C. § 1997e(a). Id. at § 3084.5(d); see Lira v. Herrera, 427  
5 F.3d 1164, 1166 (9th Cir. 2005). In order to satisfy § 1997e(a), California state prisoners are  
6 required to use this process to exhaust their claims prior to filing suit. Woodford v. Ngo, 548  
7 U.S. 81, 85 (2006); McKinney, 311 F.3d. at 1199-1201.

## 8 **B. Retaliation**

9 Allegations of retaliation against a prisoner’s First Amendment rights to speech or to  
10 petition the government may support a 1983 claim. Rizzo v. Dawson, 778 F.2d 5527, 532 (9<sup>th</sup>  
11 Cir. 1985); see also Valandingham v. Bojorquez, 866 F.2d 1135 (9<sup>th</sup> Cir. 1989); Pratt v.  
12 Rowland, 65 F.3d 802, 807 (9<sup>th</sup> Cir. 1995). “Within the prison context, a viable claim of First  
13 Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some  
14 adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that  
15 such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did  
16 not reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-  
17 68 (9<sup>th</sup> Cir. 2005); accord Watison v. Carter, 668 F.3d 1108, 1114-15 (9<sup>th</sup> Cir. 2012); Brodheim  
18 v. Cry, 584 F.3d 1262, 1269 (9<sup>th</sup> Cir. 2009).

19 An allegation of retaliation against a prisoner’s First Amendment right to file a prison  
20 grievance is sufficient to support a claim under section 1983. Bruce v. Ylst, 351 F.3d 1283, 1288  
21 (9<sup>th</sup> Cir. 2003). The Court must “‘afford appropriate deference and flexibility’ to prison officials  
22 in the evaluation of proffered legitimate penological reasons for conduct alleged to be  
23 retaliatory.” Pratt v. Rowland, 65 F.3d 802, 807 (9<sup>th</sup> Cir. 1995)(quoting Sandin v. Conner, 515  
24 U.S. 472, 482 (1995)). The burden is on Plaintiff to demonstrate “that there were no legitimate  
25 correctional purposes motivating the actions he complains of.” Pratt, 65 F.3d at 808.

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28 <sup>3</sup> The third level is sometimes known as the Director’s level.

1 **III. Claims**

2 **1. February 8, 2005, claims against Defendants McGuirt, Padilla and Knight.**

3 Plaintiff was out to court “pertaining to a writ of habeas corpus on conditions of  
4 confinement at the California Substance Abuse Treatment Facility and State Prison.” When he  
5 returned, Defendants Padilla and Knight threatened Plaintiff with retaliation “for having taken  
6 the CDCR to court and was cautioned to go easy on the CDCR witnesses.” Plaintiff alleges that  
7 Defendants Padilla and McGuirt demoted Plaintiff from a pay position to a non-pay position.  
8 Plaintiff alleges that the non-pay position “was going to be deleted, effectively leaving Plaintiff  
9 in line for being laid off.” Plaintiff alleges that he was demoted in retaliation for “having a court  
10 action against the CDCR.” Plaintiff filed a grievance against Padilla and McGuirt for the  
11 demotion. Plaintiff alleges that, in retaliation for the court action and for the grievance,  
12 Defendants Padilla and McGuirt filed a false Rules Violation Report against Plaintiff.

13 First, Defendants note that Plaintiff does not have a right to a specific job or pay position.  
14 Cal. Code of Regulations, tit. 15, § 3040(k), and that title 15 also requires that inmates must  
15 perform assigned tasks diligently and conscientiously, must not pretend illness, or otherwise  
16 evade attendance or avoid performance in assigned work and program activities, or encourage  
17 others to do so. Id., § 304(a).

18 Defendants’ evidence establishes that in February 2003, when Defendant Padilla assumed  
19 the yard crew officer position, Plaintiff was already working on the yard crew in a non-paid  
20 position. (Padilla Decl. ¶4; Deposition at 15:14-17.) Padilla’s declaration establishes that at that  
21 time, a number of inmates on the yard crew, including Plaintiff, engaged in activities other than  
22 work during their required work hours. However, as long as the inmate workers finished their  
23 yard duties and the yard was clean and well-groomed, Padilla allowed them to engage in those  
24 activities. (Padilla Decl. ¶ 5.)

25 Padilla’s declaration also establishes that in or around January, 2005, Padilla’s  
26 supervisors expressed concern about the yard crew not wearing their blue uniforms and engaging  
27 in activities other than work, during work hours. As a result, Padilla informed the yard crew  
28



1 inmates that starting immediately, they needed to wear their blue uniforms and could no longer  
2 engage recreational activities during work time.

3 At some point during his supervision of Plaintiff, Padilla decided to re-assign Plaintiff  
4 from his non-paid yard position to a paid yard position. Although Plaintiff had some prior below  
5 average evaluations, Padilla decided to elevate Plaintiff to a paid position because Plaintiff had  
6 the most seniority on the yard crew at that time, had potential, and Padilla wanted to give him a  
7 chance. (Id. ¶¶ 7,8.)

8 However, once Plaintiff received a paid yard position, his attitude towards fellow inmates  
9 and staff, his ability to work on a team, and the quantity of work produced, deteriorated. As a  
10 result, on February 7, 2005, while performing his duties as a D Facility work crew officer,  
11 Padilla re-assigned Plaintiff from a paid yard position back to a non-paid yard position. Padilla's  
12 decision to re-assign Plaintiff from a paid yard position to a non-paid yard position on February  
13 7, 2005, was based on Plaintiff's unsatisfactory work performance and poor behavior. (Id. ¶¶  
14 8,9.)

15 The declaration of J. Flores, a sergeant assigned to the Inmate Assignment Office at  
16 SATF, establishes that at SATF, both the paid and non-paid yard crew positions fall under the  
17 Work Group/Privilege Group A1/A credit earning status. A correctional officer cannot  
18 arbitrarily or unilaterally change an inmate from a paid position into a non-paid position. In  
19 order to re-assign an inmate from a paid to a non-paid position, the officer must first submit a  
20 request for the change to the Inmate Assignment Office along with the proper paperwork,  
21 including a CDC 128B chrono explaining the reason for the pay reduction, and a work change  
22 application. Once the request is received, either the Inmate Assignment Correctional Sergeant or  
23 Lieutenant will review the paperwork and either approve or deny the change. (Flores Decl. ¶¶  
24 4-6.)

25 On or around February 7, 2005, Padilla submitted a CDC Form 132, Work Change  
26 Application and CDC 128B, General Chrono to the Inmate Assignment Office, for purposes of  
27 re-assigning Plaintiff from a paid yard crew position to a non-paid yard crew position. Plaintiff  
28 was subsequently re-assigned to a non-paid yard crew position. In September 2005, Padilla

1 completed another CDC Form 128B, documenting the reason why he re-assigned Plaintiff from a  
2 paid position to a non-paid position. (Id. ¶¶ 11-13.)

3         Regarding Plaintiff's allegations of retaliation by Defendant McGuirt, Defendants submit  
4 the declaration of Defendant McGuirt. Plaintiff alleges that McGuirt retaliated against him by  
5 having a discussion with Padilla and other officers regarding which inmate they preferred to  
6 remain on the yard after Padilla left his position. (Deposition 36:13-25.)

7         On or around February 8, 2005, McGuirt was a C/O on D yard. As a yard officer,  
8 McGuirt often observed yard crew inmates working on the yard doing maintenance, landscaping,  
9 or picking up trash. McGuirt did not, however, have the authority to dictate the yard crew  
10 members' specific duties, evaluate their performance, or make any decision regarding their  
11 employment or pay status. In the event McGuirt noticed yard crew inmates participating in  
12 recreational activities during their work time, he would inform the yard crew supervisor. On  
13 numerous occasions while working as an officer on D Facility, McGuirt observed Plaintiff  
14 running on the yard during his work hours. Each time, McGuirt would inform the yard crew  
15 supervisor at that time, Officer Padilla, that Plaintiff was not working during his assigned work  
16 time. (McGuirt Decl. ¶¶ 4-7.)

17         On March 1, 2005, while performing his duties as a D Facility officer, Padilla observed  
18 Plaintiff running during his work hours. Padilla told Plaintiff that running during his work hours  
19 was strictly prohibited. The next day, on March 2, 2005, Padilla again observed Plaintiff running  
20 during work hours and ordered him to stop. Plaintiff complied. At that time, Padilla informed  
21 Plaintiff that he would receive a CDC 115 Rules Violation Report (RVR) for refusing a direct  
22 order and that if he continued to exercise during his work hours, he would be subject to  
23 progressive disciplinary action. On March 2, 2005, Padilla issued a RVR to Plaintiff for  
24 violating prison rules by refusing a direct order. (Padilla Decl. ¶¶ 14-16, Deposition 37:12, 39:7-  
25 8.)

26         On March 20, 2005, Plaintiff was found guilty of violating prison rules. However, the  
27 Senior Hearing Officer elected to reduce the RVR to a CDC 18A informational chrono in the  
28 interest of progressive discipline. On the same date, a CDC 128A informational chrono was

1 generated and placed in Plaintiff's central file, based upon the facts and circumstances of the  
2 reduced RVR. (Padilla Decl. ¶¶ 17, 18.)

3 In his deposition, Plaintiff testified that prior to February 7, 2005, he never filed a CDC  
4 602 inmate appeal against McGuirt, and that McGuirt's only involvement in the RVR was  
5 bringing the draft version to the program office. Plaintiff also admits that he was not in the  
6 program office when McGuirt brought the draft to the office. (Deposition 34:19-21; 39:1-6, 17-  
7 20; 39:9-12.)

8 Defendants' evidence establishes that in order to re-assign an inmate from a paid to a  
9 non-paid position, the officer must first submit a request for the change to the Inmate  
10 Assignment Office along with the proper paperwork, including a CDC 128B chrono explaining  
11 the reason for the pay reduction, and a work change application. Once the request is received,  
12 either the Inmate Assignment Correctional Sergeant or Lieutenant will review the paperwork and  
13 approve or deny the change. Defendants' evidence establishes that Padilla's decision to re-  
14 assign Plaintiff from a paid yard position to a non-paid yard position on February 7, 2005, was  
15 based on Plaintiff's unsatisfactory work performance and poor behavior. Plaintiff's own  
16 testimony establishes that he never filed a CDC 602 inmate appeal against McGuirt, and that  
17 McGuirt's only involvement in the RVR was bringing the draft version to the program office.  
18 Plaintiff also admits that he was not in the program office when McGuirt brought the draft to the  
19 office. Judgment should therefore be entered in Defendants' favor on this claim.

20 In his opposition, Plaintiff appears to argue that the timing of the RVR indicates  
21 retaliatory intent, as Padilla was aware that Plaintiff filed a grievance regarding his demotion.  
22 Plaintiff argues that at the time of his promotion in December of 2004, he was one of the best  
23 workers with perfect attendance. Plaintiff argues that "it is false" that Padilla decided to assign  
24 Plaintiff from a non-pay position to a pay position based on seniority and potential. Plaintiff  
25 argues that "it is completely unreasonable" that "in 11 days, and with \$7.77 in his pocket,  
26 Plaintiff turned into a complete madman, abusing his fellow prisoners, dysfunctional in  
27 teamwork, an so lazy that his quantity of work diminished drastically." (Opp'n. at 16.)  
28

1 Plaintiff submits Exhibit 41 to support his contention that the work change application  
2 that Defendant Padilla submitted stated that Plaintiff's work record was acceptable.<sup>4</sup> Exhibit 41  
3 is a copy of an RVR dated July 15, 2005, charging Plaintiff with of delay a peace officer. The  
4 specific conduct at issue was jogging on the track during a time not designated for his tier. The  
5 RVR was dismissed and Plaintiff found not guilty. Defendant Padilla submits the work change  
6 application as Exhibit 1 to his declaration. While the application does indicate that the  
7 "acceptable" box was checked on the application, Exhibit 2, signed by Defendant Padilla, is a  
8 General Chrono indicating that on February 7, 2005, Plaintiff's position was changed from pay  
9 to non-pay based on negative attitudes toward inmates and staff, and that Plaintiff had received  
10 128As for running during his normal work hours.

11 In his declaration, Plaintiff recounts his positive work history. Plaintiff indicates that at  
12 the time of his demotion, he had never received any warnings of any kind. Plaintiff states that he  
13 kept a meticulous log of his running schedule, indicating what days he ran and how far he ran.  
14 Plaintiff reiterates his belief that he was retaliated against, based on his statement that:

15 Padilla and McGuirt did engage in an exchange in front of me on  
16 February 7, 2005, the day that Padilla effected the demotion.  
17 Padilla and McGuirt discussed what inmates should remain on the  
18 yard crew. Padilla asked McGuirt who he would like to keep on  
19 the yard crew roster since Padilla was going to a different  
20 assignment on March 7, 2005. Padilla told McGuirt that "it was  
his [McGuirt's] call. Padilla mentioned my name and McGuirt  
stated that I should be fired. McGuirt acted as my supervisor and  
true to McGuirt's wish, Padilla demoted me on the same day to a  
position that was going to be deleted.

21 (Pltf.'s Decl. ¶ 70.)

22 The Court has exhaustively reviewed Plaintiff's arguments and evidence in  
23 opposition. Although Plaintiff clearly articulates his belief that he was retaliated against, he  
24 offers no evidence of retaliation<sup>5</sup>

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26 <sup>4</sup> In his memorandum in opposition, Plaintiff refers to a specific number that refers to his statement of material  
27 disputed facts. That number references a particular exhibit. For ease of reference, the Court will refer to Plaintiff's  
Exhibits as evidentiary support.

28 <sup>5</sup> Plaintiff's opposition consists of approximately 300 pages of pleadings, including an opposition, cross-motion for  
summary judgment, memorandum of points and authorities (parts A and B), a statement of material facts (disputed)  
in support of the opposition, an opposition to Defendants' statement of undisputed facts and approximately a

1 Defendants have come forward with evidence establishing that reassignment is made by  
2 the Inmate Assignment Correctional Sergeant or Lieutenant, and that Padilla's request to  
3 reassign Plaintiff was based on Plaintiff's poor behavior. As noted, Plaintiff's own testimony  
4 establishes that he never filed a CDC 602 inmate appeal against McGuirt, and that McGuirt's  
5 only involvement in the RVR was bringing the draft version to the program office. Plaintiff has  
6 not come forward with any evidence to the contrary. Judgment should therefore be entered in  
7 favor of Defendants McGuirt, Padilla and Knight on this claim.

8 **2. May 18, 2005 claims against McGuirt.**

9 Plaintiff alleges that on May 18, 2005, while being escorted to the receiving and release  
10 area to access his stored legal materials, McGuirt threatened Plaintiff with retaliation for having  
11 addressed Sgt. Sekula about an administrative appeal. Plaintiff further alleges that McGuirt told  
12 him that "he should refrain from addressing grievances to the sergeant or suffer the  
13 consequences."

14 The declaration of R. Gomez establishes that after reviewing all of Plaintiff's appeals  
15 filed at SATF concerning staff complaints, work incentive, visiting, segregation or disciplinary  
16 issues from 2005 to 2007, only appeal no. SATF-D-05-02129 addressed a similar issue. Exhibit  
17 4 to Gomez's declaration is a copy of grievance SATF-D-05-02129. In the grievance, the issue,  
18 as stated by Plaintiff, is that

19 on 5-18-05 C.O. McGuirt escorted me to R&R to retrieve legal  
20 materials from the connex. While waiting for McGirt to come  
21 back from another errand, I was placed in one of the holding cells  
22 in R&R. I asked C.O. Parr to relate to Sgt. Sekula an issue  
23 pertaining to a CDC 602. Upon McGuirt's return to R&R, he was  
24 called to Sekula's office and the sergeant, gesticulating angrily  
25 addressed McGuirt. Although I couldn't hear what Sekula was  
26 saying to McGuirt, he was looking intently towards me. On the  
27 way back towards D Facility, McGirt addressed me and said, 'The  
28 Sergeant just reamed my ass because of you! If you ever directly  
to the Sergeant again, you won't be coming back here for your  
legal materials!'

thousand pages of evidence. The Court will consider the first amended complaint, made under penalty of perjury, as  
a declaration in opposition to the motion.

1 The issue in grievance 05-02129 is McGuirt's treatment of Plaintiff for speaking directly  
2 to the Sergeant instead of speaking to McGuirt first. There are no indications in the grievance  
3 that McGuirt made any objective threat to Plaintiff as a result of Plaintiff's engagement in any  
4 protected conduct. There is no reference in the grievance to any protected conduct by Plaintiff.  
5 There is a vague reference to retrieving legal materials from Receiving and Release, but there is  
6 nothing in the grievance that would put McGuirt on notice that the issue is retaliation for  
7 Plaintiff's exercise of protected conduct.

8 Plaintiff argues that the protected activity was his speaking to Sgt. Sekula. A simple  
9 verbal threat by Defendant McGuirt does not constitute retaliation. The grievance does not put  
10 McGuirt on notice that Plaintiff is filing a grievance challenging any specific conduct on  
11 McGuirt's behalf that was taken specifically in retaliation for Plaintiff's engagement in protected  
12 conduct. This claim against Defendant McGuirt should therefore be dismissed for Plaintiff's  
13 failure to exhaust his available administrative remedies prior to filing suit.

14 **3. July 15, 2005, claims against Defendant Knight and McGuirt.**

15 Plaintiff alleges that Defendant Knight falsified a RVR in retaliation for "the grievances"  
16 and court action filed by Plaintiff. Plaintiff alleges that Knight did so at the behest of Defendant  
17 McGuirt. Defendant Knight supports the motion for summary judgment with his declaration.  
18 Defendant Knight declares that on or around July 15, 2005, he was working as a correctional  
19 officer in the control booth of Building 1 on D Facility. While working as a control booth officer  
20 on July 15, 2005, Knight was informed via radio transmission that Plaintiff was jogging on the  
21 track during a non-approved time. Knight contacted the D2 control booth and discovered that  
22 Plaintiff had informed staff that he was going to the library. (Knight Decl. ¶¶ 7-9.) In his  
23 deposition, Plaintiff testified that although he informed correctional staff that he was going to the  
24 law library, since the law librarian did not show up and he could not return to the building, he  
25 decided to jog on the track. (Deposition 65:22-66:4.)

26 As a result, C/O Knight ordered Plaintiff to return to his cell. Plaintiff refused Knight's  
27 direct order. Due to Plaintiff's refusal, he had to be physically removed from the yard and  
28 placed back in his cell. This caused a delay of approximately twenty minutes in the program.

1 As a result of Plaintiff's failure to obey Knight's direct order and actions which delayed the  
2 program, C/O Knight issued Plaintiff an RVR for delaying a peace officer. C/O Knight was not  
3 ordered or coerced into filing the RVR against Plaintiff. (Knight Decl. ¶¶ 9-11.)

4 Defendants' evidence establishes that the actions of C/O McGuirt and C/O Knight  
5 advanced legitimate correctional goals in maintaining order and discipline by requiring inmates  
6 to follow prison rules. Defendants have therefore met their burden on summary judgment by  
7 coming forward with evidence that they did not file an RVR in retaliation for filing grievances.

8 In his opposition, Plaintiff argues that he did not violate prison rules, and that "the facts  
9 supporting Plaintiff's claims are so numerous and detailed that it will consume too much of the  
10 court's time to reiterate them here. It is sufficient to say that the evidence proves that Defendant  
11 Padilla lied in his RVR." (Opp'n. p. 18.) Plaintiff contends that he was in the law library, and  
12 only started to run after his work shift was completed. Plaintiff refers the Court to the Exhibits  
13 noted in his statement of disputed facts 94 through 134 and 209 through 264. Those disputed  
14 facts do not reference the July 15, 2005, RVR. Plaintiff's Exhibit 41, however, is a copy of the  
15 RVR at issue (RVR, log no. D-05-07-039), and indicates that Plaintiff was indeed charged with  
16 delaying a peace officer. The Senior Hearing Officer ultimately found Plaintiff not guilty of the  
17 charged offense. The Senior Hearing Officer found that "the SHO had many questions for the  
18 Reporting Employee, however, due to the specific charge of 'Delaying a Peace Officer,' The  
19 SHO believes that due to the numerous errors that this CDC-115 contains, 'Dismissal' is the only  
20 alternative." In his declaration, Plaintiff states that Officer Knight did not order Plaintiff to  
21 return to his cell. Knight was working the control booth of D1 Facility and Plaintiff was housed  
22 in D2 Facility. Plaintiff also disputes that he was physically removed from the yard.

23 Plaintiff has not, however, come forward with any evidence that the RVR was issued in  
24 retaliation for filing an inmate grievance. That the RVR was dismissed does not establish  
25 evidence that it was issued in retaliation for filing an inmate grievance. Whether Plaintiff was  
26 physically removed from the yard is immaterial. Defendant Knight has come forward with  
27 evidence that the RVR was issued based on his belief that Plaintiff was violating prison  
28 regulations. Whether or not Plaintiff was authorized to run on the track, Knight had a good faith

1 belief that he did not, and that such conduct caused delay. Plaintiff has not come forward with  
2 evidence that establishes that the RVR was issued in retaliation for filing an inmate grievance.  
3 Judgment should therefore be entered in favor of Defendants Knight and McGuirt on this claim.

4 **4. August 14, 2005, claim against Defendant Ramirez.**

5 C/O Ramirez's declaration establishes that on August 14, 2005, she received notification  
6 from the Visiting Sergeant that the D Visiting room had reached maximum capacity. As a result,  
7 Ramirez was ordered to terminate Plaintiff's visit with his visitor. Ramirez documented the  
8 termination of Plaintiff's visitor, and the reason for the termination, on CDC Form 998, Notice of  
9 Visitor Approval/Denial/Termination/Suspension. Ramirez informed Plaintiff and his visitor  
10 that due to the visiting room reaching maximum capacity, their visit was being terminated.  
11 Ramirez gave Plaintiff a direct order to leave the visiting room and Plaintiff refused her order.  
12 Ramirez explained to Plaintiff that terminations are done in accordance with Title 15 and visiting  
13 guidelines, that seventeen other people before him had already been terminated, and that he was  
14 next in line to be terminated. (Ramirez Dec. ¶¶ 5-8.) In his deposition, Plaintiff acknowledged  
15 that Ramirez had terminated other visits on the same day. (Deposition 53:7-14.) Every time  
16 Officer Ramirez has given an inmate a direct order to leave the visiting area, and he refused to  
17 leave, to the extent that he had to be physically removed and escorted from the visiting area,  
18 Ramirez has written that inmate up for violating prison rules. As a result of Plaintiff's behavior  
19 and refusal to obey Ramirez's direct order, she issued Plaintiff RVR log no. D-05-06-08-060 for  
20 the specific act of refusing a direct order (Ramirez Decl. ¶¶ 10, 12.)

21 The Court finds that Defendants have met their burden on summary judgment.  
22 Defendants have come forward with evidence that Plaintiff's visit was terminated due to  
23 overcrowding and not in retaliation for filing an inmate grievance. The evidence establishes that  
24 Ramirez was informed by a superior about the number of visitors and was ordered to terminate  
25 Plaintiff's visit. The evidence establishes that other inmate visits were terminated that same day.

26 In his opposition, Plaintiff argues that "on these claims the evidence on Plaintiff's behalf  
27 is overwhelming, numerous inmates have attended the same visiting day testify as to the falsity  
28 of the charges on the RVR, including the testimony of Plaintiff's mother." (Opp'n. p. 19.)



1 Plaintiff refers the Court to his disputed facts 265-298, 299-300, 301-347 and 348-419. Each  
2 statement of disputed fact references specific exhibits. As noted above, Plaintiff does not refer  
3 the Court to specific exhibits. Plaintiff simply offers 175 facts in support of his argument that  
4 “the testimony of the witnesses are so much different to what Ramirez’s unsupported and  
5 uncorroborated statements propound.” (Id.)

6 Plaintiff, a percipient witness to the event at issue, indicates the following in his  
7 declaration:

8 On August 14, 2005, at approximately 10.00 hours, I entered the  
9 visiting room of CSATF-SP Facility D, to have a visit with my  
10 mother, Ana Maria Gonzalez.

11 Defendant F. Ramirez was working the visiting room on August  
12 14, 2005.

13 At approximately 10.00 hours, I approached the central station  
14 from the entrance door to the visiting room. I turned my prison  
15 identification card to Defendant Ramirez and was directed by  
16 Ramirez to table number 34 where my mother was awaiting my  
17 arrival.

18 At this same time, I requested that Defendant Ramirez allow me to  
19 double-up, which means to share a table, with inmate Estrada and  
20 his mother, if Ramirez determined that more free tables were  
21 needed for arriving visitors.

22 I made the request to double-up with the Estradas, because both  
23 my mother and Mrs. Estrada have driven together for the visit, and  
24 they felt comfortable with both of us, their sons. On every prior  
25 visit, we had been allowed to share a table to continue our visits till  
26 the visiting room’s closing time of 15.00 hours, instead of having  
27 the visits terminated.

28 My request to double-up with the Estradas was precautionary, and  
allowed by the visiting rules. Defendant Ramirez controlled the  
allocation of tables and seats, and made all determinations  
pertaining to the doubling up of visits.

At all times during the August 14, 2005, visit, my table and the  
Estradas’ table had two empty chairs available for doubling up.

On or about 13.00 hours, Defendant Ramirez called me to the  
central station, a desk that is located directly opposite to table  
number 34, and the farthest place from where I was seating with  
my mother.

I immediately complied and walked to Defendant Ramirez’s desk.  
At this time, Defendant Ramirez informed me that the maximum  
capacity of the room had been reached, and that she was

1 terminating my visit. I again asked Ramirez to allow me to  
2 double-up with the Estradas.

3 Ramirez refused to allow me to double-up although the visiting  
4 room had plenty of room to do so. Defendant Ramirez proceeded  
5 to prepare a CDC Form 887, Notice of Visitor  
6 Approval/Denial/Termination/Suspension for my mother Ana  
7 Maria Gonzalez, signed it, and dated said form August 14, 2005.  
8 As the form states, the termination was made by Defendant  
9 Ramirez. Attached as Exhibit 47 is a true and correct copy of the  
10 CDC Form 887 signed and Dated by Defendant Ramirez in my  
11 presence on August 14, 2005.

12 Defendant Ramirez issued to me the following documents, the  
13 CDC Form 887 for my mother, a copy of said form for me, my  
14 mother's driver's license, and my prison i.d.

15 I returned to my table (34), and informed my mother, that had  
16 remain seated, that Defendant Ramirez had terminated our visit.

17 I cleared the table, helped my mother get up, kiss her, and  
18 accompanied her to the exit. I also returned to my mother her  
19 driver's license, and gave her the CDC Form 887. The exit was  
20 located a few feet from our table. My mother left without coming  
21 in contact with Defendant Ramirez.

22 At no time during our visit did I observe Mrs. Gonzalez approach  
23 the desk from where Defendant Ramirez operated, and Defendant  
24 Ramirez never left her seat during the whole time that my visit  
25 lasted.

26 At no time did I witness Defendant Ramirez address my mother in  
27 any manner. My mother never refused to leave the visiting room.

28 I am aware that Defendant Ramirez stated in her Declaration in  
Support of Defendants' Motion for Summary Judgment that when  
she informed my mother and I that our visit was being terminated,  
both my mother and I refused to leave the visiting room.  
(Defendants' Exhibit G, at ¶ 8). This is not true. Ramirez only  
informed me of the termination of the visit. My mother complied  
immediately after I returned towards the exit door, and it had  
become possible for me to exit the visiting room as ordered.

I followed Defendant Ramirez's order to leave the visiting room  
immediately after I had accompanied my mother to the exit. I had  
to return to the table since Defendant Ramirez gave me the CDC  
Form 887 (Exhibit 47), and my mother's driver license to give  
them to her (my mother), as is the usual protocol. Once my mother  
left, I turned towards Ramirez's desk because the door to the exit  
to the visiting room for inmates was located to (Defendant  
Ramirez's) left.

I had to wait for the officers working the visiting room's  
processing area to finish with the 13.00 hours restroom break, one  
in a succession of breaks that were called every hour on the hour.  
Once I was told that I was permitted to exit the visiting room by

1 Officer Rojas, not a defendant in this case, I exited the visiting  
2 room, and was processed out.

3 I never became rude or loud, or caused a disturbance as Defendant  
4 Ramirez claims in her declaration. This is completely false.

5 I was not physically removed from the visiting room on August 14,  
6 2005, or at any other time. I was not escorted out of the visiting  
7 area by visiting staff or any other staff on August 14, 2005, or at  
8 any other time.

9 (Pltf.'s Decl. ¶¶ 151-170.)

10 Plaintiff's Exhibit 47 is a copy of a CDC Form 887 dated August 14, 2005, indicating  
11 that Plaintiff's visit was terminated due to overcrowding. Although Plaintiff refers to  
12 approximately 175 statements of disputed facts and exhibits, the Court will not recite Plaintiff's  
13 specific exhibits in support of the motion. The Court has reviewed the statements of disputed  
14 facts and exhibits, and notes that they include declarations that confirm Plaintiffs' view of the  
15 events regarding his termination.

16 Although Plaintiff declares that he did not offer any resistance, that does not establish  
17 that Ramirez filed a RVR in retaliation for the filing of a grievance against Ramirez by Plaintiff  
18 and his mother. Due to delays not material to this case, the hearing on the RVR occurred on  
19 February 1, 2006. The Senior Hearing Officer, Lt. Rodriguez, found Plaintiff not guilty and  
20 dismissed the RVR. Plaintiff refers the Court to his Exhibit 48. In his findings, Lt. Rodriguez  
21 noted that Plaintiff "did not immediately follow Ramirez's orders. The issue before the S.H.O. is  
22 not only if the defendant refused to comply with an order, but why he did not immediately  
23 comply with that order. It is reasonable for this S.H.O. to believe that inmate MARTI was  
24 simply attempting to ascertain why he and his mother were not being allowed to double up with  
25 an inmate, (ESTRADA) who was also visiting with his mother at another table, as they had  
26 previously been allowed to do in the past." (Ex. 47.)

27 Plaintiff's evidence establishes that he was found not guilty of the RVR. That does not,  
28 however, establish liability for retaliation. Defendants have come forward with evidence that  
Ramirez filed the RVR based on her good faith belief that Plaintiff was violating prison rules.  
That Plaintiff disagrees that he was refusing orders does, or that Plaintiff establishes that the

1 RVR was dismissed because the SHO found refusal to be mitigated, does not establish evidence  
2 of retaliation by Defendant Ramirez. Judgment for Defendant Ramirez should therefore be  
3 entered on this claim.

4 **5. Plaintiff's claims against Defendants Wadkins, Smart, Hansen, Smith and**  
5 **Gardner for Placement in Administrative Segregation.**

6 Plaintiff alleges that Defendants Williams, Wadkins, Smart, Hansen, Smith and Gardner  
7 segregated Plaintiff based on false allegations from a confidential informant. Defendant  
8 Williams authored a false RVR in concert with the informant, and with no corroboration.  
9 Defendant Wadkins authored the lock up order (CDC 114D) and Defendant Hansen  
10 "intimidated, threatened, ordered the segregation and also made references to plaintiff's history  
11 of numerous administrative appeals as justification for plaintiff's segregation." Defendant Smart  
12 "made loud references to plaintiff such as 'we got the 602 king.'"

13 Regarding Plaintiff's allegation that Defendant Williams authored a "False RVR," his  
14 own testimony establishes that the only allegation as to Defendant Williams is his conduct in  
15 authoring the RVR. (Deposition 68:3.) Plaintiff admits that Williams never made any  
16 comments to him regarding accessing the courts or filing grievances. (Id. at 67:7-10.) The  
17 declaration of Defendant Williams establishes that on September 2, 2005, Williams was  
18 approached by a confidential source on a possible threat made by Plaintiff against Officer F.  
19 Ramirez. (Williams Decl. ¶ 3.)

20 Defendants' evidence establishes that due to the nature of information obtained and  
21 concern for Officer Ramirez's personal safety, Capt. Hansen and Lt. Wadkins ordered Plaintiff to  
22 be escorted to the Facility D Program Isolation Cell, and re-housed in AdSeg pending an  
23 investigation. (Williams Decl. ¶ 5; Wadkins Decl. ¶¶ 3-5; Hansen Decl. ¶ 4, Deposition 71:7-  
24 10.) Defendants' evidence establishes that Lt. Wadkins authorized and completed a CDC 144-D  
25 AdSeg Unit Placement Notice, ordering that Plaintiff be immediately removed from Facility D,  
26 Sensitive Needs Yard (SNY) and be re-housed in AdSeg pending an investigation into the threats  
27 against Officer Ramirez. (Wadkins Decl. ¶ 5, Ex. 1.) Lt. Wadkins testified that when he  
28 receives information that potentially jeopardizes the safety of inmates or staff members, his main

1 and only concern is to immediately remove the inmate from the facility and place him into  
2 AdSeg. (Wadkins Decl. ¶¶ 4, 7.) Defendants' evidence establishes that the actions of Williams,  
3 Wadkins and Hansen advanced legitimate correctional goals of maintaining the safety and  
4 security of the institution.

5 Capt. Hansen testifies that although an inmate can request an Investigative Employee (IE)  
6 at the initial AdSeg placement hearing, if he declines the IE that is initially assigned to him, he  
7 may make a one-time request to have another IE assigned to him. (Hansen Decl. ¶ 7.) Plaintiff  
8 requested an IE so Capt. Hansen assigned Officer Boos-Emma as his IE. (Hansen Dec. ¶ 9, Ex.  
9 1.) Plaintiff declined to accept her, and as a result, Capt. Hansen assigned Officer Knight as  
10 Plaintiff's IE. (Id.) Capt. Hansen testifies that he assigned Officer Knight based upon Knight's  
11 particularized training to be an IE, current caseload at the time, and availability. (Id. ¶ 10.) Capt.  
12 Hansen further testifies that the fact that an inmate has previously filed a grievance against an  
13 officer does not automatically preclude that staff member from being assigned as an IE (Id. ¶ 11.)  
14 In exceptional circumstances, staff members must continue to perform their assigned duties,  
15 regardless of whether or not an inmate has filed a prior grievance against him/her. (Id.)

16  
17 Plaintiff alleges that Capt. Hansen retaliated against him by first recusing himself from  
18 the initial AdSeg hearing, and thereafter participated in the ICC that elected to retain him in  
19 AdSeg. Capt. Hansen concedes that during the course of the initial hearing, Plaintiff told him  
20 that he did not feel that Capt. Hansen could conduct a fair and impartial hearing. (Id. ¶ 12.)  
21 Capt. Hansen testifies that although he had no bias against Plaintiff, because he originally  
22 ordered his Correctional Lieutenant to place Plaintiff in AdSeg, he agreed to allow someone else  
23 to hear and review Plaintiff's AdSeg placement order. (Id.) Capt. Hansen further testifies that  
24 there is no institutional policy or department rule prohibiting an individual who chooses to recuse  
25 himself from reviewing a CDC 114-D AdSeg placement order, from thereafter participating in an  
26 ICC for the same inmate and incident. (Id. ¶ 15.)

27 Plaintiff then alleges that Defendant Tolson retaliated against him in his review of the  
28 CDC 114-D lock-up order. Defendants' evidence establishes that on September 9, 2005, Acting

1 Facility Captain Tolson reviewed Plaintiff's lock-up order. (Tolson Decl. ¶ 3, Ex. 1.) Based on  
2 Tolson's review of the relevant reports and factors, Tolson elected to retain Plaintiff in AdSeg  
3 pending an investigation into the safety and security of the institution. (Tolson Decl. ¶¶ 477;  
4 Lais Decl. ¶¶ 4,5.) Tolson testified that his decision to retain Plaintiff in AdSeg was based solely  
5 on Plaintiff's continued threat to the safety and security of staff members and the institution.  
6 (Tolson Decl. ¶ 8.)

7  
8 Plaintiff alleges that Counselor Smart retaliated against him for engaging in protected  
9 activity by making the comment, "We got the 602 king." Defendants' evidence establishes that  
10 although Marti heard an individual state, "We got the 602 king," he did not see the face of the  
11 person making the statement. (Deposition 75:17-19.) Counselor Smart testifies that she was not  
12 in contact with Plaintiff in the hour or so before he was placed into the holding cage, did not  
13 escort him to the holding cage, and does not remember being present when Plaintiff was placed  
14 into AdSeg on September 2, 2005. (Pltf.'s Dep. 76:6-10, Smart Decl. ¶ 4.) She also testifies that  
15 she did not have regular contact with Plaintiff (Id.)

16 Plaintiff alleges that Officers Gardner, Boos, Smith and Hulse retaliated against him by  
17 falsifying CDC 1030 Confidential Disclosure Forms. Defendants' evidence establishes that each  
18 of the officers' signatures on the bottom of the Form 1030 only verifies that he or she served  
19 Plaintiff with the form on a particular date. (Gardner Decl. ¶¶ 1-10, Ex. 1.) Officer Hulse  
20 testifies that at the time of service, he was not aware of, nor had any knowledge of, the facts or  
21 circumstances of Plaintiff's placement in AdSeg. (Hulse Decl. ¶ 7.) Further, each officer  
22 testifies that they played no role on the decision to either place or retain Plaintiff in AdSeg on or  
23 around September 2 or 12, 2005. (Gardner Decl. ¶ 7; Smith Decl. ¶ 10; Hulse Decl. ¶ 7; Boos  
24 Decl. ¶ 9.) Defendants' evidence establishes that Defendants Gardner, Boos Smith and Hulse  
25 took no adverse action against Plaintiff, that their actions were not motivated by Plaintiff  
26 engaging in protected activities and that their actions advanced legitimate correctional goals.

1 Defendants correctly argue that Plaintiff cannot draw an inference out of the air.  
2 Richards v. Neilsen Freight Lines, 810 F.2d 898, 902 (9<sup>th</sup> Cir., 1985). There must be a factual  
3 basis to support Plaintiff's conclusion that Defendant's conduct was retaliatory. Defendant's  
4 evidence establishes that the various individuals involved in the process to place Plaintiff in  
5 AdSeg did not act in concert to retaliate against him because he filed inmate grievances, but in  
6 order to advance legitimate correctional goals. Defendants have met their burden on summary  
7 judgment regarding the September 2, 2005, placement in AdSeg.

8  
9 In his opposition, Plaintiff argues that the statement, "We got the 602 king!" establishes  
10 retaliation. Defendants have come forward with evidence that Plaintiff was placed in AdSeg  
11 pursuant to correct procedure and protocol, and was afforded due process. That Defendant  
12 Smart uttered the statement regarding Plaintiff's filing of inmate grievances does not establish  
13 evidence that Plaintiff's placement in AdSeg was in retaliation for any specific First Amendment  
14 conduct of Plaintiff's. Plaintiff refers the Court to his statement of disputed facts 420-435.  
15 These statements of disputed fact indicate that Plaintiff did not threaten staff. Liability for  
16 retaliation does not, however, turn on whether Plaintiff was in fact guilty of threatening staff.  
17 Defendants' evidence establishes that, through a confidential source, a threat on staff became  
18 apparent. Utilizing the proper procedures, Plaintiff was placed in AdSeg pending an  
19 investigation. Defendants' evidence establishes that they acted in accord with prison policy and  
20 regulation, and in furtherance of legitimate correctional goals.

21 Plaintiff refers the Court to his statements of disputed facts number 436-491, 492-508,  
22 509-567,568-738, and 797, to support his argument that "the Defendants concocted the  
23 allegations, had the number of informants, serving Plaintiff with four confidential information  
24 disclosure forms, obscuring the fact that no corroboration for the allegations existed, issued a  
25 false RVR that was eventually dismissed, and even after its dismissal retained Plaintiff in  
26 segregation hiding the fact that Defendant Ramirez had transferred out to SATF." (Opp'n. p.  
27 20.) The Court declines to list the exhibits in support of the 298 statements of disputed fact that  
28 Plaintiff refers to in support of this claim. The Court has reviewed Plaintiff's evidentiary

1 support, and has found that Plaintiff has not come forward with evidence that his placement in  
2 AdSeg pending investigation was retaliatory. Plaintiff offers no evidence that Gardner, Boos,  
3 Smith or Hulse retaliated against him by falsifying CDC 1030 Confidential Disclosure Forms.  
4 All of these Defendants have declared that they played no role on the decision to either place or  
5 retain Plaintiff in AdSeg on or around September 2 or 12, 2005.

6  
7 Plaintiff argues that his statement of undisputed facts 436 through 588 “deal extensively  
8 with the undisputed facts submitted by Defendants. It will unduly consume an enormous judicial  
9 time to repeat Plaintiff’s responses here anew. It is particularly poignant to direct the court’s  
10 attention to the sections of the pdf that address Plaintiff’s recognition of Defendant Smart’s  
11 voice. (PDF 459-469, 581-588). Smart was there on 9/2/05. Plaintiff’s claim against  
12 Defendants Smart, Hansen, Arline, Fulks should be heard by a jury, as well as his claims against  
13 Defendants Williams, Wadkins, Boos, Gardner, Hulse, Tolson, Knight, further numerous  
14 retaliatory actions against Plaintiff.” (Opp’n. pp. 21, 22.) Without listing the evidentiary  
15 support for exhibits 436 through 588, the Court has reviewed the exhibits referred to by Plaintiff  
16 and finds that Plaintiff has not met his burden on summary judgment. Plaintiff appears to focus  
17 on the fact that he did not threaten staff and Defendant Smart’s comment about Plaintiff’s  
18 grievance activity. Plaintiff does not, however, come forward with any evidence establishing  
19 that any of the Defendants took any action in retaliation for Plaintiff’s exercise of his protected  
20 conduct. Judgment should therefore be entered in favor of Defendants Williams, Wadkins,  
21 Smart, Hansen, Smith and Gardner on this claim.

22 **6. September 15, 2005, claims against Defendants Wadkins, Boos, Hulse and**  
23 **Tolson.**

24 Plaintiff alleges that the actions of ICC members on September 15, 2005, in deciding to  
25 retain him in AdSeg violated his First Amendment right to be free from retaliation. Defendants’  
26 evidence establishes that Defendants Smart, Hansen, Arline and Fulks were members of the  
27 September 15, 2005 ICC, and after hearing Plaintiff’s individual case factors, decided to retain  
28 Plaintiff in AdSeg pending adjudication of the RVR. (Smart Decl. ¶¶ 6, 10; Hansen Decl. ¶¶ 16,



1 20; Arline Decl. ¶¶ 6, 26; Fulks Decl. ¶ 8.) Plaintiff alleges that the committee should have  
2 considered the evidence or information relating to his guilt or innocence prior to retaining him in  
3 AdSeg. Defendants' evidence establishes that the only determination to be made by the  
4 committee is whether the inmate needs to be retained in AdSeg because the inmate's presence in  
5 general population presents an immediate threat to the safety of the inmate or others, endangers  
6 institutional security, or jeopardizes the integrity of an investigation. (Smart Decl. ¶¶ 7, 8;  
7 Hansen Decl. ¶¶ 17, 18; Arline Decl. ¶¶ 3, 4; Fulks Decl. ¶¶ 5, 6.) When the reason for an  
8 inmate's initial placement in AdSeg is a disciplinary matter and likely to result in a formal report  
9 of violation of institution rules on a CDC Form 115, or a referral to the district attorney for  
10 possible criminal prosecution, the hearing will assume the alleged misconduct or criminal  
11 activities to be factual as reported in the segregation order. (Id.) Defendants' evidence  
12 establishes that the committee members do not consider evidence or information relating to the  
13 guilt or innocence of the inmate. (Id.) The evidence establishes that retaining Plaintiff in AdSeg  
14 was both necessary and justified. (Smart Decl. ¶ 11; Hansen Decl. ¶ 21; Arline Decl. ¶ 7; Fulks  
15 Decl. ¶ 9.)

16 Defendants Smart, Hansen, Arline and Fulks all testify that their actions as ICC members  
17 on September 15, 2005, were solely aimed at preserving the safety and security of the inmates,  
18 staff and institution. (Smart Decl. ¶ 13; Hansen Decl. ¶ 22; Arline Decl. ¶ 8; Fulks Decl. ¶ 10.)  
19 Defendants have therefore met their burden on summary judgment regarding the September 15,  
20 2005, AdSeg placement.

21 In his opposition, Plaintiff indicates that "This claim was addressed above and Plaintiff's  
22 claim should survive summary judgment." (Opp'n. p. 22.) Plaintiff refers to his argument  
23 regarding the September 2, 2005, placement in AdSeg pending investigation. Plaintiff has not  
24 come forward with evidence establishing a triable issue of fact on his claim of retaliation.  
25 Judgment should therefore be entered in favor of Defendants Wadkins, Boos, Hulse and Tolson.

26 **7. November 22, 2005, claims against Defendants Jordt and Munoz.**

27 Plaintiff alleges that Officer Jordt and Sergeant Munoz retaliated against him by denying  
28 him access to the AdSeg Law Library and moving him from Facility E, Building 1 (FEB1) to the

1 general AdSeg unit. Defendants' evidence establishes that on or around November 23, 2005,  
2 FEB1 was a housing unit designated for AdSeg inmates participating in SATF's mental health  
3 programs. (Jordt Decl. ¶ 3; Munoz Decl. ¶ 3.) At times, inmates not participating in the mental  
4 health programs were housed in FEB1. In the event additional bed space was needed, those  
5 inmates not meeting the mental health criteria were routinely transferred to the general AdSeg  
6 unit. (Id., ¶ 4.) On or around November 23, 2005, Plaintiff was housed in FEB1 but was not a  
7 participant in SATF's mental health programs. (Id. ¶ 6.) On November 23, 2005, Lt. Tucker  
8 decided to move Plaintiff from FEB1 to general AdSeg because additional bed space was needed  
9 for incoming inmates with mental health needs, and Plaintiff did not meet the criteria to remain  
10 in FEB1. (Id. ¶ 7.) The evidence establishes that Plaintiff's access to the law library in FEB1  
11 and AdSeg was the same. (Pltf.'s Dep. 85:19-21.) Defendants' evidence establishes that  
12 Plaintiff failed to demonstrate that he suffered an adverse action, that Defendants retaliated  
13 against him because of his protected conduct or that their actions failed to advance a legitimate  
14 correctional goal. The burden therefore shifts to Plaintiff to come forward with evidence  
15 establishing retaliation.

16 In his opposition, Plaintiff states that he "never claimed denial of AdSeg law library," and  
17 that he "disputes that FEB1 was a housing unit designated for Ad-Seg inmates participating in  
18 SATF's mental health programs. This is not true and Defendants' own Operational Procedure  
19 100 disproves it (PDF 795-796). Further, Defendants Jordt and Munoz retaliated against  
20 Plaintiff for having filed grievances, and presenting Jordt with a court order. Jordt and Munoz  
21 were almost instantaneous in their adverse retaliatory action of moving Plaintiff to ASU once he  
22 presented Jordt with the court order. The harshness of ASU vis a vis E1 was a severe enough  
23 adverse action. (PDF 719-770; 795-796.)" Defendants' evidence establishes that when Plaintiff  
24 was moved to AdSeg, he had equally available law library access. Plaintiff seems to dispute that  
25 he was properly placed in AdSeg, arguing that he was placed there in retaliation for presenting  
26 Defendant Jordt with a court order. Defendants' evidence establishes that Plaintiff did not meet  
27 the criteria for housing in FEB1. Plaintiff offers no evidence to the contrary. The order referred  
28 to by Plaintiff in his statement of disputed fact no. 720 refers the Court to his Exhibit 90.

1 Exhibit 90 is an order from the Court of Appeal for the State of California, Second  
2 Appellate District, dated November 17, 2005. The order vacates an order of dismissal in  
3 Plaintiff's appeal and grants Plaintiff fifteen days in which to cure the default. Plaintiff  
4 presented the order to Defendant Jordt in order to gain law library access. Plaintiff's disputed  
5 fact no. 736 contends that Jordt was working with Munoz "and both confirmed to Plaintiff that  
6 Plaintiff's move to ASU was not being made for any need of bed space." Plaintiff refers to  
7 paragraph 372 of his declaration. Plaintiff's central grievance is found in his declaration.

8 Defendant Munoz and Defendant Jordt were solely responsible for  
9 my move to ASU on November 23, 2005. Defendant Jordt was  
10 working with Munoz and both confirmed to me that E-1 had plenty  
11 of room and that my move to ASU was not being made for any  
12 need of bed space at E-1.

13 On November 23, 2005, I submitted a complaint against Defendant  
14 Jordt and Defendant Munoz for the move from E-1 to ASU as a  
15 retaliatory action for having exercised both my right to file  
16 grievances and accessing the courts. (Exhibit 16.)

17 The move from E-1 to ASU-175 was retaliatory and meant as  
18 punishment.

19 I am aware that Defendants Jordt and Munoz claim that FEB1 and  
20 general ASU are almost identical in programming and access to  
21 legal services, and that the main difference between the two  
22 housing units is that FEB1 was a unit specifically designated for  
23 housing Administrative Segregation inmates in SATF's mental  
24 health programs. This is not true.

25 (Marti Decl. ¶¶ 372-375.) Plaintiff's Exhibit 16 includes copies of Plaintiff's inmate  
26 grievance no. SATF 05-04821 and responses to the grievances. The grievance alleged staff  
27 misconduct by Jordt and Munoz. Specifically, Plaintiff alleges that once he received Priority  
28 Legal User (PLU) status, allowing him law library access, Jordt, with Munoz's permission,  
moved Plaintiff into the ASU. Plaintiff alleges that Jordt "is a lazy individual who does not like  
doing his job; therefore, he moved appellant to the ASU so that he would not have to escort him  
to the law library due to his PLU status. The appellant claims that the bed move is an abuse of  
CO Jordt's and Sgt. Munoz's authority." The final, Director's Level, decision indicated that  
Plaintiff had not been subjected to misconduct on the part of named staff.

1 Plaintiff has not come forward with evidence establishing that Defendants Jordt and  
2 Munoz moved Plaintiff to ASU in retaliation for the exercise of First Amendment activity.  
3 Plaintiff may not overcome Defendants' evidence by merely declaring it is not true, or declaring  
4 Defendants' retaliatory intent. That Plaintiff may or may not have been denied law library  
5 access and that Plaintiff presented Jordt with a court order does not establish liability for  
6 retaliation. Defendants' evidence indicates that Plaintiff was moved pursuant to procedure, and  
7 that he had equally available law library access. A generalized grievance that Defendants'  
8 conduct is based on Plaintiff's exercise of his First Amendment rights is insufficient to overcome  
9 Defendants' evidence that their actions were taken to advance legitimate correctional goals, and  
10 complied with policy and procedure. Judgment should therefore be entered in favor of  
11 Defendant Jordt and Munoz.

12 **8. January 8, 2006, claims against Defendants Baires and Hansen.**

13 Plaintiff alleges that the actions of ICC members on December 28, 2005, in deciding to  
14 retain him in AdSeg, violated his First Amendment rights to be free from retaliation.  
15 Defendants' evidence establishes that Counselor Arline was a member of the December 28, 2005  
16 ICC, and participated by presenting Plaintiff's case factors, making a recommendation, recording  
17 what transpired at the committee, and generating a CDC 128G reflecting the committee's  
18 actions. (Arline Decl. ¶ 10, Ex. 2.) The committee noted that the RVR was still in the  
19 adjudication/audit process. (Id. ¶ 11.) Based on Plaintiff's individual case factors, the  
20 committee elected to retain Plaintiff in AdSeg pending completion of the RVR. (Id. ¶ 12.) Due  
21 to the seriousness of the charge, retaining Plaintiff in AdSeg was both necessary and justified.  
22 (Id. ¶ 14.) Counselor Arline testifies that the ICC members' actions on December 28, 2005, were  
23 solely aimed at preserving the safety and security of inmates, staff, and the institution. (Id. ¶ 13.)  
24 Defendants' evidence establishes that Arline acted to advance legitimate correctional goals, and  
25 not in retaliation for Plaintiff's protected conduct.

26 Plaintiff alleges that Defendants Baires and Hansen intentionally held the disposition of  
27 the RVR from January 8, 2006, until March 15, 2006, effectively prolonging his stay in AdSeg.  
28 Defendants' evidence establishes that on January 8, 2006, Lt. Baires acted as the Senior Hearing

1 Officer for RVR log number D-05-09-002. (Baires Decl. ¶ 3; Deposition 80:1-2.) At the  
2 hearing, it is the Senior Hearing Officer's responsibility to evaluate the evidence and make a  
3 determination whether the preponderance of the evidence submitted at the hearing substantiated  
4 the charge against the inmate. (Baires Decl. ¶¶ 4, 5.) Lt. Baires considered the evidence  
5 presented, and discovered that the confidential information relied on by Officer Williams lacked  
6 a secondary source to confirm the threat against Officer Ramirez. (Id. ¶ 11.) As a result of this  
7 deficiency, the preponderance of the evidence could not substantiate the charge against Plaintiff  
8 and the RVR was dismissed. (Baires Decl. ¶ 12; Deposition 80:3-5.)

9 Lt. Baires' declaration establishes the various reasons that RVRs are dismissed. (Id. ¶  
10 13.) Lt. Baires further declares that based on his training and experience, just because an RVR is  
11 dismissed, or errors are found within the RVR, or the inmate is found not guilty of the charge  
12 against him, it does not automatically or necessarily mean that the charges were false or that  
13 there was some wrongdoing on the part of the charging officer. (Id. ¶ 14.) A dismissal only  
14 means that based on the preponderance of the evidence presented, the charge against the inmate  
15 could not be substantiated. (Id. ¶ 15.)

16 Lt. Baires declares that although a significant amount of time passed between the date of  
17 the disciplinary hearing and the date when the RVR was finally signed off on by the Chief  
18 Disciplinary Officer, it is common for RVRs dealing with multiple and complex issues to take  
19 longer to review, and in fact, RVR log no. D-05-02-009 contained multiple and complex issues.  
20 (Baires Decl. ¶¶ 16-20; Deposition 81:19-82:16.) Defendants' evidence also establishes that  
21 Capt. Hansen's only role in RVR log no. D-05-02-009 was to originally classify the RVR, as he  
22 was transferred to Pleasant Valley State Prison on November 1, 2005. (Hansen Decl. ¶ 26, Ex.  
23 3.) The evidence establishes that Defendants did not retaliate against Plaintiff for exercising his  
24 First Amendment rights.

25 Plaintiff alleges that Counselor Arline intentionally failed to schedule him for an ICC for  
26 release from AdSeg. Defendants' evidence establishes that sometime in February 2006,  
27 Counselor Arline became aware that the RVR against Plaintiff had been dismissed, and reviewed  
28 his case for further action. (Arline Decl. ¶ 17.) Plaintiff's particular case was extremely

1 complicated because he was a Level IV inmate serving a term of life without the possibility of  
2 parole, needed special needs yard placement and was a Departmental Review Board-controlled  
3 case. (Id. ¶ 19.) Sometime in March 2006, acting as a liaison between Plaintiff, the facility, the  
4 CSR, and the committee, Counselor Arline had a discussion with Lt. Baires about Plaintiff's  
5 status. (Baires Decl. ¶ 23.) Lt. Baires informed Counselor Arline that Plaintiff still potentially  
6 posed a threat to the safety of the staff member involved in the allegation, and that Facility D  
7 was going to issue a new CDC 114-D to retain Plaintiff in AdSeg pending transfer to another  
8 institution. (Id.) As a result, Counselor Arline waited for a new 114-D lock-up order. (Arline  
9 Decl. ¶ 22.) Defendants' evidence therefore establishes that Counselor Arline did not act in  
10 retaliation for Plaintiff's exercise of his First Amendment rights.

11 Plaintiff argues that "the facts are quite different to what Defendants claim them to be."  
12 (Opp'n. 23.) Plaintiff refers the Court to his disputed fact no. 589. This indicates that the  
13 Classification Staff Representative (CSR) issued a chrono ordering "Plaintiff's return to CSR no  
14 later than 12/14/2005 with status update." Plaintiff refers the Court to his Exhibit 74. Exhibit 74  
15 is a copy of a CDC 128-G, indicating that Plaintiff's 90 day extension in ASU was approved,  
16 expiring on December 14, 2005, and directing Plaintiff to be returned to CSR no later than  
17 December 14, 2005, with status update. Plaintiff contends that Defendant Arline attempted to  
18 take Plaintiff to ICC, but couldn't because "he had failed to properly notice Plaintiff and the ICC  
19 was aborted." Plaintiff refers to disputed facts nos. 601-604. These statements of disputed fact  
20 reference Plaintiff's declaration, which indicates that

21 On December 21, 2005, I was called for an ICC hearing. Since  
22 they had failed to serve me with a 72 hours written notice, the  
23 hearing was not held. It is customary of the CDCR to attempt to  
24 hold hearings when inmates are not prepared because they are not  
25 aware that they would be called. The 72 hours notice serves the  
26 purpose of notifying the inmate of the upcoming hearing and  
27 allows time to prepare. I was not notified and the ICC hearing  
28 couldn't be conducted.

(Marti Decl. ¶ 300.) Plaintiff also references disputed fact nos. 612-616, which reference Exhibit  
77, a copy of CDC Form 128G dated December 28, 2005, indicating that Plaintiff was originally  
placed in AdSeg on September 2, 2005, with a projected minimum early release date (MERD) of

1 December 25, 2005. The Chrono further indicates that although Plaintiff's MERD was  
2 December 25, 2005, "considering the circumstance regarding pending RVR dated 9/2/05, it has  
3 been determined that "S" presence in the general population at SATF/SP would jeopardize the  
4 safety and security of the institution, staff and other inmates." Because the RVR was still in the  
5 adjudication process, the committee decided to retain Plaintiff in ASU pending completion of the  
6 RVR. Plaintiff's evidence establishes, at most, a delay in a new ICC hearing. Plaintiff's own  
7 evidence indicates that the RVR was not resolved and, although Plaintiff's original ASU term  
8 had expired, there is no evidence that Plaintiff was held in ASU in retaliation for Plaintiff's  
9 exercise of First Amendment activity. The undisputed evidence establishes that Plaintiff was  
10 held pursuant to proper procedure and protocol. The RVR had not been adjudicated, and holding  
11 Plaintiff in ASU pending resolution of the RVR advanced legitimate correctional goals.

12 Plaintiff refers the Court to his disputed facts 660 – 668 to establish that "Baires ignored  
13 Plaintiff's letters and his duty for the sole purpose of keeping Plaintiff in segregation." (Opp'n.  
14 p. 24.) These facts refer the Court to Exhibits 81 to 84. Exhibit 81 is a copy of a note from  
15 Plaintiff to Lt. Baires dated February 20, 2006, indicating that he had not yet received a final  
16 copy of the RVR. Exhibit 82 is a notice, informing Plaintiff of a February 22, 2006,  
17 classification hearing. Exhibit 83 is a second written request (dated February 26, 2006) to Lt.  
18 Baires requesting a final disposition of the RVR. Exhibit 84 is a similar note from Plaintiff to  
19 Associate Warden Sherman requesting a copy of the final disposition of the RVR. Plaintiff's  
20 evidence establishes, at most, that he did not receive a written disposition of the RVR. Plaintiff  
21 has not come forward with evidence of a triable issue of disputed fact regarding his retaliation  
22 claim. Judgment should therefore be entered in favor of Defendants Baires and Hansen.

### 23 **9. April 3, 2006, claim against Defendant Lais.**

24 Plaintiff alleges that Captain Lais denied Plaintiff an IE, witnesses and documentary  
25 evidence to allow Plaintiff to prepare for the ICC hearing that could release him from AdSeg.  
26 Defendants' evidence establishes that the only conduct by Lais was the review of the lock-up  
27 order on April 3, 2006 (Lais Decl. 3, Ex. 1.) Based upon his review of the relevant reports and  
28 factors, Lais elected to retain Plaintiff in AdSeg pending his review by the ICC. (Id. ¶ 7.) Capt.

1 Lais testifies that his decision was based on Plaintiff's continued threat to the safety and security  
2 of staff members and the institution. (Id.) Defendants' evidence establishes that Capt. Lais's  
3 actions advanced legitimate correctional goals and not in retaliation for the exercise of protected  
4 conduct. Judgment should therefore be entered in favor of Defendant Lais.

5 **10. April 10, 2006, claims against Defendants Santoro, Reynoso and Polk.**

6 Plaintiff alleges that ICC members Captain Reynoso, Captain Santoro and Chief Deputy  
7 Polk retaliated against him by retaining him in AdSeg pending completion of a Departmental  
8 Review Board (DRB) report. Defendants' evidence establishes that the committee considered all  
9 relevant factors and elected to retain Plaintiff in AdSeg pending completion of the DRB report.  
10 (Reynoso Decl. ¶ 6-12; Santoro Decl. ¶ 6-12; Polk Decl. ¶ 6-12.) All members of the committee  
11 further testify that their decision to retain Plaintiff in AdSeg and transfer him to another  
12 institution was based upon the DRB report needing to be completed before transfer could take  
13 effect, and the continued concerns for officer safety, based upon allegations that could not be  
14 substantiated. (Id.) Each of the committee members testify that their actions were solely aimed  
15 at preserving the safety and security of staff members and the institution. (Id. ¶ 13.)  
16 Defendants' evidence establishes that their actions were solely aimed at preserving the safety and  
17 security of staff members and the institution, and not in retaliation for Plaintiff's exercise of  
18 conduct protected by the First Amendment. Judgment should therefore be entered in favor of  
19 Defendants Santoro, Reynoso and Polk.

20 **11. May 11, 2006 claim against Defendants Williams and Smart.**

21 Plaintiff's final allegation against Officer Williams and Counselor Smart is that they  
22 retaliated against him by placing him on "orientation status" upon his return to D Facility.  
23 Defendants' evidence establishes that in May 2006, it was mandatory protocol for all AdSeg  
24 inmates returning to the yard to be placed on orientation status for an initial classification review.  
25 (Williams Decl. ¶ 15; Smart Decl. ¶ 12.) The evidence also establishes that the purpose of an  
26 inmate being placed on orientation status was to give the yard sufficient time to evaluate the  
27 inmate's classification and any enemy concerns, in order to determine safe and appropriate  
28 housing for the inmate on that particular yard. (Williams Decl. ¶ 12; Smart Decl. ¶ 17.) Further,



1 the evidence establishes that neither Officer Williams nor Counselor Smart had the authority to  
2 either order or place any inmate on orientation status. (Smart Decl. ¶ 16.) Defendants' evidence  
3 establishes that neither Officer Williams nor Counselor Smart could have retaliated against  
4 Plaintiff for exercising his First Amendment rights by placing him on orientation status.

5 Plaintiff argues that "it is clear that Defendants were going to keep Plaintiff in ASU and  
6 transfer him out had it not been for Plaintiff's appeal uncovering that Ramirez was no longer at  
7 CSATF." (Opp'n. p. 26.) Plaintiff offers disputed facts nos. 705-713, which refer the Court to  
8 Exhibit 89. Exhibit 89 is a copy of a CDC Form 128G, dated May 11, 2006, indicating that the  
9 ICC decided to "rescind ICC action of 4-10-06 in regards to the DRB referral for transfer noting  
10 that retention at SATF is now appropriate." Plaintiff was released to Facility D. The committee  
11 elected to retain Plaintiff on double cell status on the sensitive needs yard.

12 Plaintiff also refers the Court to disputed facts 698-718, 771-779 and 780-785 to "counter  
13 the facts submitted by Defendants in detail." The Court has reviewed those facts and the exhibits  
14 in support. Plaintiff has not come forward with evidence that creates a triable issue of fact as to  
15 whether the decision to retain him in AdSeg pending RVR review or placing him on orientation  
16 status was taken in retaliation for the exercise of his First Amendment rights. Judgment should  
17 therefore be entered in favor of Defendants Smart and Williams.

#### 18 **IV. Conclusion**

19 Defendants have come forward with evidence that establishes, without dispute, that their  
20 actions were taken pursuant to prison policy and procedure, and not in retaliation for Plaintiff's  
21 exercise of his First Amendment rights. Plaintiff's subjective belief that Defendants retaliated  
22 against him is not supported by evidence. Plaintiff has not come forward with evidence that  
23 establishes a triable issue of fact as to whether any of the actions taken by Defendants were in  
24 retaliation for the exercise of Plaintiff's First Amendment rights. Defendants' motion for  
25 summary judgment should therefore be granted. The Court considered the evidence offered in  
26 support of Plaintiff's cross-motion for summary judgment in determining whether Plaintiff  
27 could establish a triable issue of fact regarding his claims. Plaintiff's evidence in support of his  
28

1 cross-motion does not establish any evidence that Defendants retaliated against Plaintiff for his  
2 exercise of protected First Amendment activity.

3 Accordingly, IT IS HEREBY RECOMMENDED that:

4 1. Summary should be granted on Plaintiff's claim of a threat of retaliation during  
5 the May 18, 2005, escort, on the ground that Plaintiff failed to exhaust his available  
6 administrative remedies prior to filing suit.

7 2. Summary judgment be granted in favor of Defendants and against Plaintiff on his  
8 remaining claims of retaliation in violation of the First Amendment.

9 3. Plaintiff's cross-motion for summary judgment be denied.

10 These findings and recommendations are submitted to the United States District Judge  
11 assigned to the case, pursuant to the provisions of 28 U.S.C. §636(b)(1)(B). Within thirty days  
12 after being served with these findings and recommendations, the parties may file written  
13 objections with the Court. Such a document should be captioned "Objections to Magistrate  
14 Judge's Findings and Recommendations." Any reply to the objections is due within ten days of  
15 the filing of objections. The parties are advised that failure to file objections within the specified  
16 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.2d 834 (9<sup>th</sup> Cir.  
17 2014)(citing Baxter v. Sullivan, 923 F.2d 1398 (9<sup>th</sup> Cir. 1991)).

18  
19  
20 IT IS SO ORDERED.

21 Dated: September 25, 2015

22 /s/ Gary S. Austin  
23 UNITED STATES MAGISTRATE JUDGE  
24  
25  
26  
27  
28