



1 **A. ALLEGATIONS IN FIRST AMENDED COMPLAINT**<sup>1</sup>

2 Plaintiff is currently incarcerated at High Desert State Prison in Susanville, California.  
3 The events complained of occurred at the California Substance Abuse Treatment Facility in  
4 Corcoran, California.

5 Plaintiff alleges that he wrote Defendant Gonzalez up on November 12, 2009, for  
6 “unbecoming” conduct and constant bias towards Plaintiff’s lifestyle.

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8 On March 6, 2010, Plaintiff contends Defendant Gonzalez had him written up for  
9 allegedly delaying her pill line. Pursuant to Plaintiff’s exhibit, he received a Rules Violation  
10 Report (“RVR”) for threatening staff. ECF No. 13, at 39. Plaintiff contends that there was no  
11 need to write him up and that he could have been given an order to move ahead. He was  
12 handcuffed and placed in the clinic holding cell. Plaintiff was detained throughout breakfast and  
13 completion of the a.m. pill line.

14 Sgt. Ibarra entered the clinic area, where he was met by Defendant Gonzalez. The two  
15 exchanged friendly conversation and “some detestable comments in regards to gays.” ECF No.  
16 13, at 3. Plaintiff was then returned to his assigned cell and received his medications with no  
17 further problems. At noon, Plaintiff received his medications from Defendant Gonzalez without  
18 a problem. At 5:00 p.m. and 8:00 p.m., he again went to the pill line and got his medications  
19 without a problem.

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21 On March 7, 2010, throughout the day, Plaintiff received his medications from Defendant  
22 Gonzalez with no problem.

23 On March 8, 2010, Plaintiff was handcuffed and taken to the program holding cages,  
24 where he was held for several hours without knowing why. Officer Lyons eventually told him,  
25 “You know how the game is played.” ECF No. 13, at 4. Officer Ibarra stopped by and smiled at  
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28 <sup>1</sup> The Court will only set forth the allegations relating to First Amendment retaliation claim.

1 Plaintiff, telling him, “I’m going to show you what happens when you mess with our staff.” ECF  
2 No. 13, at 4.

3           Soon after, Plaintiff was involved in an altercation with Officer Akin. Plaintiff sustained  
4 injuries and was treated by medical staff. Officer Diaz was ordered to take Plaintiff to the  
5 Central Treatment Center and have him placed on suicide watch. As Officer Diaz was lifting  
6 Plaintiff, he heard him say, “Hey Gonzalez, look what you did to Delgado.” Defendant  
7 Gonzalez cheered and said, “Get his sick ass.” ECF No. 13, at 6.

8           Plaintiff was then re-housed in Ad-Seg.

9           On March 17, 2010, the Ad-Seg committee reviewed the lock-up order and Chief Deputy  
10 Warden Diaz ordered that Plaintiff be released and returned to Facility D. Plaintiff was held in  
11 Ad-Seg while a new lock-up order was issued by Defendant Gonzalez, who claimed that her life  
12 would be in serious danger if Plaintiff returned to Facility D.

13           On April 8, 2010, Plaintiff attended the disciplinary hearing on the RVR. He was found  
14 guilty of threatening staff and assessed a forfeiture of sixty-days of credit. ECF No. 43, at 41-42.

15           Plaintiff alleges that Defendant Gonzalez persuaded Sgt. Ibarra to arrest him and place  
16 him in Ad-Seg. He requests monetary damages.

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18 **B.     LEGAL STANDARD**

19           To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
20 accepted as true, to state a claim that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662,  
21 678, 129 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555,  
22 127 S.Ct. 1955, 1964-65 (2007)) (quotation marks omitted); Conservation Force, 646 F.3d at  
23 1242; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The Court must accept  
24 the factual allegations as true and draw all reasonable inferences in favor of the non-moving  
25 party, Daniels-Hall, 629 F.3d at 998; Sanders, 504 F.3d at 910; Morales v. City of Los Angeles,  
26 214 F.3d 1151, 1153 (9th Cir. 2000), and in this Circuit, pro se litigants are entitled to have their  
27 pleadings liberally construed and to have any doubt resolved in their favor, Wilhelm v. Rotman,  
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1 680 F.3d 1113, 1121 (9th Cir. 2012); Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012);  
2 Silva v. Di Vittorio, 658 F.3d 1090, 1101 (9th Cir. 2011); Hebbe v. Plieler, 627 F.3d 338, 342 (9th  
3 Cir. 2010).

4 **C. DISCUSSION**

5 1. First Amendment Retaliation

6 Allegations of retaliation against a prisoner's First Amendment rights to speech or to  
7 petition the government may support a section 1983 claim. Rizzo v. Dawson, 778 F.2d 527, 532  
8 (9th Cir. 1985); see also Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v.  
9 Rowland, 65 F.3d 802, 807 (9th Cir. 1995). "Within the prison context, a viable claim of First  
10 Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some  
11 adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that  
12 such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did  
13 not reasonably advance a legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-  
14 68 (9th Cir. 2005); accord Watison v. Carter, 668 F.3d 1108, 1114-15 (9th Cir. 2012); Brodheim  
15 v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009).

17 Here, Defendant argues that Plaintiff has not pled a sufficient nexus between his  
18 November 2009 grievance against her and the allegedly false March 6, 2010, RVR. Defendant is  
19 correct that Plaintiff must demonstrate that she took adverse action against him *because of* his  
20 engagement in protected activity. Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir.2009); Rhodes  
21 v. Robinson, 408 F.3d 559, 567-68 (9th Cir.2005).

22 Defendant contends that Plaintiff "only mentioned" that he previously filed a grievance  
23 against her. Mot., 3. Defendant also points to the Court's language in the first screening order  
24 that Plaintiff "appears to allege" that Defendant retaliated against him for his November 12,  
25 2009, complaint by making false allegations that led to his placement in Ad-Seg. Mot., 4.  
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1 The Court disagrees. At the screening stage, Plaintiff has pled sufficient allegations  
2 which, if accepted as true, state a plausible retaliation claim. While Plaintiff may not have  
3 specifically stated that Defendant initiated the RVR because of Plaintiff's grievance against her,  
4 his allegations are sufficient to connect the events. Indeed, Plaintiff specifically states, "LVN-  
5 Gonzalez persuaded Sgt. Ibarra to arrest Plaintiff and placed [sic] in Ad-Seg." ECF No. 13, at 8.  
6 In addition, his allegations set forth the context in which Defendant acted- Defendant was  
7 allegedly biased against Plaintiff because of his lifestyle.

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9 Taken as a whole, Plaintiff's allegations are sufficient to state a claim at the pleading  
10 stage. See Brodheim, 584 F.3d at 1271 (on summary judgment, Plaintiff need "only put forth  
11 evidence of retaliatory motive that, taken in the light most favorable to him, presents a genuine  
12 issue of material fact as to" Defendant's motivation.") (internal citations omitted); Watison, 668  
13 F.3d at 1114 (direct evidence of improper motive is only rarely available); McCollum v. CDCR,  
14 647 F.3d 870, 882 (9th Cir. 2011) (plaintiff may show retaliation by either direct evidence or  
15 circumstantial evidence).

16 2. Heck Bar

17 Finally, Defendant argues that even if Plaintiff can state a claim, his claim is barred by  
18 Heck v. Humphrey, 512 U.S. 477 (1994) and Edwards v. Balisok, 520 U.S. 641 (1997).  
19 Defendant contends that a favorable finding that she falsified a RVR would necessarily  
20 invalidate the RVR *and* his sixty-day credit forfeiture.

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22 A prisoner plaintiff cannot proceed on a claim where success would necessarily imply the  
23 invalidity of the length of a prisoner's sentence, until the prisoner obtains a favorable termination  
24 of a state or federal habeas challenge to his sentence. Heck, 512 U.S. at 487. The United States  
25 Supreme Court has applied this "favorable termination" requirement to the context of prison  
26 disciplinary hearing where good-time credits are affected. Edwards, 520 U.S. at 648.

1 Here, as evidenced by the hearing on Plaintiff's RVR, attached as an exhibit to his First  
2 Amended Complaint, Plaintiff suffered a loss of sixty days of credit for the RVR. Therefore, a  
3 favorable finding, i.e., that Defendant wrote a false RVR in retaliation, would necessarily imply  
4 that the loss of sixty days of credit was invalid. Under Heck, therefore, Plaintiff's claim is  
5 barred.

6 In his opposition, Plaintiff argues that he tried to appeal the guilty finding, but was  
7 unsuccessful. While he may have tried to appeal the finding both administratively and with a  
8 writ of habeas corpus, the fact remains that he has not received a favorable termination of the  
9 punishment.  
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11 Plaintiff also argues that the disciplinary appeal needs to be "put aside" to allow the First  
12 Amendment retaliation claim to proceed, but the Court cannot ignore applicable federal law.

13 Accordingly, Plaintiff's claim is barred by the favorable termination rule and must be  
14 dismissed.

15 **D. RECOMMENDATION**

16 For these reasons, the Court RECOMMENDS that Defendant's motion to dismiss be  
17 GRANTED.

18 These Findings and Recommendations are submitted to the United States District Judge  
19 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)  
20 days after being served with these Findings and Recommendations, any party may file written  
21 objections with the Court and serve a copy on all parties. Such a document should be captioned  
22 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
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1 shall be served and filed within ten (10) days after service of the objections. The parties are  
2 advised that failure to file objections within the specified time may waive the right to appeal the  
3 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.1991).  
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5 IT IS SO ORDERED.

6 Dated: October 15, 2014

7 /s/ Dennis L. Beck  
8 UNITED STATES MAGISTRATE JUDGE  
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