

1 **II. SCREENING REQUIREMENT**

2 A court has inherent power to control its docket and the disposition of its cases
3 with economy of time and effort for both the court and the parties. Landis v. North
4 American Co., 299 U.S. 248, 254-55 (1936); Ferdik v. Bonzelet, 963 F.2d 1258, 1260
5 (9th Cir. 1991), cert. denied, 506 U.S. 915 (1992). Accordingly, this Court screens all
6 complaints filed by plaintiffs in propria persona to ensure that the action is not frivolous
7 or malicious, states a claim upon which relief may be granted, and that the complaint
8 does not seek monetary relief from a defendant who is immune from such relief.

9 A complaint must contain “a short and plain statement of the claim showing that
10 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
11 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
12 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct.
13 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
14 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is
15 plausible on its face.’” Id. Facial plausibility demands more than the mere possibility
16 that a defendant committed misconduct and, while factual allegations are accepted as
17 true, legal conclusions are not. Id. at 1949-50.

18 **III. SUMMARY OF SECOND AMENDED COMPLAINT**

19 The Second Amended Complaint identifies Wanda Killian, Program Director,
20 Central California Forensic Conditional Release Program (CONREP), and Steven
21 Chase, Social Worker, CONREP, as Defendants.

22 Plaintiff alleges the following:

23 On approximately June 14, 2012 and again on June 21, 2012, Plaintiff filed a
24 grievance complaining that he was being forced to live with “low-functioning and
25 irresponsible roommates” during his conditional release in CONREP. On or about June
26 22, 2012, Defendant Chase, Plaintiff’s assigned social worker, responded by raising
27 problems with Plaintiff’s desired living arrangement. He stated that Plaintiff had agreed
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1 to live in the CONREP approved residence as part of the terms of his conditional
2 release and that Plaintiff was not yet ready to live on his own. Defendant Chase
3 reported that the CONREP treatment team had denied Plaintiff's request to move out or
4 be assigned a different roommate. (Compl. at 5-7.)

5 The assertion that Plaintiff was not ready to live on his own contradicts a previous
6 statement by Defendant Chase, in a quarterly progress report dated March 14, 2012,
7 where he reported that "[Plaintiff] has demonstrated the ability to manage his funds and
8 maintain his residence on his own with little or no assistance." (Id. at 12.) Defendant
9 Chase filed the negative grievance responses in retaliation against Plaintiff for exercising
10 his First Amendment rights. (Id. at 5.)

11 On August 1, 2012, Defendant Killian transferred Plaintiff from a two bedroom
12 apartment with a single roommate into a two bedroom duplex with three roommates.
13 Other clients in Plaintiff's former apartment complex moved into a nicer duplex. Plaintiff
14 was the only client moved who received only a single day's notice instead of a full week.
15 (Id. at 15.) Plaintiff was also forced to pay a higher share of the rent and contribute to a
16 communal pantry. (Id. at 15, 16.) Some of the clients with less experience were allowed
17 to live on their own while Plaintiff was forced to move into shared living. (Id. at 16.)

18 **IV. ANALYSIS**

19 **A. Section 1983**

20 Section 1983 "provides a cause of action for the 'deprivation of any rights,
21 privileges, or immunities secured by the Constitution and laws' of the United States."
22 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
23 Section 1983 is not itself a source of substantive rights, but merely provides a method for
24 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94
25 (1989).

26 To state a claim under Section 1983, a plaintiff must allege two essential
27 elements: (1) that a right secured by the Constitution or laws of the United States was
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1 violated and (2) that the alleged violation was committed by a person acting under the
2 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda
3 Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

4 **B. Retaliation**

5 Allegations of retaliation against a prisoner's First Amendment rights to speech or
6 to petition the government may support a section 1983 claim. Silva v. Di Vittorio, 658
7 F.3d 1090, 1104 (9th Cir. 2011); see also Valandingham v. Bojorquez, 866 F.2d 1135
8 (9th Cir. 1989); Pratt v. Rowland, 65 F.3d 802, 807 (9th Cir. 1995); and Short v.
9 Sanzberro, 2009 WL 5110676, *5 (E.D. Cal. Dec. 18, 2009) ("Civil detainees are
10 protected from retaliation by the First Amendment."). "Within the prison context, a viable
11 claim of First Amendment retaliation entails five basic elements: (1) An assertion that a
12 state actor took some adverse action against an inmate (2) because of (3) that prisoner's
13 protected conduct, and that such action (4) chilled the inmate's exercise of his First
14 Amendment rights, and (5) the action did not reasonably advance a legitimate
15 correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005); accord
16 Watison v. Carter, 668 F.3d 1108, 1114-15 (9th Cir. 2012); Silva, 658 at 1104; Brodheim
17 v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009).

18 The amended complaint alleges that Defendant Chase filed a negative grievance
19 response containing false statements and Defendant Killian imposed punitive conditional
20 release terms in retaliation against Plaintiff for filing grievances. Filing a grievance is a
21 First Amendment protected activity. Valandingham, 866 F.2d at 1138. However, the
22 allegations set forth in the amended complaint are not sufficient to establish that
23 Plaintiff's grievances were the substantial or motivating factor behind the Defendant's
24 conduct. Brodheim, 584 F.3d at 1271 (citing Soranno's Gasco, Inc. v. Morgan, 874 F.2d
25 1310, 1314 (9th Cir. 1989)).

26 Defendant Chase replied to Plaintiff's grievances according to CONREP
27 procedure. The fact that Plaintiff's complaint necessitated a response and that response
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1 disagreed and rejected Plaintiff's proposal does not equate to retaliation. In this Circuit,
2 Plaintiff need "only put forth evidence of retaliatory motive that, taken in the light most
3 favorable to him, presents a genuine issue of material fact as to" Defendant's motivation.
4 Id. (citing Bruce v. Ylst, 351 F.3d 1283, 1289 (9th Cir. 2003)) (internal quotation marks
5 omitted). The response authored by Defendant Chase raises seemingly valid arguments
6 addressing the merits of Plaintiff's request. The fact that his statement regarding
7 Plaintiff's fitness to live alone is inconsistent with a previous statement made months
8 prior does not establish that the Defendant's response was fueled by an improper
9 motive.

10 Defendant Killian was allegedly responsible for imposing a series of unfair living
11 conditions that disproportionately affected Plaintiff. These terms were instituted months
12 after Plaintiff's grievances and the amended complaint offers no factual allegations
13 suggesting they motivated Defendant Killian. The mere possibility that either Defendant
14 was motivated by Plaintiff's grievances is not sufficient to state a claim. Iqbal, 129 S.Ct.
15 at 1949-50.

16 Plaintiff has not identified facts to support his conclusion that the Defendants
17 were motivated by his exercise of First Amendment protected rights. As such, it fails to
18 state a claim.

19 The Court has twice previously instructed Plaintiff on the applicable legal
20 standards for pleading such claims and invited him to allege true facts bringing his case
21 within those standards. His failure to do so to date is reason to conclude he cannot do
22 so. No reasonable purpose would be served by yet again giving him the same
23 guidelines and another opportunity to try to meet them. Leave to amend is denied.

24 **V. CONCLUSION AND ORDER**

25 For the reasons stated above, the Court finds that Plaintiff's Second Amended
26 Complaint fails to state a claim upon which relief may be granted and that leave to
27 amend would be futile. See Noll v. Carson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).

1 Accordingly, Plaintiff's Second Amended Complaint is DISMISSED WITH PREJUDICE
2 for failure to state a claim. The Clerk shall close the case.

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IT IS SO ORDERED.

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Dated: January 29, 2014

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1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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