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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

SALADIN RUSHDAN,

Plaintiff,

v.

J. GONZALES, et al.,

Defendants.

Case No. 1:14-cv-01807-DLB PC

**ORDER FINDING CONGNIZABLE  
CLAIMS AND DISMISSING REMAINING  
CLAIMS AND DEFENDANTS**

Plaintiff Saladin Rushdan (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on November 17, 2014. The action was transferred to this Court on November 19, 2014. Pursuant to Court order, he filed a First Amended Complaint (“FAC”) on May 4, 2015. Plaintiff names J. Gonzales, J. Arnett, T. Hood, Officer Casas, A. Guzman, T. Marsh, Sgt. Macias, M. Sexton and John Doe as Defendants.<sup>1</sup>

On October 28, 2015, the Court screened Plaintiff’s FAC and found that it stated (1) an Eighth Amendment excessive force claim against Defendants Arnett, Hood, Guzman, Casas and Doe; and (2) a due process claim against Defendant Sexton. The Court ordered Plaintiff to either file an amended complaint, or notify the Court of his willingness to proceed only on these cognizable

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<sup>1</sup> Plaintiff consented to the jurisdiction of the United States Magistrate Judge on January 15, 2015.

1 claims. On November 6, 2015, Plaintiff informed the Court that he was willing to proceed only on  
2 the cognizable claims.<sup>2</sup>

3 **A. LEGAL STANDARD**

4 The Court is required to screen complaints brought by prisoners seeking relief against a  
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
6 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
7 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
8 monetary relief from a defendant who is immune from such relief. 28 U.S.C.

9 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid,  
10 the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . .  
11 fails to state a claim upon which relief may be granted.” 28 U.S.C.

12 § 1915(e)(2)(B)(ii).

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

20 To state a claim, Plaintiff must demonstrate that each defendant personally participated in the  
21 deprivation of his rights. Id. at 1949. This requires the presentation of factual allegations sufficient  
22 to state a plausible claim for relief. Iqbal, 129 S.Ct. at 1949-50; Moss v. U.S. Secret Service, 572  
23 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting this  
24 plausibility standard. Iqbal, 129 S.Ct. at 1949-50; Moss, 572 F.3d at 969.

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28 <sup>2</sup> In his filing, Plaintiff asks why the Court did not address his claim of “unreasonable force” on page 15 of his FAC. The Court will address it in this order.

1 **B. SUMMARY OF PLAINTIFF'S ALLEGATIONS**

2 Plaintiff is currently incarcerated at Corcoran State Prison in Corcoran, California, where the  
3 events at issue occurred.

4 Sometime in June 2013, after Plaintiff arrived at Corcoran, he appeared before a  
5 Classification Committee and made it clear that he would refuse to be double-celled. Defendant  
6 Marsh, the 3A-Yard Lieutenant, therefore had knowledge of “the intended reaction of Plaintiff.”  
7 ECF No. 11, at 16. Plaintiff contends that by signing off on the documents that were subsequently  
8 falsified, Defendant Marsh “lent tacit support to the other defendants.” ECF No. 11, at 17.

9 On June 30, 2013, Plaintiff alleges that Defendants Arnett and Hood walked Plaintiff to see  
10 Defendant Gonzales, the yard sergeant who was directly responsible for ordering all events.  
11 Defendant Gonzales asked Plaintiff the same question over and over. Plaintiff stated, “I have an out  
12 of court settlement with CDC and I’m not supposed to be housed at Corcoran and I’m supposed to  
13 be single-cell status. Take me to the hole, I refuse to be double-celled.” ECF No. 11, at 11-12.  
14 Defendant Gonzales then ordered Plaintiff to be placed in a double cell. Plaintiff tried to “resist  
15 peacefully by stopping,” but Defendants Arnett and Hood bent his elbows above his head. ECF No.  
16 11, at 12. Plaintiff contends that Defendant Gonzales was responsible for ordering the use of illegal  
17 force, and was responsible for Plaintiff’s safety.

18 Defendant Guzman then walked up and asked Plaintiff what the problem was, and Plaintiff  
19 said he had repeated it over and over. Defendant Guzman told Plaintiff that he had not told him of a  
20 problem, so Plaintiff repeated that he had an out of court settlement. Defendant Guzman again asked  
21 Plaintiff if he had any safety concerns.

22 Plaintiff alleges that the hold by Defendants Arnett and Hood was excruciatingly painful and  
23 exacerbated various injuries. They “bodily carried” Plaintiff up a flight of stairs, and then tried to  
24 toss Plaintiff face first into cell #230 with another prisoner (Inmate Cain). ECF No. 11, at 12.

25 When Plaintiff tried to resist and break his fall by grabbing onto the cell door, Defendants  
26 Arnett, Hood, Guzman, Casas and Doe assaulted him on the orders of Defendant Gonzales. They  
27 began kicking and kneeling Plaintiff in an attempt to get him to double cell, and they laughed and  
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1 joked about it. ECF No. 11, at 12-13. Defendant Arnett then punched Plaintiff in the chest and  
2 knocked him onto his back. By the time Plaintiff got to his feet, Defendant Arnett “cowardly ran out  
3 of the cell and slammed the door.” ECF No. 11, at 13. Plaintiff states that he was already  
4 restrained, handcuffed and in a secure holding area at the time force was used.

5 Plaintiff alleges that Defendant Marsh did not physically touch Plaintiff, but he was “present  
6 in the building during the attack and did nothing to stop it.” ECF No. 11, at 17.

7 Plaintiff alleges that Defendant Casas was the “spark that ignited the entire situation.” ECF  
8 No. 11, at 13-14. Defendants Casas and Doe handcuffed Plaintiff initially on June 30, 2013, and  
9 placed him in the locked shower area, which is often used as a holding cage. Plaintiff “peaceably”  
10 told Defendant Casas that he was refusing to double cell with Inmate Cain and he assumed that  
11 “standard procedure” after a refusal would be followed and he’d go to the hole. ECF No. 11, at 14.  
12 About fifteen minutes later, Defendant Casas returned and told Plaintiff, “Let’s go!” While still  
13 handcuffed, Plaintiff turned towards the front door, assuming he was going to the hole. Instead,  
14 Defendants Casas and Doe tried to force Plaintiff up the stairs. Defendant Casas told Plaintiff that  
15 unless he had safety concerns, he was going into that cell. Plaintiff was shocked and “planted his  
16 feet and loudly proclaimed: ‘I have an out of court settlement and I am not supposed to be housed at  
17 Corcoran period. An [sic] I’m supposed to be single-celled.’” ECF No. 11, at 14. Defendant Casas  
18 kept asking Plaintiff if he had safety concerns and Plaintiff responded with “the same answer each  
19 time.” ECF No. 11, at 14. Defendant Casas again said, “Let’s go,” and then swung Plaintiff towards  
20 the wall, pushing his head and trying to smash his face into the wall. ECF No. 11, at 14. At the last  
21 moment, Plaintiff blocked the majority of the force with his foot and knee.

22 Prior to the assault, Plaintiff contends that he told Defendants that he was refusing to double-  
23 cell and why. Plaintiff states that after the assault, several Defendants were guilty of “threats and  
24 falsifying documentation.” ECF No. 11, at 9. He contends that Defendants conspired to disavow the  
25 incident. Defendants never made a verbal or written report, and lied to make it appear as though  
26 Plaintiff requested protective custody.  
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1 Plaintiff argues that Defendants cannot say that they were just doing their job because they  
2 do not have a right to force an inmate to double-cell. If a prisoner refuses an order, guards can  
3 handcuff him. However, kicking and punching is not appropriate.

4 After the incident, Defendant Guzman asked Plaintiff to sign a statement indicating that he  
5 had safety and security concerns. Plaintiff refused, and told him “I thought you were a straight up  
6 man, you know I never made any statement like that. I’m not signing that.” ECF No. 11, at 15.  
7 Plaintiff alleges that Defendant Guzman falsified the document and later added a false addendum.  
8 Plaintiff contends that these statements placed his life at risk, as Corcoran staff gave inmates access  
9 to other prisoners’ reports and information. Plaintiff argues that this implicated a liberty interest in  
10 “maintaining truth, his reputation and continued daily existence.” ECF No. 11, at 16. He believes  
11 that his medical condition and prior settlement places him “outside the normal operation of prison  
12 and in itself created a new liberty interest.” ECF No. 11, at 16. He contends that attacking him and  
13 forcing him to double cell-with mentally ill prisoners, gang members or other prisoners involved in  
14 activities detrimental to his health was an atypical hardship.

15 Plaintiff further believes that placing him in a double cell creates an unreasonable risk to his  
16 health because it aggravates his medical condition. He alleges that he “exudes a malodorous smell  
17 from his infections” and had been single-celled in the past because of this. ECF No. 11, at 18.  
18 Plaintiff contends that he cannot get up at 2 a.m. to tend to his wounds without a substantial risk of  
19 fighting his cell mate. He also believes that he has a liberty interest in being single-celled.

20 Plaintiff also alleges that Defendant Macias attempted to intimidate him prior to his  
21 Classification Committee meeting in an attempt to “subvert justice.” ECF No. 11, at 19. He  
22 believes that this was in retaliation for his charges of assault against Corcoran staff. Defendant  
23 Macias told Plaintiff that he would not be allowed to make “all sorts of accusations against Corcoran  
24 prison guards concerning their attack on him.” ECF No. 11, at 19. Plaintiff contends that only a  
25 counselor can perform pre-interviews prior to classification, and that Defendant Macias, a sergeant,  
26 had no authority to do so. Plaintiff alleges that Defendant Macias was part of the conspiracy to hide  
27 the assault, and that she retaliated against him and violated his right to free speech.  
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1 Finally, Plaintiff alleges that Defendant Sexton, Chief Deputy Warden, was at his  
2 Classification Committee hearing. Defendant Sexton refused to allow Plaintiff to introduce pertinent  
3 case information so that he could respond to the false charges that he supposedly had safety and  
4 security concerns. He alleges that Defendant Sexton made himself part of the conspiracy to cover up  
5 the assault. Defendant Sexton also refused to hear any case factors relating to Plaintiff's medical  
6 needs. Plaintiff believes that his actions were retaliatory "for said guards to protect their lies." ECF  
7 No. 11, at 20.

8 Based on these allegations, Plaintiff alleges violations of the First, Fourth, Eighth and  
9 Fourteenth Amendments.

10 **C. ANALYSIS**

11 1. Eighth Amendment- Excessive Force

12 The unnecessary and wanton infliction of pain violates the Cruel and Unusual Punishments  
13 Clause of the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5, 112 S.Ct. 995 (1992)  
14 (citations omitted). For claims arising out of the use of excessive physical force, the issue is  
15 "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and  
16 sadistically to cause harm." Wilkins v. Gaddy, 559 U.S. 34, 37, 130 S.Ct. 1175, 1178 (2010) (per  
17 curiam) (citing Hudson, 503 U.S. at 7) (internal quotation marks omitted); Furnace v. Sullivan, 705  
18 F.3d 1021, 1028 (9th Cir. 2013). The objective component of an Eighth Amendment claim is  
19 contextual and responsive to contemporary standards of decency, Hudson, 503 U.S. at 8 (quotation  
20 marks and citation omitted), and although *de minimis* uses of force do not violate the Constitution,  
21 the malicious and sadistic use of force to cause harm always violates contemporary standards of  
22 decency, regardless of whether or not significant injury is evident, Wilkins, 559 U.S. at 37-8, 130  
23 S.Ct. at 1178 (citing Hudson, 503 U.S. at 9-10) (quotation marks omitted); Oliver v. Keller, 289 F.3d  
24 623, 628 (9th Cir. 2002).

25 a. *Use of Force in Cell- Defendants Arnett, Hood, Guzman, Casas and Doe*

26 Plaintiff alleges that Defendants Arnett, Hood, Guzman, Casas and Doe kicked and kned  
27 him while he was handcuffed, though admittedly trying to resist being placed into a double cell. At  
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1 the screening stage, and considering the number of Defendants allegedly involved, the Court finds  
2 that this states a claim against Defendants Arnett, Hood, Guzman, Casas and Doe.<sup>3</sup>

3 b. *Other Allegations of Use of Force*

4 i. Defendant Casas

5 Plaintiff contends that he was handcuffed by Defendants Casas and Doe after he refused to  
6 be double celled. He alleges that they tried to force him up the stairs, and Defendant Casas told him  
7 that unless he had a safety concern, he would be double celled. In response, Plaintiff “planted his  
8 feet and loudly proclaimed: ‘I have an out of court settlement and I am not supposed to be housed at  
9 Corcoran period. An [sic] I’m supposed to be single-celled.’” ECF No. 11, at 14. Defendant Casas  
10 kept asking Plaintiff if he had safety concerns and Plaintiff kept responding with the same answer.  
11 Defendant Casas then swung Plaintiff towards the wall, pushing his head and trying to smash his  
12 face into the wall. At the last minute, Plaintiff blocked the majority of force with his foot and knee.

13 For claims arising out of the use of excessive physical force, the issue is “whether force was  
14 applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to  
15 cause harm.” Wilkins v. Gaddy, 559 U.S. 34, 37, 130 S.Ct. 1175, 1178 (2010) (per curiam) (citing  
16 Hudson, 503 U.S. at 7) (internal quotation marks omitted); Furnace v. Sullivan, 705 F.3d 1021, 1028  
17 (9th Cir. 2013). Plaintiff again admits that he refused an order to double cell, and then resisted  
18 Defendant Casas’ apparent attempts to move him after he was handcuffed. Plaintiff also contends  
19 that he “blocked” the majority of force. Under this scenario, which involves only one Defendant, the  
20 Court finds that this does not state a claim for relief.

21 ii. Defendant Guzman

22 Plaintiff alleges that Defendant Guzman approached him and asked what the problem was.  
23 Plaintiff again told him about the settlement, but Defendant Guzman asked if Plaintiff had any safety  
24 concerns. There is nothing about this encounter that suggests the use of any force.  
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28 <sup>3</sup> Plaintiff’s claim that the “assault” was ordered by Defendant Gonzales will be discussed below.

1                                   iii.     Defendants Hood and Arnett

2           Plaintiff contends that Defendants Hood and Arnett walked him to see Defendant Gonzales.  
3 After Plaintiff spoke to Defendant Gonzales, Defendant Gonzales ordered Plaintiff to a double cell  
4 and Defendants Hood and Arnett began to take him back across the yard. Plaintiff admits that he  
5 tried to “resist peacefully by stopping,” but Defendants Hood and Arnett bent his elbows above his  
6 head. ECF No. 11, at 12. Plaintiff contends that the arm hold was painful. Again, however,  
7 Plaintiff has admitted that he was resisting attempts to move him across the yard. Under this  
8 scenario, even though the arm hold may have caused pain, the facts do not suggest that Defendants  
9 Hood and Arnett used force maliciously and sadistically to cause harm. He therefore fails to state  
10 claim against them based on this incident.

11                                   iv.     Defendant Gonzales

12           Plaintiff contends that Defendant Gonzales ordered the assault. However, Plaintiff’s  
13 allegations are based solely on speculation. Defendant Gonzales asked Plaintiff if he had any safety  
14 concerns and, despite Plaintiff’s explanation about his prior settlement, ordered that he be taken to a  
15 double cell. These facts do no suggest, in any way, that Defendant Gonzales ordered that any action  
16 be taken against Plaintiff other than his placement in a double cell.

17           Plaintiff therefore fails to state a claim against Defendant Gonzales for the use of excessive  
18 force.

19                                   v.     Defendant Marsh

20           Plaintiff makes a vague allegation that Defendant Marsh was in the building during the  
21 attack, but failed to stop it. While a failure to protect can support an Eighth Amendment claim,  
22 Plaintiff’s allegations are insufficient to do so here.

23           The failure of prison officials to protect inmates from attacks by other inmates may rise to  
24 the level of an Eighth Amendment violation where prison officials know of and disregard a  
25 substantial risk of serious harm to the plaintiff. E.g., Farmer, 511 U.S. at 847; Hearns, 413 F.3d at  
26 1040.



1 Here, Plaintiff simply states that Defendant Marsh was “present in the building” during the  
2 attack, but this does not establish that Defendant Marsh knew of the attack, or had a reasonable  
3 opportunity to prevent the attack.

4 Plaintiff therefore fails to state a claim against Defendant Marsh.

5 2. Eighth Amendment- Deliberate Indifference

6 While the Eighth Amendment of the United States Constitution entitles Plaintiff to medical  
7 care, the Eighth Amendment is violated only when a prison official acts with deliberate indifference  
8 to an inmate’s serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012);  
9 Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091, 1096 (9th  
10 Cir. 2006). Plaintiff “must show (1) a serious medical need by demonstrating that failure to treat  
11 [his] condition could result in further significant injury or the unnecessary and wanton infliction of  
12 pain,” and (2) that “the defendant’s response to the need was deliberately indifferent.” Wilhelm, 680  
13 F.3d at 1122 (citing Jett, 439 F.3d 1091, 1096 (9th Cir. 2006)). Deliberate indifference is shown by  
14 “(a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need, and (b) harm  
15 caused by the indifference.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The  
16 requisite state of mind is one of subjective recklessness, which entails more than ordinary lack of  
17 due care. Snow, 681 F.3d at 985 (citation and quotation marks omitted); Wilhelm, 680 F.3d at 1122.

18 Plaintiff’s claim of deliberate indifference appears to be based on his contention that forcing  
19 him to double-cell will cause future harm to his health. However, Plaintiff cannot base a claim on a  
20 future event, which may or may not happen. Such allegations are speculative and do not support a  
21 claim for relief.

22 3. Due Process

23 The Due Process Clause protects Plaintiff against the deprivation of liberty without the  
24 procedural protections to which he is entitled under the law. Wilkinson v. Austin, 545 U.S. 209,  
25 221, 125 S.Ct. 2384 (2005). To state a claim, Plaintiff must first identify the interest at stake.  
26 Wilkinson, 545 U.S. at 221. Liberty interests may arise from the Due Process Clause or from state  
27 law. Id.

1                   a.       *False Documentation*

2           The Due Process Clause itself does not confer on inmates a liberty interest in avoiding more  
3 adverse conditions of confinement and an independent right to an accurate prison record, grounded  
4 in the Due Process Clause, has not been recognized. Hernandez v. Johnston, 833 F.2d 1316, 1319  
5 (9th Cir. 1987). Under state law, liberty interests created by prison regulations are limited to  
6 freedom from restraint which imposes atypical and significant hardship on the inmate in relation to  
7 the ordinary incidents of prison life, and Plaintiff’s allegations concerning his prison record do not  
8 support a claim for relief. Wilkinson, 545 U.S. at 221 (citing Sandin v. Conner, 515 U.S. 472, 484,  
9 115 S.Ct. 2293 (1995)) (quotation marks omitted).

10           Plaintiff argues that the documents placed his life in danger because Corcoran staff gave  
11 inmates access to prisoners’ information. He also suggests that he had a liberty interest in  
12 “maintaining truth, his reputation and continued daily existence.” ECF No. 11, at 16. Plaintiff does  
13 not support this with any facts, however, and there is no indication that this constitutes an atypical  
14 hardship. He therefore fails to state a claim against Defendants Marsh and Guzman based on  
15 falsification of documents.

16           Plaintiff also suggests that his medical condition would make it an atypical hardship to place  
17 him in a double cell, and that he has a liberty interest in being single-celled. Contrary to his belief,  
18 he has no liberty interest in single cell housing, regardless of his medical conditions.

19           This claim cannot be cured by amendment.

20                   b.       *Classification Hearing*

21           With respect to placement in administrative segregation, due process requires only that  
22 prison officials hold an informal nonadversary hearing within a reasonable time after the prisoner is  
23 segregated, inform the prisoner of the charges against him or the reasons for considering segregation,  
24 and allow the prisoner to present his views. Toussaint v. McCarthy, 801 F.2d 1080, 1100-01 (9th  
25 Cir. 1986) (quotation marks omitted), abrogated in part on other grounds, Sandin v. Conner, 515  
26 U.S. 472, 115 S.Ct. 2293 (1995); accord Bruce v. Ylst, 351 F.3d 1283, 1287 (9th Cir. 2003).

1 Prisoners are not entitled to detailed written notice of charges, representation by counsel or  
2 counsel substitute, an opportunity to present witnesses, or a written decision describing the reasons  
3 for placing the prisoner in administrative segregation. Toussaint, 801 F.2d at 1100-01 (quotation  
4 marks omitted). Further, due process does not require disclosure of the identity of any person  
5 providing information leading to the placement of a prisoner in administrative segregation. Id.  
6 (quotation marks omitted).

7 Plaintiff complains of a denial of due process in connection with a classification hearing.  
8 Specifically, he contends that Defendant Macias attempted to intimidate him prior to the hearing and  
9 dictate what Plaintiff could or could not say. He also alleges that Defendant Macias did so using a  
10 “pre-inquisition style” interview, which is not provided for in CDCR policy. That Defendant Macias  
11 may have intimidated him, or tried to tell him that he could not make certain allegations, however,  
12 does not violate the Due Process Clause. Based on Plaintiff’s allegations, Defendant Sexton, not  
13 Defendant Macias, prevented Plaintiff from defending against the charges at the hearing.

14 In that regard, Plaintiff contends that Defendant Sexton refused to allow him to defend  
15 himself “by responding to the ‘false charge’ that Plaintiff supposedly said he had safety concerns.”  
16 ECF No. 11, at 20. Defendant Sexton also refused to hear about Plaintiff’s medical needs. As  
17 explained above, the Due Process Clause requires that Plaintiff be permitted to present his views,  
18 and this would include Plaintiff’s refutation of the reason why he was being placed in Ad-Seg.  
19 Plaintiff therefore states a due process claim against Defendant Sexton.

20 4. First Amendment

21 a. *Retaliation*

22 “Prisoners have a First Amendment right to file grievances against prison officials and to be  
23 free from retaliation for doing so.” Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012) (citing  
24 Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009)). “Within the prison context, a viable claim  
25 of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took  
26 some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that  
27 such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not  
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1 reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th  
2 Cir. 2005).

3 Here, Plaintiff alleges that Defendant Macias tried to intimidate him prior to his  
4 Classification Hearing in retaliation for filing a complaint against Corcoran staff. Even assuming  
5 that telling Plaintiff that he cannot “make all sorts of accusations against Corcoran staff concerning  
6 their attack” is adverse action, he speculates that she did this because of his complaint. Moreover,  
7 there is no indication that any of his First Amendment rights were chilled because of her alleged  
8 intimidation. Plaintiff’s alleged issues at the hearing are related to Defendant Sexton, not Defendant  
9 Macias. Plaintiff therefore fails to state a retaliation claim against her.

10 Turning to Defendant Sexton, Plaintiff believes that he retaliated against him by not  
11 permitting him to discuss certain issues at his Classification Committee hearing. Other than citing  
12 his own belief, however, Plaintiff does not provide any facts to support a finding that Defendant  
13 Sexton’s actions were taken *because of* Plaintiff’s grievance. He therefore fails to state a retaliation  
14 claim against Defendant Sexton.

15 b. *Freedom of Speech*

16 The free speech standard is diminished in prisons, as compared to the nation at large, because  
17 it must yield to the need for creating a climate of consistency and control. Shaw v. Murphy, 532  
18 U.S. 223, 229 (2001). Thus, “an inmate retains those First Amendment rights not inconsistent with  
19 his status as a prisoner or with the legitimate penological objectives of the corrections system.”  
20 Prison Legal News v. Cook, 238 F.3d 1145, 1149 (9th Cir.2001) (quoting Jones v. N.C. Prisoners’  
21 Labor Union, Inc., 433 U.S. 119, 129 (1977)) (internal quotation marks omitted). The question is  
22 whether officials’ disciplinary decisions were commiserate with their authority to control the prison  
23 climate.

24 Plaintiff’s claim is vague, but appears to be related to his contention that he was not  
25 permitted to speak on certain issues at his Classification Committee hearing. Given the deference  
26 afforded to prison authorities, and the fact that this claim is cognizable under the Due Process clause,  
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1 the Court will not find a right to freedom of speech during a classification hearing. This claim  
2 cannot be cured by amendment.

3 5. Fourth Amendment

4 Plaintiff's Fourth Amendment claim is based the same set of facts that underlie his Eighth  
5 Amendment excessive force claim. However, the Fourth Amendment's prohibition against  
6 excessive force applies to non-prisoners, i.e., individuals during an arrest. When prison officials use  
7 excessive force against prisoners, they violate the inmates' Eighth Amendment right to be free from  
8 cruel and unusual punishment. Clement v. Gomez, 298 F.3d 898, 903 (9th Cir. 2002)

9 Plaintiff therefore fails to state a claim under the Fourth Amendment.

10 6. Conspiracy

11 Insofar as Plaintiff alleges a general conspiracy, he fails to adequately allege the existence of  
12 a conspiracy. In the context of conspiracy claims brought pursuant to section 1983, such a complaint  
13 must "allege [some] facts to support the existence of a conspiracy among the defendants." Buckey  
14 v. County of Los Angeles, 968 F.2d 791, 794 (9th Cir. 1992); Karim-Panahi v. Los Angeles Police  
15 Department, 839 F.2d 621, 626 (9th Cir. 1988). Plaintiff must allege that defendants conspired or  
16 acted jointly in concert and that some overt act was done in furtherance of the conspiracy. Sykes v.  
17 State of California, 497 F.2d 197, 200 (9th Cir. 1974).

18 Plaintiff has not alleged any facts supporting the existence of a conspiracy, i.e., the existence  
19 of an agreement or a meeting of the minds, between Defendants. Avalos v. Baca, 596 F.3d 583, 592  
20 (9th Cir. 2010); Franklin v. Fox, 312 F.3d 423, 441 (9th Cir. 2001). He therefore fails to state a  
21 conspiracy claim.

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1 **D. CONCLUSION AND ORDER**

2 This action shall proceed on the following claims: (1) an Eighth Amendment excessive force  
3 claim against Defendants Arnett, Hood, Guzman, Casas and Doe; and (2) a due process claim  
4 against Defendant Sexton. All remaining claims and Defendants Gonzales, Macias and Marsh are  
5 DISMISSED from this action for failure to state a claim.

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7 IT IS SO ORDERED.

8 Dated: November 10, 2015

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE

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