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

GUSTAVO TORRES,  
Plaintiff,

v.

GUTIERREZ, et al.,  
Defendants.

Case No. 1:15-cv-0575-DLB

ORDER DISMISSING CERTAIN  
DEFENDANTS AND CLAIMS FOR  
FAILURE TO STATE A CLAIM

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Plaintiff Gustavo Torres (“Plaintiff”), a state inmate in the custody of the California Department of Corrections and Rehabilitation, is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on April 15, 2015. He names Acting Warden J. Gutierrez, Sgt. G. Arrellano, CO R. Montanez and Dr. Abrams as Defendants.<sup>1</sup>

On June 5, 2015, the Court screened Plaintiff’s complaint and ordered him to either file an amended complaint, or notify the Court of his willingness to proceed only on the cognizable claims against Defendants Arrellano and Montanez.

On July 17, 2015, Plaintiff notified the Court that he would not amend, and that he was willing to proceed only on his cognizable claims.

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<sup>1</sup> Plaintiff consented to the jurisdiction of the United States Magistrate Judge on May 13, 2015.

1 **A. SCREENING STANDARD**

2 The Court is required to screen complaints brought by prisoners seeking relief against a  
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
4 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
5 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
6 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).  
7 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall  
8 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a  
9 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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

17 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or  
18 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d  
19 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);  
20 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the actions  
21 or omissions of each named defendant to a violation of his rights; there is no respondeat superior  
22 liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609  
23 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir.  
24 2009); Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to state a  
25 plausible claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,  
26 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting this plausibility  
27 standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.  
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1 **B. ALLEGATIONS IN COMPLAINT**

2 Plaintiff is currently incarcerated at Corcoran State Prison. The events at issue occurred  
3 while he was housed at the California Correctional Institution (“CCI”) in Tehachapi, California.

4 Plaintiff alleges that on July 28, 2014, he reported his safety concerns to Sgt. Escartega.  
5 Plaintiff did not want to share a cell with just any inmate because of his sex charges and his prior  
6 problems with cellmates. He requested that he be housed with inmates with the same charges so  
7 that he could avoid more trouble. However, COs at CCI kept pressing Plaintiff to take a cellmate  
8 and ignored his safety concerns.

9 On August 5, 2014, Sgt. Barboza issued Plaintiff a 115 for refusing a cellmate, though he  
10 failed to counsel Plaintiff prior to issuing the 115. Sgt. Barboza also falsely stated that Plaintiff  
11 was not a participant in the Mental Health Program.

12 Due to the 115, Plaintiff was placed in a management cell for 50 days. During that time,  
13 he was deprived of usually authorized items, such as a clean mattress, clean bedding, reading  
14 material, forms to appeal the 115 and writing materials. Plaintiff alleges that Defendant Arrellano  
15 was responsible for Plaintiff’s placement in the management cell and deprived him of the usual  
16 items as punishment for refusing a cellmate for safety concerns. Plaintiff was not given a proper  
17 mattress and had to sleep on the floor for 50 days, causing back and neck pain. He was also not  
18 given clean sheets or a bar of soap to do his own laundry.

19 While in his management cell, Plaintiff asked to be housed with an inmate with the same  
20 sex-related charges, or to be put on single cell status. Officers ignored his requests and indicated  
21 that there was no reason why Sensitive Needs Yard inmates cannot cell together.

22 On September 15, 2014, Defendant Abrams took Plaintiff off his medications, stating that  
23 Plaintiff did not need them. Plaintiff alleges that he needed the medication because he is mentally  
24 disturbed and suffers from mental distress, depression, paranoia and anxiety.

25 On September 19, 2014, Defendant Montanez issued Plaintiff another 115 for refusing a  
26 cellmate. Plaintiff alleges that COs were trying to make him share a cell with Inmate Duran, a  
27 gang member who would have been required to read Plaintiff’s paperwork. Plaintiff refused  
28 Inmate Duran to prevent trouble and a possible assault.

1 On September 26, 2014, Sgt. Martinez and Montanez gave Plaintiff a cellmate, and  
2 Defendant Montanez threatened Plaintiff with another 115 if he refused. Defendant Montanez told  
3 Plaintiff that Inmate Diaz was also a sex offender and Plaintiff therefore agreed to cell with him.  
4 However, a week later, Inmate Diaz told Plaintiff that he was not a sex offender, and that he could  
5 not live with a sex-offender. Diaz asked to see Plaintiff's paperwork and when Plaintiff refused,  
6 Diaz became upset and threatened Plaintiff's safety.

7 On October 4, 2014, Inmate Diaz tried to assault Plaintiff for refusing to show his  
8 paperwork. As they fought, Plaintiff cut Diaz in the face with a razor blade while he was trying to  
9 defend himself. Plaintiff contends that Defendant Montanez lied about Diaz just so he could give  
10 Plaintiff a cellmate, in violation of his Eighth Amendment rights.

11 Plaintiff also contends that Defendant Abrams is to blame for the fight because he denied  
12 his medications and he was feeling depressed and hopeless. Plaintiff alleges that Defendant  
13 Abrams was careless and unprofessional, and acted with deliberate indifference to Plaintiff's  
14 mental health needs.

15 On October 8, 2014, Defendants Arrellano and Montanez continued to harass Plaintiff by  
16 searching his cell without cause when Plaintiff was at his mental health appointment with  
17 Defendant Abrams. Plaintiff contends that there was no reason to search his cell because it had  
18 already been searched twice after the incident with Inmate Diaz. They took some of Plaintiff's  
19 personal books and exchanged his good mattress for a "torn and stinky" one. ECF No. 1, at 7.  
20 Plaintiff contends that this was retaliation.

21 On October 16, 2014, Defendant Montanez continued to harass Plaintiff by searching his  
22 cell without cause in retaliation for Plaintiff telling Defendant Gutierrez of CO misconduct during  
23 committee. However, Plaintiff was accused of lying. Plaintiff contends that Defendant Gutierrez  
24 is responsible for training his COs.

25 On October 26, 2014, during his 115 hearing, Plaintiff alleges that Defendant Montanez  
26 and CO Delgado verbally assaulted him by making harsh comments about his offenses. Upon  
27 escort to his cell, Defendant Montanez threatened Plaintiff by telling him that he was "just a  
28 fucking rapist and a woman beater," and that he'd like to see Plaintiff fight him. ECF No. 1, at 7.

1 He ordered his fellow COs to hold Plaintiff against the wall while he searched Plaintiff's cell for a  
2 fourth time in two weeks. Plaintiff contends that Defendant Montanez violated his rights by  
3 continuously harassing him and threatening his safety.

4 On October 28, 2014, Plaintiff was denied a move and had a mental breakdown. Plaintiff  
5 tried to commit suicide and was taken to the suicide unit for care. Plaintiff believes that he was  
6 being retaliated against for his crimes against society. Plaintiff continued to request his  
7 medications, but Defendant Abrams denied mental health care. During one appointment, Plaintiff  
8 asked Defendant Abrams what would happen if he went crazy on his cellmate because he didn't  
9 have his medications. Defendant Abrams told Plaintiff that "he may have to do what he had to  
10 do." ECF No. 1, at 9.

11 On November 2, 2014, Plaintiff filed a staff complaint about these issues, but it was  
12 cancelled with the pretext that Plaintiff refused to be interviewed on December 6, 2014. Plaintiff  
13 states that he was never asked to leave his cell for an interview.

14 A second complaint about the same issues was supposed to be mailed on January 28, 2015.  
15 However, on January 29, 2014, Defendant Montanez came to Plaintiff's door holding Plaintiff's  
16 mail and demanded to know why Plaintiff was filing complaints against him. Defendant  
17 Montanez told Plaintiff that he should have learned his lesson. Plaintiff alleges that Defendant  
18 Montanez denied Plaintiff the right under state law and CDCR rules to communicate  
19 confidentially with the court, attorneys and public officials. Plaintiff believes that this was done in  
20 retaliation for Plaintiff's crimes against society.

21 Plaintiff alleges that Defendant Montanez's disposition of his documents prevented him  
22 from obtaining relief from the institution's appeal system. He believes that Defendant Montanez  
23 went through his legal mail before it left the institution.

24 For relief, Plaintiff requests an injunction to prevent officials at CCI from causing further  
25 harm and monetary damages.

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1 **C. DISCUSSION**

2 1. Defendant Gutierrez

3 Supervisory personnel may not be held liable under section 1983 for the actions of  
4 subordinate employees based on *respondeat superior*, or vicarious liability. Crowley v. Bannister,  
5 734 F.3d 967, 977 (9th Cir. 2013); accord Lemire v. California Dep't of Corr. and Rehab., 726  
6 F.3d 1062, 1074-75 (9th Cir. 2013); Lacey v. Maricopa County, 693 F.3d 896, 915-16 (9th Cir.  
7 2012) (en banc). “A supervisor may be liable only if (1) he or she is personally involved in the  
8 constitutional deprivation, or (2) there is a sufficient causal connection between the supervisor’s  
9 wrongful conduct and the constitutional violation.” Crowley, 734 F.3d at 977 (citing Snow, 681  
10 F.3d at 989) (internal quotation marks omitted); accord Lemire, 726 F.3d at 1074-75; Lacey, 693  
11 F.3d at 915-16. “Under the latter theory, supervisory liability exists even without overt personal  
12 participation in the offensive act if supervisory officials implement a policy so deficient that the  
13 policy itself is a repudiation of constitutional rights and is the moving force of a constitutional  
14 violation.” Crowley, 734 F.3d at 977 (citing Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989))  
15 (internal quotation marks omitted).

16 In his complaint, Plaintiff alleges that Defendant Gutierrez violated his rights because he  
17 was responsible for the training the COs with whom Plaintiff had issues. A supervisor’s failure to  
18 train subordinates can give rise to individual liability under Section 1983 where the supervisor’s  
19 failure amounts to deliberate indifference to the rights of persons with whom the employees are  
20 likely to come into contact. See Canell v. Lightner, 143 F.3d 1210, 1213-14 (9th Cir.1998). To  
21 impose liability, Plaintiff is required to show that the inadequate training actually caused the  
22 constitutional violation, and that the violation would have been avoided had the employees been  
23 properly trained. Id. at 389-91; Lee v. City of Los Angeles, 250 F.3d 668, 681 (9th Cir.2001)  
24 (citations and internal quotations omitted). “A pattern of similar constitutional violations by  
25 untrained employees is ordinarily necessary to demonstrate deliberate indifference for purposes of  
26 failure to train, ‘though there exists a ‘narrow range of circumstances [in which] a pattern of  
27 similar violations might not be necessary to show deliberate indifference.’” Id. (quoting Connick  
28 v. Thompson, 131 S.Ct. 1350, 1360-61 (2011)). In this “narrow range of circumstances,” a single

1 incident may suffice to establish deliberate indifference where the violation of constitutional rights  
2 is a “highly predictable consequence” of a failure to train because that failure to train is “so  
3 patently obvious.” Connick, 131 S.Ct. at 1361.

4 Plaintiff has not made allegations sufficient to state a claim against Defendant Gutierrez.  
5 He has not shown that any alleged inadequate training actually caused the violations, and that any  
6 violations would have been avoided had the employees been properly trained.

7 2. Eighth Amendment- Medical Care

8 While the Eighth Amendment of the United States Constitution entitles Plaintiff to medical  
9 care, the Eighth Amendment is violated only when a prison official acts with deliberate  
10 indifference to an inmate’s serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir.  
11 2012), overruled in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir.  
12 2014); Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091,  
13 1096 (9th Cir. 2006). Plaintiff “must show (1) a serious medical need by demonstrating that  
14 failure to treat [his] condition could result in further significant injury or the unnecessary and  
15 wanton infliction of pain,” and (2) that “the defendant’s response to the need was deliberately  
16 indifferent.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d 1091, 1096 (9th Cir. 2006)).  
17 Deliberate indifference is shown by “(a) a purposeful act or failure to respond to a prisoner’s pain  
18 or possible medical need, and (b) harm caused by the indifference.” Wilhelm, 680 F.3d at 1122  
19 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective recklessness, which  
20 entails more than ordinary lack of due care. Snow, 681 F.3d at 985 (citation and quotation marks  
21 omitted); Wilhelm, 680 F.3d at 1122.

22 Plaintiff contends that Defendant Abrams denied him mental health treatment by taking  
23 him off his medications. Contrary to Defendant Abram’s decision, Plaintiff believed that he  
24 needed the medications, and he alleges that he became depressed and hopeless as a result. This  
25 wasn’t a case where Plaintiff was not receiving *any* treatment, however, as he continued to be seen  
26 by Defendant Abrams. Rather, Plaintiff simply disagrees with Defendant Abrams decision to take  
27 him off of his medications. “A difference of opinion between a physician and the prisoner - or  
28 between medical professionals - concerning what medical care is appropriate does not amount to

1 deliberate indifference.” Snow v. McDaniel, 681 F.3d 978, 987 (9th Cir. 2012) (citing Sanchez v.  
2 Vild, 891 F.2d 240, 242 (9th Cir. 1989)), overruled in part on other grounds, Peralta v. Dillard,  
3 744 F.3d 1076, 1082-83 (9th Cir. 2014); Wilhelm v. Rotman, 680 F.3d 1113, 1122-23 (9th Cir.  
4 2012) (citing Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)). Rather, Plaintiff “must  
5 show that the course of treatment the doctors chose was medically unacceptable under the  
6 circumstances and that the defendants chose this course in conscious disregard of an excessive risk  
7 to [his] health.” Snow, 681 F.3d at 988 (citing Jackson, 90 F.3d at 332) (internal quotation marks  
8 omitted).

9 Plaintiff has not alleged that Defendant Abram’s treatment decisions were medically  
10 unacceptable under the circumstances and that Defendant Abram chose the course of treatment in  
11 conscious disregard of an excessive risk to Plaintiff. Plaintiff alleges that he once asked  
12 Defendant Abrams what would happen if he went crazy on his cellmate, and Defendant Abrams  
13 responded that Plaintiff “may have to do what he had to do.” Plaintiff’s statement to Defendant  
14 Abrams does not, however, show that Defendant Abram’s decision to take him off of his  
15 medications was done in conscious disregard of an excessive risk to Plaintiff. It was a treatment  
16 decision, and Plaintiff’s disagreement with the decision does not state a claim under the Eighth  
17 Amendment.

### 18 3. Eighth Amendment- Conditions of Confinement

19 The Eighth Amendment’s prohibition against cruel and unusual punishment protects  
20 prisoners not only from inhumane methods of punishment but also from inhumane conditions of  
21 confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006) (citing Farmer v.  
22 Brennan, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994) and Rhodes v. Chapman, 452 U.S. 337, 347,  
23 101 S.Ct. 2392 (1981)) (quotation marks omitted). While conditions of confinement may be, and  
24 often are, restrictive and harsh, they must not involve the wanton and unnecessary infliction of  
25 pain. Morgan, 465 F.3d at 1045 (citing Rhodes, 452 U.S. at 347) (quotation marks omitted).  
26 Thus, conditions which are devoid of legitimate penological purpose or contrary to evolving  
27 standards of decency that mark the progress of a maturing society violate the Eighth Amendment.  
28 Morgan, 465 F.3d at 1045 (quotation marks and citations omitted); Hope v. Pelzer, 536 U.S. 730,



1 737, 122 S.Ct. 2508 (2002); Rhodes, 452 U.S. at 346.

2 Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,  
3 clothing, sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th  
4 Cir. 2000) (quotation marks and citations omitted), but not every injury that a prisoner sustains  
5 while in prison represents a constitutional violation, Morgan, 465 F.3d at 1045 (quotation marks  
6 omitted). To maintain an Eighth Amendment claim, a prisoner must show that prison officials  
7 were deliberately indifferent to a substantial risk of harm to his health or safety. E.g., Farmer, 511  
8 U.S. at 847; Thomas v. Ponder, 611 F.3d 1144, 1150-51 (9th Cir. 2010); Foster v. Runnels, 554  
9 F.3d 807, 812-14 (9th Cir. 2009); Morgan, 465 F.3d at 1045; Johnson, 217 F.3d at 731; Frost v.  
10 Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

11 Plaintiff alleges that Defendant Arrellano deprived him of certain items while he was in the  
12 management cell. Plaintiff states a claim insofar as he alleges that Defendant Arrellano deprived  
13 him of a clean mattress and clean sheets for fifty days. Deprivation of the remaining items,  
14 including reading materials, forms to appeal and writing materials, do not rise to the level of an  
15 Eighth Amendment violation.

16 4. Eighth Amendment- Failure to Protect

17 Prison officials have a duty under the Eighth Amendment to protect prisoners from  
18 violence at the hands of other prisoners because being violently assaulted in prison is simply not  
19 part of the penalty that criminal offenders pay for their offenses against society. Farmer, 511 U.S.  
20 at 833-34 (quotation marks omitted); Clem v. Lomeli, 566 F.3d 1177, 1181 (9th Cir. 2009);  
21 Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005). However, prison officials are liable  
22 under the Eighth Amendment only if they demonstrate deliberate indifference to conditions posing  
23 a substantial risk of serious harm to an inmate; and it is well settled that deliberate indifference  
24 occurs when an official acted or failed to act despite his knowledge of a substantial risk of serious  
25 harm. Farmer, 511 U.S. at 834, 841 (quotations omitted); Clem, 566 F.3d at 1181; Hearns, 413  
26 F.3d at 1040.

27 Plaintiff's allegations center on his contention that he could not be housed with certain  
28 inmates because of his sex-related charges. He alleges that if he is housed with inmates who do

1 not have such charges, he could be subject to assault. In this regard, Plaintiff alleges that  
2 Defendant Montanez lied to him about Inmate Diaz and Inmate Diaz subsequently assaulted  
3 Plaintiff. This states a claim under the Eighth Amendment against Defendant Montanez.

4 5. Eighth Amendment- Excessive Force

5 For claims arising out of the use of excessive physical force, the issue is “whether force  
6 was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically  
7 to cause harm.” Wilkins v. Gaddy, 559 U.S. 34, 37, 130 S.Ct. 1175, 1178 (2010) (per curiam)  
8 (citing Hudson, 503 U.S. at 7) (internal quotation marks omitted); Furnace v. Sullivan, 705 F.3d  
9 1021, 1028 (9th Cir. 2013). The objective component of an Eighth Amendment claim is  
10 contextual and responsive to contemporary standards of decency, Hudson, 503 U.S. at 8 (quotation  
11 marks and citation omitted), and although de minimis uses of force do not violate the Constitution,  
12 the malicious and sadistic use of force to cause harm always violates contemporary standards of  
13 decency, regardless of whether or not significant injury is evident, Wilkins, 559 U.S. at 37-8, 130  
14 S.Ct. at 1178 (citing Hudson, 503 U.S. at 9-10) (quotation marks omitted); Oliver v. Keller, 289  
15 F.3d 623, 628 (9th Cir. 2002).

16 Plaintiff alleges that Defendant Montanez verbally assaulted him and threatened him.  
17 However, verbal harassment or abuse alone is not sufficient to state a claim under section 1983,  
18 Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987), and threats do not rise to the level of  
19 a constitutional violation, Gaut v. Sunn, 810 F.2d 923, 925 (9th Cir. 1987).

20 Plaintiff therefore fails to state a claim against Defendant Montanez based on verbal abuse  
21 and/or threats.

22 6. First Amendment Retaliation

23 Allegations of retaliation against a prisoner’s First Amendment rights to speech or to  
24 petition the government may support a section 1983 claim. Silva v. Di Vittorio, 658 F.3d 1090,  
25 1104 (9th Cir. 2011); Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985); see also Valandingham  
26 v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v. Rowland, 65 F.3d 802, 807 (9th Cir. 1995).

27 “Within the prison context, a viable claim of First Amendment retaliation entails five basic  
28 elements: (1) An assertion that a state actor took some adverse action against an inmate (2)

1 because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s  
2 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate  
3 correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005); accord Watison v.  
4 Carter, 668 F.3d 1108, 1114-15 (9th Cir. 2012); Silva, 658 at 1104; Brodheim v. Cry, 584 F.3d  
5 1262, 1269 (9th Cir. 2009).

6       Insofar as Plaintiff alleges that Defendants retaliated against him because of his “crimes  
7 against society,” he does not state a claim in the context of the First Amendment. Plaintiff’s  
8 “crimes against society” are not constitutionally protected conduct and do not support a retaliation  
9 claim.

10       Plaintiff also alleges that Defendant Montanez conducted a retaliatory cell search on  
11 October 16, 2014, after Plaintiff reported CO misconduct. This states a claim under the First  
12 Amendment.

13       As to the October 8, 2014, search by Defendants Arrellano and Montanez, Plaintiff does  
14 not link the searches to any protected conduct. Although he states that the searches were  
15 retaliatory, he does not state what he did to cause the alleged retaliation. He therefore fails to state  
16 a claim for the October 8, 2014, search.

17       7.     Appeals Process

18       “The Fourteenth Amendment’s Due Process Clause protects persons against deprivations  
19 of life, liberty, or property; and those who seek to invoke its procedural protection must establish  
20 that one of these interests is at stake.” Wilkinson v. Austin, 545 U.S. 209, 221, 125 S.Ct. 2384  
21 (2005). Plaintiff does not a have protected liberty interest in the processing his appeals, and  
22 therefore, he cannot pursue a claim for denial of due process with respect to the handling or  
23 resolution of his appeals. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v.  
24 Adams, 855 F.2d 639, 640 (9th Cir. 1988)).

25       Accordingly, Plaintiff fails to state a claim against Defendant Montanez for preventing him  
26 from obtaining relief from the prison appeals system.

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1           8.       Violations of CDCR Regulations and State Law

2           Plaintiff’s vague claim that he was prevented from confidentially communicating with  
3 courts, attorneys and public officials does not state a claim for relief. There is no specific state law  
4 that requires that inmates be permitted to correspond confidentially with certain sources.

5           Moreover, the Court is unaware of any authority for the proposition that there exists a  
6 private right of action available to Plaintiff for violation of Title 15 regulations and ample district  
7 court decisions hold otherwise. E.g., Vasquez v. Tate, No. 1:10-cv-1876 JLT (PC), 2012 WL  
8 6738167, at \*9 (E. D. Cal. Dec. 28, 2012); Davis v. Powell, 901 F.Supp.2d 1196, 1211 (S.D. Cal.  
9 2012); Meredith v. Overley, No. 1:12-cv-00455-MJS (PC), 2012 WL 3764029, at \*4 (E.D. Cal.  
10 Aug. 29, 2012); Parra v. Hernandez, No. 08cv0191-H (CAB), 2009 WL 3818376, at \*8 (S.D. Cal.  
11 Nov. 13, 2009); Davis v. Kissinger, No. CIV S-04-0878 GEB DAD P, 2009 WL 256574, at \*12  
12 n.4 (E.D. Cal. Feb. 3, 2009), adopted in full, 2009 WL 647350 (Mar. 10, 2009).

13           9.       Injunctive Relief

14           When an inmate seeks injunctive or declaratory relief concerning the prison where he is  
15 incarcerated, his claims for such relief become moot when he is no longer subjected to those  
16 conditions. Alvarez v. Hill, 667 F.3d 1061, 1063-64 (9th Cir. 2012); Nelson v. Heiss, 271 F.3d  
17 891, 897 (9th Cir. 2001); Dilley v. Gunn, 64 F.3d 1365, 1368 (9th Cir. 1995); Johnson v. Moore,  
18 948 F.2d 517, 519 (9th Cir. 1991).

19           In his request for relief, Plaintiff asks for injunctive relief to prevent COs at CCI from  
20 causing future harm at the hands of Plaintiff’s cellmates. He requests the same relief in his April  
21 15, 2015, “order to show cause for preliminary injunction.” However, Plaintiff has since  
22 transferred to Corcoran State Prison, and his injunctive relief claims are now moot.

23 **D.       CONCLUSION AND ORDER**

24           The Court ORDERS that this action go forward on the following claims: (1) an Eighth  
25 Amendment conditions of confinement claim against Defendant Arrellano; (2) an Eighth  
26 Amendment failure to protect claim against Defendant Montanez; and (3) a First Amendment  
27 retaliation claim against Defendant Montanez.<sup>2</sup>

28 \_\_\_\_\_  
<sup>2</sup> The Court will instruct Plaintiff on service by separate order.

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He does not state any further claims against any other Defendants, and Defendants Gutierrez and Abrams are DISMISSED from this action.

IT IS SO ORDERED.

Dated: June 18, 2015

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE