

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 ISRAEL RIOS,

12 Plaintiff,

13 v.

14 KATHY CIUFFINI, et al.,  
15

16 Defendants.  
17  
18

1:15-cv-01028-GSA-PC

**ORDER DIRECTING THE CLERK'S  
OFFICE TO ADMINISTRATIVELY  
RE-DESIGNATE THIS ACTION AS A  
440 CIVIL ACTION AND RANDOMLY  
REASSIGN MAGISTRATE JUDGE**

19 **I. BACKGROUND**

20 This case was filed on July 6, 2015, by plaintiff Israel Rios, a state prisoner proceeding  
21 pro se under 42 U.S.C. § 1983. (ECF No. 1.)<sup>1</sup> On July 7, 2015, Plaintiff was granted leave to  
22 proceed in forma pauperis. (ECF No. 5.)

23 The court screened Plaintiff's Complaint under 28 U.S.C. § 1915A and issued an order  
24 on October 4, 2016, dismissing the Complaint for violation of Rule 8(a) of the Federal Rules of  
25 Civil Procedure, with leave to amend. (ECF No. 10.) On November 3, 2016, Plaintiff filed the  
26 First Amended Complaint, which is now before the court for screening. (ECF No. 12.)  
27

28 <sup>1</sup> On July 24, 2015, Plaintiff consented to Magistrate Judge jurisdiction in this action pursuant to  
28 U.S.C. § 636(c), and no other parties have made an appearance. (ECF No. 6.)

1  
2 **II. FIRST AMENDED COMPLAINT – PLAINTIFF’S ALLEGATIONS**

3 Plaintiff is presently incarcerated at High Desert State Prison in Susanville, California.  
4 The events at issue in the First Amended Complaint allegedly occurred when Plaintiff was  
5 incarcerated at Corcoran State Prison (CSP) in Corcoran, California, in the custody of the  
6 California Department of Corrections and Rehabilitation. Plaintiff names as defendants  
7 Gregory E. Strickland (Kings County District Attorney), Kathy Ciuffini (Deputy District  
8 Attorney), and J. Torres (Correctional Officer (C/O), CSP).

9 Plaintiff’s allegations follow. While housed at CSP, Plaintiff was issued a Rules  
10 Violation Report (RVR) for possession of escape paraphernalia. Plaintiff alleges that pursuant  
11 to the California Code of Regulation, Title 15, Crime Prevention and Correction, this charge  
12 does not meet the criteria for seeking criminal prosecution. Therefore, C/O M. Bravo, who  
13 was in charge of distribution of the RVR, told Plaintiff that he (Plaintiff) was not able to  
14 postpone this matter to prepare any kind of defense.

15 On March 30, 2014, Plaintiff was found guilty at a disciplinary hearing by Hearing  
16 Officer Lieutenant E. Silva. Plaintiff submitted an inmate 602 appeal to the Office of Appeals  
17 in Sacramento, alleging that he was not properly advised. Plaintiff was scheduled for court on  
18 July 10, 2014, and he addressed the matter with C/O M. Bravo who advised Plaintiff to contact  
19 C/O J. Torres. Ms. J. Torres is in charge of disciplinary records. When Plaintiff addressed the  
20 matter with Torres and provided her with the case number and the courthouse hearing the case,  
21 Torres constantly neglected the facts. In an attempt to misguide Plaintiff, Torres referred to  
22 another case for which Plaintiff had already been sentenced in Kern County in August 2014.  
23 Torres’ negligence led to D.A. Gregory E. Strickland wrongfully filing charges and allowing  
24 Deputy D.A. Kathy Ciuffini to prosecute the case, threatening Plaintiff with life in prison under  
25 the Three Strikes law. Plaintiff would not take a deal due to the violation of his due process  
26 rights. Deputy D.A. Ciuffini transferred the case to Superior Court and pushed for a trial  
27 schedule for September 22, 2014. Plaintiff appeared at the Kings County Superior Court on  
28 September 22, 2014 to start trial. Ciuffini again attempted to force Plaintiff to take a plea,

1 giving up his rights to file a claim, which Plaintiff did not agree to do. Still, all of the charges  
2 were dismissed.

3 Plaintiff seeks monetary damages as relief.

4 **III. DISCUSSION**

5 This case was initially opened by this court on July 6, 2015, as a prisoner civil rights  
6 action concerning conditions of confinement, and designated 550 suit (Prisoner: Civil Rights.)  
7 (Court record.) However, Plaintiff's allegations in the First Amended Complaint do not  
8 concern the conditions of his confinement. Instead, Plaintiff complains that he was not  
9 properly advised about the charges against him and was wrongfully prosecuted in Superior  
10 Court. Based on these allegations, this case should be re-designated as a civil case with nature  
11 of suit as 440.

12 **IV. CONCLUSION**

13 Based on the foregoing, the Clerk's Office is HEREBY DIRECTED to:

- 14 1. Re-designate this action as a 440 civil action;
- 15 2. Randomly assign this case to another magistrate judge, and to a district judge if  
16 if needed, for any further proceedings which may be appropriate or required;  
17 and
- 18 3. The parties shall omit the PC designation from the new case number.

19  
20 IT IS SO ORDERED.

21 Dated: August 26, 2017

21 /s/ Gary S. Austin  
22 UNITED STATES MAGISTRATE JUDGE