



1 as to the claims found not to be cognizable, and recommended dismissal of all remaining claims  
2 and defendants. (*Id.*) The findings and recommendations provided plaintiff fourteen days within  
3 which to file any objections thereto. After being granted one extension of time in which to do so,  
4 plaintiff filed his objections on July 7, 2017. (Doc. No. 16.)

5 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the  
6 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,  
7 including plaintiff's objections, the court finds the findings and recommendations to be supported  
8 by the record and by proper analysis. Having reviewed plaintiff's objections, the court finds them  
9 to lack merit.

10 In his objections, plaintiff first argues that dismissal of his due process claim against  
11 defendant Davis was improper. (*See id.* at 3–4.) In his first amended complaint, plaintiff alleges  
12 that defendant Davis issued a false RVR against plaintiff for “possession and distribution of a  
13 controlled substance.” (*See* Doc. No. 10 at 21.) Plaintiff now argues that the disposition of that  
14 RVR resulted in him being sentenced to nine months in segregated housing, a loss of visitation  
15 rights, and the addition of eight points to his placement score. (Doc. No. 16 at 3–4.) In the  
16 pending findings and recommendations, the magistrate judge correctly pointed out that plaintiff  
17 had no constitutional right to be free of unfounded prison disciplinary charges but was instead  
18 only entitled to appropriate procedures in his RVR hearing prior to being deprived of a liberty  
19 interest. (*See* Doc. No. 11 at 8–9.) As a result, plaintiff's due process claim against defendant  
20 Davis is properly subject to dismissal. On the other hand, in light of plaintiff's allegations and as  
21 concluded by the magistrate judge, plaintiff's claims against defendant Lunes based on defendant  
22 Lunes's alleged statements and handling of plaintiff's second RVR hearing, should be allowed to  
23 proceed. (*See id.* at 9.) To the extent plaintiff is now arguing that defendant Davis's issuance of  
24 a false RVR also violated CDCR regulations, the court notes that neither state nor federal  
25 regulations dictate the outcome of the federal constitutional due process analysis or entitle an  
26 inmate to sue civilly for violations thereunder. *See e.g., Vasquez v. Tate*, No. 1:10-cv-01876-JLT,  
27 2012 WL 6738167, at \*9 (E.D. Cal. Dec. 28, 2012); *Davis v. Powell*, 901 F. Supp. 2d 1196, 1211  
28 (S.D. Cal. 2012).

1 Second, plaintiff objects to the magistrate judge's recommendation that defendant Hall be  
2 dismissed from the action. (See Doc. No. 16 at 4.) However, as the magistrate judge correctly  
3 concluded, plaintiff merely alleges in his first amended complaint that defendant Hall said to  
4 plaintiff, "Lieutenant Lunes sends his regards," while processing plaintiff's 602 administrative  
5 grievance. (See Doc. No. 6.) Such a statement is insufficient to attribute liability for any  
6 misconduct to defendant Hall. Because plaintiff was already provided an opportunity to amend  
7 that claim, granting further leave to amend would be futile in this regard. Plaintiff's allegation,  
8 raised for the first time in his objections, that defendant Hall first granted Plaintiff's 602  
9 grievance, then proceeded to deny it, also fails to allege facts sufficient to state a claim for a  
10 constitutional violation. See *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (finding that  
11 because there is no right to any particular grievance process, it is impossible for due process to  
12 have been violated by ignoring or failing to properly process grievances).

13 Accordingly,

- 14 1. The May 16, 2017 findings and recommendations (Doc. No. 11) are adopted in full;
- 15 2. All non-cognizable claims are dismissed with prejudice for failure to state a claim;
- 16 3. The Clerk of Court is directed to terminate defendants Joosten, Hall, Ssaly, Diaz,  
17 Ramos, and Cota<sup>1</sup> on the docket in this case;
- 18 4. This case now proceeds on plaintiff's claims (a) against defendant Davis for excessive  
19 force in violation of the Eighth Amendment; and (b) against defendant M. Lunes for  
20 retaliation in violation of the First Amendment and for due process violations under  
21 the Fourteenth Amendment; and

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27 <sup>1</sup> Defendants Diaz, Ramos, and Cota were named in plaintiff's original complaint, but not in his  
28 first amended complaint. Accordingly, these defendants should also be administratively  
terminated from the case.

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5. This case is referred back to the assigned magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: September 7, 2017

Dale A. Floyd  
UNITED STATES DISTRICT JUDGE