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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TODD ASHKER,  
  
  Plaintiff,  
  
                          v.  
  
C. PFEIFFER, et al.,  
  
  Defendants.

No. 1:21-cv-00423-NONE-EPG (PC)

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS ACTION  
PROCEED ON PLAINTIFF’S CLAIMS  
AGAINST (1) DEFENDANTS KERNAN,  
DIAZ, ALLISON, ALFARO, GIPSON,  
MOAK, PARIS, PRELIP, PEREZ, PFEIFFER,  
ALAFI, HIGHTOWER, ORTIZ, STEBBINS,  
HAMMER, AND SPEIDEL FOR  
RETALIATION IN VIOLATION OF THE  
FIRST AMENDMENT; (2) DEFENDANTS  
KERNAN, DIAZ, ALLISON, ALFARO,  
GIPSON, MOAK, PEREZ, PARIS, PRELIP,  
PFEIFFER, ALAFI, HIGHTOWER, ORTIZ,  
AND STEBBINS FOR VIOLATION OF THE  
EIGHTH AMENDMENT FOR  
UNCONSTITUTIONAL CONDITIONS OF  
CONFINEMENT; AND (3) KERNAN, DIAZ,  
ALLISON, ALFARO, GIPSON, MOAK,  
PEREZ, PARIS, PRELIP, PFEIFFER, ALAFI  
FOR VIOLATION OF THE FOURTEENTH  
AMENDMENT’S DUE PROCESS CLAUSE.

(ECF No. 10)

OBJECTIONS, IF ANY, DUE WITHIN  
TWENTY-ONE (21) DAYS

ORDER GRANTING PLAINTIFF’S NOTICE  
OF MOTION AND MOTION FOR  
EXTENSION OF TIME TO RESPOND TO  
THE COURT’S JULY 29, 2021 ORDER; AND  
TO BE PERMITTED TO EXCEED THE  
ORDER’S SPECIFIED PAGE LIMIT OF (30)

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PAGES BY (3) ADDITIONAL PAGES BE GRANTED

(ECF. NO. 58)

ORDER GRANTING DEFENDANTS' REQUEST FOR SCREENING OF PLAINTIFF'S SECOND AMENDED COMPLAINT

(ECF. NO. 59)

Plaintiff Todd Ashker (“Plaintiff”) is a state inmate proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s Second Amended Complaint (“SAC”) is before this Court for screening. (ECF No. 57). The SAC bring claims concerning his treatment at Kern Valley State Hospital (“KVSP”) including his treatment following a settlement agreement in a separate case regarding the procedures the prison may and may not use to keep inmates in solitary confinement.

The Court has reviewed the SAC, and for the reasons described below, will recommend that this action proceed on Plaintiff’s claims against (1) Defendants Kernan, Diaz, Allison, Alfaro, Gipson, Moak, Paris, Prelip, Perez, Pfeiffer, Alafa, Hightower, Ortiz, Stebbins, Hammer, and Speidel for retaliation in violation of the First Amendment; (2) Defendants Kernan, Diaz, Allison, Alfaro, Gipson, Moak, Perez, Paris, Prelip, Pfeiffer, Alafa, Hightower, Ortiz, and Stebbins for violation of the Eighth Amendment for unconstitutional conditions of confinement; and (3) Kernan, Diaz, Allison, Alfaro, Gipson, Moak, Perez, Paris, Prelip, Pfeiffer, Alafa for violation of the Fourteenth Amendment’s Due Process Clause. The Court recommends that the claim against Defendants Stebbins and Hammer for excessive force be dismissed with prejudice. The Court will also recommend that all other claims be dismissed.

The parties have twenty-one days from the date of service of these findings and recommendations to file his objections.

**I. PROCEDURAL BACKGROUND**

**A. Plaintiff’s Class Action Lawsuit**

Plaintiff is the lead plaintiff in the class-action lawsuit *Ashker v. Brown*, No. C 09-5796

1 CW (N.D. Cal), in which California inmates claimed that their assignment to an indeterminate  
2 term in the Secured Housing Unit (“SHU”) at Pelican Bay State Prison (“PBSP”) violated their  
3 constitutional rights under the Eighth Amendment and the Due Process Clause of the Fourteenth  
4 Amendment. On May 6, 2016, the clerk entered judgment in accordance with the Order Granting  
5 Final Approval of Class Action Settlement Agreement, which awarded class members declaratory  
6 and injunctive relief.

7 **B. Plaintiff Files Complaint in Northern District of California**

8 Plaintiff filed a complaint in the Northern District of California on October 17, 2018,  
9 against prison officials at KVSP and his previous prison. (ECF No. 1).<sup>1</sup> The Northern District of  
10 California screened the complaint on May 28, 2020. (ECF No. 10). The Court dismissed  
11 Plaintiff’s claims for declaratory and injunctive relief arising from his confinement in the Pelican  
12 Bay State Prison SHU on the basis that they duplicate claims in the class action and fall within  
13 the ambit of the settlement agreement. (ECF No. 10, at p. 2). The Court also dismissed  
14 Plaintiff’s claims for breach of the settlement agreement and for seeking enforcement of the  
15 settlement agreement without prejudice to Plaintiff bringing such claims in the class action  
16 through class counsel. (ECF No. 10, at p. 2). The Court found that Plaintiff could “proceed in  
17 this action with his claims for damages arising from his placement in ... the ASU at KVSP.” (*Id.*).

18 Plaintiff filed the FAC on September 2, 2020. (ECF No. 43). The Defendants in the FAC  
19 filed a motion to dismiss on September 17, 2020. (ECF No. 23). Among other things, they argued  
20 that Defendants related to KVSP were misjoined and should be dismissed or severed and  
21 transferred to this district.

22 On March 11, 2021, District Judge William Alsup of the Northern District of California  
23 granted the motion in part, severed the claims against Warden C. Pfeiffer, Sgt. A. Alafa, Officer  
24 Hightower, Officer Manual Ortiz, Capt. Hammer, Lt. Speidel, and Associate Warden Stebbins at  
25 Kern Valley State Prison, and transferred the severed claims to this district. (ECF No. 37). The  
26 court also found that, “[w]hen liberally construed, the allegations in the FAC against the newly-

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28 <sup>1</sup> A redacted copy of the original complaint has been filed at ECF No. 34. His proof of service is dated October 1,  
2018. (ECF No. 34-1 at 57).

1 named Defendants S. Alfaro, C. Gipson, and R. Diaz are cognizable.” (*Id.* at 6). On March 15,  
2 2021, the transferred action in this district was opened. (ECF No. 38).

3 **C. This Court Screens Plaintiff’s Complaint and Gives Leave to Amend**

4 Defendants filed a motion that requested the Court screen the FAC on March 26, 2021,  
5 (ECF No. 42), which the Court granted, (ECF No. 44). On April 30, 2021, this Court issued a  
6 screening order finding that Plaintiff’s FAC violated Rule 8 because it failed to set forth a short  
7 and plain statement of the claim showing Plaintiff is entitled to relief. The Court gave Plaintiff  
8 leave to file an amended complaint limited to no longer than twenty-five pages and limited to  
9 claims arising from Plaintiff’s time at KVSP. (ECF No. 48).

10 On July 28, 2021, the Court in the Northern District of California severed and transferred  
11 additional claims and Defendants to this District, including Defendants Ralph Diaz, Sandra  
12 Alfaro and Connie Gipson. (ECF No. 54).

13 On July 29, 2021, the court provided additional time to respond to the screening order and  
14 gave Plaintiff leave to file an amended complaint no longer than 30 pages, which may include the  
15 newly transferred claims against Diaz, Alfaro, and Gipson.

16 Plaintiff filed his SAC on September 27, 2021. (ECF No. 57). The SAC is 32 pages long.

17 Plaintiff filed a motion for extension of time to respond to the Court’s July 29, 2021 order  
18 and to be permitted to exceed the specified page limit on October 4, 2021. (ECF No. 58).  
19 Plaintiff also requested permission to add a defendant, Alexandria Perez.

20 On October 19, 2021, Defendants filed a request for this Court to screen Plaintiff’s  
21 Second Amended Complaint and to extend the deadline to file a responsive pleading, if  
22 necessary, until 30 days after the Court issues its final screening order. (ECF No. 59)

23 On November 4, 2021, the claims against Diaz, Alfaro, and Gipson were opened under  
24 another case number, 1:21-cv-01611-HBK. On November 19, 2021, Magistrate Judge Barch-  
25 Kuchta granted the motion to consolidate the cases so that they may be consolidated into one case  
26 under this case number.

27 Thus, now before this Court is Plaintiff’s Second Amended Complaint against already  
28 served Defendants Warden C. Pfeiffer, Sgt. A. Alafa, Officer Hightower, Officer Manual Ortiz,

1 Capt. Hammer, Lt. Speidel, and Associate Warden Stebbins, Diaz, Alfaro, and Gipson as well as  
2 unserved Defendant Alexandria Perez.

## 3 **II. SCREENING REQUIREMENT**

4 The Court is required to screen complaints brought by inmates 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 inmate 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. § 1915A(b)(1), (2).  
9 As Plaintiff is proceeding *in forma pauperis*, the Court may also screen the complaint under 28  
10 U.S.C. § 1915. “Notwithstanding any filing fee, or any portion thereof, that may have been paid,  
11 the court shall dismiss the case at any time if the court determines that the action or appeal fails to  
12 state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

13 A complaint is required to contain “a short and plain statement of the claim showing that  
14 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
15 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
16 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*  
17 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual  
18 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting  
19 *Twombly*, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting this  
20 plausibility standard. *Id.* at 679. While a plaintiff’s allegations are taken as true, courts “are not  
21 required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681  
22 (9th Cir. 2009) (citation and quotation marks omitted). Additionally, a plaintiff’s legal  
23 conclusions are not accepted as true. *Iqbal*, 556 U.S. at 678.

24 Pleadings of *pro se* plaintiffs “must be held to less stringent standards than formal  
25 pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (holding that  
26 *pro se* complaints should continue to be liberally construed after *Iqbal*).

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1 **III. ALLEGATIONS IN THE FAC**

2 The SAC alleges as follows:

3 **A. Plaintiff's Involvement in Class Action Lawsuit**

4 Plaintiff is the named plaintiff in a settled class-action lawsuit, *Ashker v. Newsom*, No.  
5 4:09-cv-5796, filed in the Northern District of California. That lawsuit challenged long-term  
6 confinement of inmates in the security housing unit at PBSP. The lawsuit "brought global  
7 exposure & condemnation" to the practices of California Department of Corrections and  
8 Rehabilitation ("CDCR") with respect to solitary confinement.

9 Plaintiff is also a co-founder of the PBSP-SHU, SCC-PHRM groups formed in 2010 by  
10 similarly situated, long-term solitary confinement prisoners of all racial groups for the purpose of  
11 wide-spread education and exposure of CDCR's state sanctioned torture.

12 The class-action parties entered into a settlement agreement September 1, 2015.

13 **B. Plaintiff Arrives at KVSP**

14 Relevant to the allegations at KVSP, the SAC alleges that on February 5, 2016, the week  
15 prior to Plaintiff's release to KVSP General Population ("GP"), Chief Robertson issues the  
16 following order to KVSP A facility Defendant Hightower, Ortiz et al: "CSU recommends release  
17 to the g.p. where enemies are not housed, contingent in that Ashker is able to avoid conflict in his  
18 future involvement s/affiliates of the AB, and/or affiliates of other STG-1s."

19 On February 12, 2016, Plaintiff was released to KVSP A Facility g.p. 1-block, where he  
20 was on Max A Custody & A2/B Privilege Group, resulting in only 5-to-7 hours per week out of  
21 cell time, with all meals still being fed in cell.

22 Upon his arrival, prisoners told him that one week before he got there, 1-block, 2d watch  
23 floor officer Defendant Hightower told his porters "Todd Ashker's coming from PBSP soon,  
24 you've probably heard of him, and I'm just giving you the heads-up that his own people want to  
25 kill him." Hightower also personally told Plaintiff "I know who you are, and I know all about  
26 your lawsuit; and I'm the CCPOA Rep. here at KVSP, who's been going to meetings at CDCR  
27 Headquarters, to oppose your lawsuit." Hightower is also a former gang-unit member. Plaintiff  
28 alleges that Hightower's intent was to plant a seed in prisoners' minds that Plaintiff was targeted

1 and hoped that a prisoner would “run with it” by dropping a note saying Plaintiff was going to be  
2 attacked, in order to justify Plaintiff’s return to solitary for safety-concerns investigation.

3 Plaintiff alleges that Defendants Pfeiffer, Alafa, Hightower, Ortiz, Stebbins, Hammer, and  
4 Speidel all approved and directed of such a plan to use unreliable confidential information to keep  
5 Plaintiff in solitary confinement.

6 The A facility operated more like a Modified-SHU Control Unit, than a G.P., with less out  
7 of cell time, meals in cell, no access to jobs, education, vocation, rehabilitation, in violation of the  
8 settlement agreement.

9 Plaintiff wrote a memo to the lead Defendant Kernan addressing how the housing failed to  
10 comply with the Settlement Agreement. Plaintiff also attended compliance monitoring meetings  
11 related to the Settlement Agreement, during which Defendants were angry and hostile to Plaintiff.

12 Shortly after the litigation-related meeting, Defendant Hightower told Plaintiff “words  
13 come down from headquarters that you’re not to be treated differently than other prisoners here.”

#### 14 **C. Instances of Retaliation**

15 Plaintiff then lists instances of alleged retaliation. Plaintiff described a tier-raid of  
16 Plaintiff’s tier, during which Hightower personally participated in tearing-up/trashing Plaintiff’s  
17 cell. Another guard working on A. facility, 1-block, 3d watch told his porters he’s “not able to  
18 allow them to run around the tiers after dinner anymore because Ashker is at Inmate Advisory  
19 Counsel [IAC] meeting, telling on staff.” Defendant Ortiz tried to end Plaintiff’s visit with his  
20 fiancée early, and when that failed, threatened to put Plaintiff on visiting restriction by falsely  
21 claiming they had “too much contact.”

22 Plaintiff and Defendants held another meeting on November 17, 2016 to discuss perceived  
23 distance/misunderstandings between the parties re: terms, spirit, and intent of the settlement  
24 agreement.

25 Plaintiff believes his confidential legal communications are monitored by Defendants.

26 In December 2016, Plaintiff created a detailed group 602 appeal regarding visiting issues  
27 raised at the semi-annual meeting. In response, Defendants Hightower and Ortiz, among others,  
28 began tearing up and trashing all cells, making visitors wait for an hour or more for their prisoner

1 to arrive, cancelling visits after an hour or less. Other prisoners told Plaintiff that staff had told  
2 them to thank Ashker for the cell trashing and visiting treatment, behind him pushing paperwork  
3 against the staff. This was stated by Hightower when Plaintiff was present.

4 In December, 2016, Plaintiff was brought out late to the visit room. Upon arrival, Ortiz  
5 told him, "I hear you have a complaint against me behind visiting." After the December 2016  
6 visit, Plaintiff told Ortiz "My fiancé is afraid to come visit after the way she was treated in  
7 October." Ortiz replied "If that made her afraid, she should be afraid, because people get run  
8 over just walking down the street around here all the time."

9 Plaintiff sent his litigation counsel a declaration summarizing CDCR retaliatory acts.  
10 Counsel informed CDCR Defendants of intent to file an ongoing retaliation motion on Plaintiff's  
11 behalf. In response, CDCR Defendants, including KVSP agents Stebbins, Hammer and Speidel  
12 locked down the entire A Facility GP on March 20, 2017, by using confidential information  
13 ("C.I.") as a pretext. In this instance, they alleged to have an anonymous note stating that  
14 Plaintiff was planning to have 1-block staff assaulted with weapons. All Defendants knew this  
15 was false. Plaintiff's leadership role focuses on seeking peaceful/legal avenues for positive  
16 reform. The three sergeants involved agreed with Plaintiff and returned Plaintiff to his cell.

#### 17 **D. Cell Extraction**

18 Soon after returning to his cell, staff told Plaintiff to pack up his property to go to  
19 Administrative Segregation Unit ("ASU") for a 90-day Staff Threat Investigation. Plaintiff  
20 refused to go voluntarily and said they would have to extract him. Defendants Stebbins and  
21 Hammer ordered Lt. Speidel to initiate a cell extraction. They fired two gas grenades into  
22 Plaintiff's cell, sprayed pepper spray on Plaintiff's head area, and then ran into the cell with riot  
23 gear. Guards placed Plaintiff in leg shackles and Ortiz used a wheelchair to take Plaintiff to the  
24 ASU. Ortiz told Plaintiff "Ashker, I thought you were stupid, pushing paperwork and telling on  
25 staff. Now you're outta here for good."

26 Plaintiff was housed in solitary confinement from March 20, 2017, until March 31, 2017.  
27 Chief Deputy Warden Tolson chaired Plaintiff's ICC hearing and explained that he checked into  
28 the staff threat and knew there was no validity to it. He ordered Plaintiff to be released to B



1 Facility GP on April 1, 2017. As soon as he arrived at B facility, other prisoners told Plaintiff  
2 that A facility staff had trashed all of the cells there after Plaintiff's extraction and told the  
3 prisoners they should thank Ashker for it.

4 **E. Attorneys Banned**

5 Plaintiff also alleges that Defendants interfered with his right to assistance of counsel.  
6 Plaintiff's attorney, Carole J. Travis, sent KVSP Warden Pfeiffer a letter on August 16, 2016,  
7 regarding "Interference s/Confidential Legal Mail," Attorneys Weills and Travis were the most  
8 active members of the class action litigation team. On March 3, 2017, Defendant Gipson advised  
9 attorneys Weills and Travis that they were "temporarily banned" from all CDCR Institutions, as  
10 well as confidential calls/visits/mail, pending the outcome into potential violations of Cal. Code  
11 of Regs Title 15, § 3178(s)(3). On April 10, 2017, Defendant Allison informed Weills, CDCR's  
12 investigation had concluded that she had numerous and extensive illegal cell-phone  
13 communications with inmates, jeopardizing the security of CDCR institutions, and her lifetime  
14 ban would be upheld. During Diaz' term as CDCR Secretary, he too upheld this ban, as has the  
15 current secretary Allison.

16 Defendants Kernan, Allison and Gipson imposed an 18-month ban on Travis based on  
17 similar alleged conduct as Weills.

18 Plaintiff has never been notified of, nor charged with, anything regarding the alleged  
19 illegal cell phone communications. He has been charged with possessing four cell phones, which  
20 were introduced to KVSP A facility by Defendants' agents. Plaintiff's communications with  
21 Weills and Travis were due in large part to the fact that Defendants' agents violated his right to  
22 confidential communications with Weills and Travis. Such communications were not in the  
23 capacity of lawyer-client, but were strictly personal, regarding Plaintiff's concerns about his  
24 fiancée's well-being in the U.K. and personal difficulties adjusting to G.P. after decades in  
25 solitary confinement.

26 The penalty assessed on Plaintiff's attorneys were grossly disproportionate to penalties  
27 imposed on other attorneys engaged in cell phone conversations with prisoners.

28 Attorney Dan Siegel, who has also supported the Ashker case members and Plaintiff,

1 assisted Plaintiff with a few legal things after he visited Plaintiff at KVSP. On February 14,  
2 2019, Plaintiff had a 2-hour legal visit with Siegel in KVSP's BPH Building. Attorney Siegel had  
3 formally joined the Ashker class action legal team. In advance of the meeting, Plaintiff asked  
4 lead counsel, Jules Lobel, to send Plaintiff some documents. Attorney Siegel provided some  
5 documents to Plaintiff, which inadvertently included Attorneys Eyes Only documents regarding  
6 Plaintiff's retaliatory housing placement subject. Plaintiff told his counsel about these  
7 documents. They advised Defendants' counsel of the error, and Plaintiff provided the documents  
8 to KVSP Captain Martinez, who sent them to Lobel.

9 Defendants Diaz, Gipson, and other used this honest mistake to ban Plaintiff from  
10 communicating or visiting with Attorney Siegel, depriving Plaintiff of assistance on the Ashker  
11 case as well as new cases.

12 Defendant Gipson sent Attorney Siegel a letter on March 15, 2019, stating that the  
13 punishment would be a lifetime exclusion from confidential privileges, including visiting,  
14 telephone, and mail privileges. This ban was reduced to 10 years, which remains grossly  
15 disproportionate for Attorney Siegel and Plaintiff, who is deprived of representation. Although  
16 Attorneys Weills and Siegel expressed interest in representing Plaintiff in the present case, the  
17 bans prevented this and Plaintiff was unable to find replacement counsel. The loss of the support  
18 of these attorneys caused Plaintiff emotional harm.

19 **F. Plaintiff Placed in ASU**

20 On May 1, 2017, Plaintiff had been on B facility for a month, and on C privilege group  
21 status the entire time. He received mail indicating domestic issues with his fiancée had worsened.  
22 Plaintiff asked the captain for help to contact his attorney or fiancée to check on her well-being.  
23 The captain asked Plaintiff to wait in the office. In a few minutes, gang-investigators came to the  
24 office and asked him, "What's was going on?" They asked more questions, including, "Is he  
25 responsible for putting [his] fiancée in danger," and "What are his concerns about his own  
26 safety?"

27 After some further discussion, someone behind Plaintiff asked him if he's ready to sign  
28 the "agreement to debrief." Plaintiff agreed to sign, although he had no intention to debrief. He

1 signed the paper, but put a clause next to his signature stating, “subject to certain conditions.”  
2 Plaintiff believes his additional clause automatically nullified the agreement.

3 After that, Defendants including Alafa, sent Plaintiff to ASU due to “self-expressed  
4 concerns,” which was false. Plaintiff then threatened to go on a hunger strike in protest. Staff  
5 then claimed that Plaintiff was suicidal and put him on suicide watch. Plaintiff refused to eat and  
6 drink for 3 days, but told staff he was not suicidal.

7 On May 3, 2017, Plaintiff was still in the medical clinic on suicide watch when  
8 Defendants agents placed Plaintiff in a yard cage at the end of the tier. A few minutes later, an  
9 AB dropout who had been working with the CDCR since 2016 sat nearby. Plaintiff believed it  
10 was a setup. He let the dropout do most of the talking about why he went to CDCR’s side.  
11 Plaintiff replied that “all he’s said was b.s. and wrong,” which ended the conversation.

12 The evening of May 3, 2017, West showed up to get Plaintiff to debrief. Plaintiff said he  
13 was advised not to talk to anyone. West stated, “the Department recognized Plaintiff wasn’t in  
14 the right mind on May 1 and had stepped back in response.

15 On May 7, 2017, ASU-2 undercover C.I. gave a prison agent a note that C.I. had  
16 manufactured and claimed another prisoner on tier had sent C.I. stating Plaintiff told him Plaintiff  
17 was dropping out. This was false.

18 On May 8, 2017, Plaintiff was taken to ASU-2 Committee Room, where West and  
19 Clayton were seated. They told Plaintiff their “superiors asked us to make a full presentation of  
20 debrief process, in case your attorney has any questions when you talk to him.” Clayton said that  
21 people were talking bad about Plaintiff and his only option at this point was to debrief. He said  
22 he wanted to help Plaintiff successfully come over to CDCR’s side. Plaintiff never intended to  
23 debrief. He said he was only worried about his fiancée.

24 On May 10, 2017, Plaintiff send a CDCR-22 form explaining that his ASU placement was  
25 solely regarding concerns about outside loved ones, which were resolved. He requested to return  
26 to B. Facility, G.P.

27 On May 10, 2017, Defendants Diaz, Allison, Alfaro and Gipson exchanged emails  
28 regarding Plaintiff’s ASU placement. They created a plan to continue Plaintiff’s solitary

1 confinement indefinitely. For example, Diaz wrote Allison, "Let's talk tomorrow. I would think  
2 he would be a retention in ASU pending resolution of his concerns. Let's not get pushed into  
3 anything by his attorneys."

4 On May 11, 2017, Defendant Pfeiffer chairs Plaintiff's ICC meeting. Pfeiffer orders  
5 Alafa to conduct a safety concern investigation and retain Plaintiff in the ASU pending  
6 completion. Plaintiff's repeated denial of safety concerns and requests for correction of the  
7 falsehood are ignored.

8 On May 18, 2017, Defendant Alafa interviewed Plaintiff regarding a safety concerns  
9 investigation. Alafa disclosed a summary of the Confidential Memorandum. Plaintiff denied  
10 C.I.'s allegation and said he has no safety concerns. Alafa closed his investigation on May 18,  
11 2017, recommending Plaintiff's release to KVSP A or B Facility G.P. and forwarded the report to  
12 Pfeiffer, who approved it and let it stand.

13 On June 1, 2017, chief Deputy Warden Tolson Chaired Plaintiff's ICC and approved  
14 Plaintiff's release back to B. Facility, G.P.

15 By 11:45 am, Plaintiff was on the way to B. Facility, only to have the bus u-turn and  
16 return to ASU-2. A sergeant tells Plaintiff, "Warden said not to release you," and "I've been  
17 ordered to isolate you on H tier."

18 On June 1, 2017, at 7:45 pm, Plaintiff is given a CDCR 114 Ad/Seg placement form,  
19 saying that he had been retained in ASU pending further inquiry into possible enemy/safety  
20 concerns at KVSP and will remain in ASU pending completion of investigation.

21 Plaintiff later learned that Alafa claimed that Plaintiff was retained in ASU based on  
22 discovery of a phone call where a ranking member of the Mexican Mafia said he had heard  
23 Ashker debriefing and thus Plaintiff's life was in danger. But this was a false pretext to keep  
24 Plaintiff in solitary confinement.

25 Alafa then lead an investigations unit staff on an ASU-2 raid of 14 cells, allegedly to  
26 search and interview prisoners who had been housed in close proximity to Plaintiff, seeking  
27 evidence of Plaintiff's safety concerns if released to G.P. No evidence was discovered. Four of  
28 these prisoners had sent declarations in favor of Plaintiff.

1 On June 7, 2017, Alafa and a partner interviewed the AB prison-gang dropout, who was  
2 the same C.I. who has sat next to Plaintiff earlier. The C.I. claimed Plaintiff had personally told  
3 him that Plaintiff told the whites on B yard he was debriefing and told the Mexicans at ASU the  
4 same thing.

5 On June 8, 2017, ICC retained Plaintiff in ASU based on the phone call discussion about  
6 Plaintiff requiring safety investigation.

7 After litigation, Plaintiff learned that it was Ralph Diaz, CDCR Undersecretary, who had  
8 reversed ICC and retained Plaintiff in ASU. Diaz had also emailed Kernan about this issue, and  
9 Kernan let the decision stand.

10 On June 26, 2017, Alafa gave Plaintiff several disclosures prior to an ICC set for June 29.  
11 On June 27, 2017, Plaintiff gave ASU-2 Captain his rebuttal memo. Defendant Pfeiffer chaired  
12 the hearing and decided “there is overwhelming evidence of safety concerns prohibiting release to  
13 G.P.”

14 Moments after this ICC hearing, Moak and Perez ordered Pfeiffer to have Alafa obtain  
15 evidence to corroborate his C.I.’s allegations about being targeted by AB. Moak and Perez  
16 recognized that Alafa’s C.I. was not credible.

17 Between July 5 and 7, 2017, Plaintiff was given additional disclosures and sent another  
18 rebuttal. Moak and Perez reviewed and investigated the points and determined they agreed with  
19 Plaintiff that there was no evidence of Plaintiff ever participating in any pre-debrief/debrief  
20 interviews and that Plaintiff’s concerns were only about his fiancée. They further found that the  
21 allegations from C.I. dropouts were not reliable and credible.

22 Defendant Allison responded by creating additional evidence. Plaintiff received another  
23 disclosure on July 19, 2017, authored by IGI Sergeant at North Kern S.P. alleging Plaintiff was a  
24 priority target of AB. But Plaintiff claims this disclosure was made through coercion and  
25 manipulation.

26 On August 4, 2017, Defendant Allison chaired a DRB hearing with Moak, Paris, Perez,  
27 and Alafa. Allison ordered Plaintiff’s placement in PBSP[illegible], alleging substantial safety  
28 concerns. Defendants Allison, Moak, Prelip, Perez, and Alafa reaffirmed this decision on August

1 4, 2017, based on the pretext of a continuing threat of AB affiliated inmate IDing Ashker as a  
2 target for murder.

3 In early 2018, Plaintiff alleges that he received additional disclosures and rebutted them.  
4 Defendants have never produced any valid concrete evidence. Plaintiff then summarizes  
5 proceedings before District Judge Wilken regarding this issue in connection with the Settlement  
6 Agreement and various disclosures and refutations to those disclosures. Plaintiff then  
7 summarizes various attempts and hearings on this issue through 2021.

8 In May 2021, Defendant Gipson decided to retain Plaintiff in ASU pending Plaintiff's  
9 decision to discontinue his court challenge or final resolution of challenge by the court regarding  
10 safety concerns if Plaintiff is released to G.P.

11 Thus, Plaintiff has been subjected to 52 months and counting of unwarranted solitary  
12 confinement in KVSP's ASU despite zero credible enemy safety concerns.

13 Plaintiff has a protected liberty interest in being free of solitary confinement.

#### 14 **G. Guard One Welfare Checks**

15 Plaintiff has also been subject to Guard-One Welfare Checks wherein every 30 minutes,  
16 staff walk tiers using heavy metal pipes to strike each metal cell door. This results in heavy pipe  
17 hitting doors every half hour all day, making very loud and extremely disruptive jarring metal-  
18 striking noises. Defendants Kernan, Diaz, Allison, Alfaro, Gipson, Pfeiffer, Stebbins have  
19 repeatedly been put on notice about the damaging effects of Guard One on prisoners. Plaintiff  
20 has filed repeated appeals, which have been rejected.

#### 21 **H. Plaintiff's Causes of Action**

22 Plaintiff's First Claim alleges that Defendants Kernan, Diaz, Allison, Alfaro, Gipson,  
23 Moak, Paris, Prelip, Perez, Pfeiffer, Alafa, Hightower, Ortiz, Stebbins, Hammer, and Speidel  
24 violated the First Amendment. Plaintiff alleges that they subjected Plaintiff to retaliatory  
25 punishment for exercise of his free speech and right to petition based on his role in the class  
26 action, as well as his leadership role in other groups that challenge CDCR policies. Defendants  
27 denied Plaintiff assistance of counsel by imposing disproportionate punishments for alleged  
28 violation of prison rules.

1 Plaintiff's second claim alleges that Defendants Kernan, Diaz, Allison, Alfaro, Gipson,  
2 Moak, Perez, Paris, Prelip, Pfeiffer, Alafa, Hightower, Ortiz, Stebbins, Hammer and Speidel  
3 violated his rights under the Eighth Amendment. Plaintiff alleges that KVSP's GP's conditions  
4 are excessively restrictive and punitive. KVSP's A Facility GP was operated akin to a modified  
5 SHU, where the majority of the prisoners warehoused spend time idle in their cells based on  
6 Defendants' failure to provide adequate space/security/supervision/qualified instructors resulting  
7 in few jobs/education/vocation/rehabilitation and self-help opportunities. Also, there is a lack of  
8 visiting space and phone access.

9 Separately, on March 20, 2017, Defendants used excessive force in response to Plaintiff's  
10 peaceful protestation against wrongful return to solitary confinement. Defendants Stebbins,  
11 Hammer, and Speidel initiated physical force that resulted in deployment of 2 gas grenades in  
12 Plaintiff's small sealed cell, turning Plaintiff's cell into a gas chamber for over 9 minutes before  
13 staff ran into the cell to forcibly apply restraints, causing Plaintiff to experience 24 hours of  
14 intense burning discomfort.

15 Plaintiff was retained in KVSP's solitary confinement unit.

16 Plaintiff is subjected to "Guard-One" policy, resulting in sleep deprivation and related  
17 emotional and physical damage.

18 Plaintiff's third claim for relief alleges that Defendants Kernan, Diaz, Allison, Alfaro,  
19 Gipson, Moak, Perez, Paris, Prelip, Pfeiffer, and Alafa subjected Plaintiff to indefinite solitary  
20 confinement in KVSP's ASU through systemic misuse of confidential information as a pretext to  
21 justify class action members remaining in solitary confinement in violation of the settlement  
22 agreement. They do this by relying on fabricated, altered confidential information.

#### 23 **IV. SECTION 1983**

24 The Civil Rights Act under which this action was filed provides:

25 Every person who, under color of any statute, ordinance, regulation, custom,  
26 or usage, of any State or Territory or the District of Columbia, subjects, or  
27 causes to be subjected, any citizen of the United States or other person within  
28 the jurisdiction thereof to the deprivation of any rights, privileges, or  
immunities secured by the Constitution and laws, shall be liable to the party  
injured in an action at law, suit in equity, or other proper proceeding for

1 redress....

2 42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely  
3 provides ‘a method for vindicating federal rights elsewhere conferred.’” *Graham v. Connor*, 490  
4 U.S. 386, 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)); *see also*  
5 *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 618 (1979); *Hall v. City of Los Angeles*,  
6 697 F.3d 1059, 1068 (9th Cir. 2012); *Crowley v. Nevada*, 678 F.3d 730, 734 (9th Cir. 2012);  
7 *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006).

8 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under  
9 color of state law, and (2) the defendant deprived him of rights secured by the Constitution or  
10 federal law. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006); *see also Marsh*  
11 *v. Cnty. of San Diego*, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of state  
12 law”). A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if he  
13 does an affirmative act, participates in another’s affirmative act, or omits to perform an act which  
14 he is legally required to do that causes the deprivation of which complaint is made.’” *Preschooler*  
15 *II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting *Johnson v. Duffy*,  
16 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection may be established when an  
17 official sets in motion a ‘series of acts by others which the actor knows or reasonably should  
18 know would cause others to inflict’ constitutional harms.” *Preschooler II*, 479 F.3d at 1183  
19 (quoting *Johnson*, 588 F.2d at 743). This standard of causation “closely resembles the standard  
20 ‘foreseeability’ formulation of proximate cause.” *Arnold v. Int’l Bus. Mach. Corp.*, 637 F.2d  
21 1350, 1355 (9th Cir. 1981); *see also Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir.  
22 2008).

23 Additionally, a plaintiff must demonstrate that each named defendant personally  
24 participated in the deprivation of his rights. *Iqbal*, 556 U.S. at 676-77. In other words, there must  
25 be an actual connection or link between the actions of the defendants and the deprivation alleged  
26 to have been suffered by Plaintiff. *See Monell v. Dep’t of Soc. Servs. of City of N.Y.*, 436 U.S.  
27 658, 691, 695 (1978).



1 Supervisory personnel are generally not liable under § 1983 for the actions of their  
2 employees under a theory of *respondeat superior* and, therefore, when a named defendant holds a  
3 supervisory position, the causal link between him and the claimed constitutional violation must be  
4 specifically alleged. *Iqbal*, 556 U.S. at 676-77; *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir.  
5 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978). To state a claim for relief under  
6 § 1983 based on a theory of supervisory liability, a plaintiff must allege some facts that would  
7 support a claim that the supervisory defendants either personally participated in the alleged  
8 deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or  
9 promulgated or “implement[ed] a policy so deficient that the policy itself is a repudiation of  
10 constitutional rights’ and is ‘the moving force of the constitutional violation.” *Hansen v. Black*,  
11 885 F.2d 642, 646 (9th Cir. 1989) (citations and internal quotation marks omitted); *Taylor v. List*,  
12 880 F.2d 1040, 1045 (9th Cir. 1989). For instance, a supervisor may be liable for his “own  
13 culpable action or inaction in the training, supervision, or control of his subordinates,” “his  
14 acquiescence in the constitutional deprivations of which the complaint is made,” or “conduct that  
15 showed a reckless or callous indifference to the rights of others.” *Larez v. City of Los Angeles*,  
16 946 F.2d 630, 646 (9th Cir. 1991) (internal citations, quotation marks, and alterations omitted).

## 17 **V. ANALYSIS OF PLAINTIFF’S CLAIMS**

### 18 **A. First Amendment Retaliation**

19 Plaintiff brings a First Amendment claim against Defendants Kernan, Diaz, Allison,  
20 Alfaro, Gipson, Moak, Paris, Prelip, Perez, Pfeiffer, Alafa, Hightower, Ortiz, Stebbins, Hammer  
21 and Speidel. Plaintiff alleges that they subjected him to retaliatory punishment in response to his  
22 lawful exercise of free speech and petition related to the class action litigation.

23 There are five basic elements to a First Amendment retaliation claim: “(1) An assertion  
24 that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s  
25 protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment  
26 rights, and (5) the action did not reasonably advance a legitimate correctional goal.” *Rhodes v.*  
27 *Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted). Because filing administrative  
28 grievances and initiating civil litigation are protected activities, it is impermissible for prison

1 officials to retaliate against prisoners for engaging in these activities. *Id.* at 567.

2 The Court recommends allowing this claim to proceed against all named Defendants.  
3 Construing all allegations in Plaintiff’s TAC in favor of Plaintiff, the Court finds that Plaintiff has  
4 adequately alleged that they took an adverse action against Plaintiff, because of his protected  
5 conduct, *i.e.*, his litigation in the class action case, and that action did not reasonably advance a  
6 legitimate correctional goal. This recommendation is only for screening purposes.

7 Plaintiff adds to the statement of the claim “& Related Violation of the SA,” *i.e.*,  
8 settlement agreement. As noted above, the district court for the Northern District of California  
9 already dismissed Plaintiff’s claims for breach of the settlement agreement and for seeking  
10 enforcement of the settlement agreement without prejudice to Plaintiff bringing such claims in the  
11 class action through class counsel. (ECF No. 10, at p. 2).

12 **B. Conditions of Confinement**

13 Plaintiff next brings an Eighth Amendment claim against Defendants Kernan, Diaz,  
14 Allison, Alfaro, Gipson, Moak, Perez, Paris, Prelip, Pfeiffer, Alafa, Hightower, Ortiz, Stebbins,  
15 Hammer and Speidel. Plaintiff alleges that they subjected him to excessively restricted punitive  
16 conditions at KVSP’s GP, which operated as a modified SHU, spending the majority of time idle  
17 in cells, without adequate space, security, supervision, and instructors. Plaintiff also alleges that  
18 Defendants used excessive force in extracting him from his cell in response to his peaceful  
19 protest. Plaintiff also alleges that Plaintiff was subjected to Guard-One policies, resulting in  
20 chronic sleep deprivation.

21 “It is undisputed that the treatment a prisoner receives in prison and the conditions under  
22 which [the prisoner] is confined are subject to scrutiny under the Eighth Amendment.” *Helling v.*  
23 *McKinney*, 509 U.S. 25, 31 (1993); *see also Farmer v. Brennan*, 511 U.S. 825, 832 (1994).  
24 Conditions of confinement may, consistent with the Constitution, be restrictive and harsh. *See*  
25 *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981); *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th  
26 Cir. 2006); *Osolinski v. Kane*, 92 F.3d 934, 937 (9th Cir. 1996); *Jordan v. Gardner*, 986 F.2d  
27 1521, 1531 (9th Cir. 1993) (*en banc*). Prison officials must, however, provide prisoners with  
28 “food, clothing, shelter, sanitation, medical care, and personal safety.” *Toussaint v. McCarthy*,

1 801 F.2d 1080, 1107 (9th Cir. 1986), *abrogated in part on other grounds by Sandin v. Connor*,  
2 515 U.S. 472 (1995); *see also Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000); *Hoptowit v.*  
3 *Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982); *Wright v. Rushen*, 642 F.2d 1129, 1132-33 (9th Cir.  
4 1981).

5         Construing facts in favor of Plaintiff in this screening stage, and keeping in mind the  
6 Northern District of California’s holding that Plaintiff could “proceed in this action with his  
7 claims for damages arising from his placement in ... the ASU at KVSP,” this Court recommends  
8 allowing Plaintiff to proceed on a claim that his prolonged placement in the ASU at KVSP  
9 subjected him to cruel and unusual punishment. This includes his allegations that the Guard-One  
10 policies subjected him to sleep deprivation. It also includes his allegation that KVSP’s GP  
11 operated as a SHU with inadequate conditions of confinement. It includes all asserted Defendants  
12 except Stebbins and Hammer.

13         Regarding Plaintiff’s allegations of excessive force against Defendants Stebbins and  
14 Hammer in particular, in its prohibition of ‘cruel and unusual punishments,’ the Eighth  
15 Amendment places restraints on prison officials, who may not ... use excessive physical force  
16 against prisoners.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). “[W]henver prison officials  
17 stand accused of using excessive physical force in violation of the [Eighth Amendment], the core  
18 judicial inquiry is . . . whether force was applied in a good-faith effort to maintain or restore  
19 discipline, or maliciously and sadistically to cause harm.” *Hudson v. McMillian*, 503 U.S. 1, 6-7  
20 (1992). When determining whether the force was excessive, the Court looks to the “extent of  
21 injury suffered by an inmate. . . , the need for application of force, the relationship between that  
22 need and the amount of force used, the threat ‘reasonably perceived by the responsible officials,’  
23 and ‘any efforts made to temper the severity of a forceful response.’” *Hudson*, 503 U.S. at 7  
24 (quoting *Whitley v. Albers*, 475 U.S. 312, 321 (1986)). While *de minimis* uses of physical force  
25 generally do not implicate the Eighth Amendment, significant injury need not be evident in the  
26 context of an excessive force claim, because “[w]hen prison officials maliciously and sadistically  
27 use force to cause harm, contemporary standards of decency always are violated.” *Hudson*, 503  
28 U.S. at 9.

1           The Court recommends dismissing Plaintiff’s claim to the extent it alleges a claim for  
2 excessive force in connection with his cell extraction. Plaintiff alleges that, when staff told him  
3 to go to the ASU, “Plt. Told them to inform the supervisor that they were going to have to extract  
4 him, because such placement back in solitary was obviously part of the on-going retaliation he’d  
5 been subject to since arrival at KVSP; therefore his only recourse was to peacefully protest via  
6 refusal to voluntarily move, thereby, forcing a real investigation.” Plaintiff then alleges that  
7 Defendants Stebbins and Hammer forcibly initiated a cell extraction involving gas canisters.  
8 Although Plaintiff alleges that he was harmed by the gas canisters, Plaintiff’s allegations  
9 demonstrate that they were used to maintain and restore discipline. There are no allegations  
10 indicating they were used maliciously and sadistically to cause harm.

11           **C.       Procedural Due Process**

12           Plaintiff next alleges that defendants Kernan, Diaz, Allison, Alfaro, Gipson, Moak, Perez,  
13 Paris, Prelip, Pfeiffer, and Alafa violated Plaintiff’s due process rights by fabricating and altering  
14 confidential and unreliable information provided by Defendants’ recruited-collaborating prison  
15 gang dropouts as a pretext to support Defendants’ agenda of keeping Plaintiff in solitary  
16 confinement. This violated Plaintiff’s liberty interest in his right to be free of such placement,  
17 which impose atypical and significant hardships on Plaintiff.

18           The Due Process Clause of the Fourteenth Amendment protects prisoners from being  
19 deprived of life, liberty, or property without due process of law. *Wolff v. McDonnell*, 418 U.S.  
20 539, 556 (1974). The procedural guarantees of the Fifth and Fourteenth Amendments’ Due  
21 Process Clauses apply only when a constitutionally protected liberty or property interest is at  
22 stake. *Ingraham v. Wright*, 430 U.S. 651, 672-73 (1977). The due process clause attaches where  
23 the restraint imposes an atypical and significant hardship on the inmate in relation to the ordinary  
24 incidents of prison life. *Sandin v. Conner*, 515 U.S. 472, 483-86 (1995).

25           For the purposes of screening, the Court recommends allowing this claim to proceed.  
26 While Plaintiff alleges that he received process in the form of multiple hearings and opportunities  
27 to respond, Plaintiff has alleged that Defendants systematically fabricated evidence or relied on  
28 evidence known to be unreliable in order to subject him to confinement in the ASU, which

1 imposes an atypical and significant hardship in relation to ordinary prison life.

2 **VI. CONCLUSION AND RECOMMENDATIONS**

3 The Court hereby GRANTS Plaintiff's Motion for extension of time to respond to the  
4 Court's July 29, 2021 order and to be permitted to exceed the order's specified page limit of 30  
5 pages by 3 additional pages. (ECF No. 58).

6 The Court also GRANTS Defendants' Request for Screening of Plaintiff's Second  
7 Amended Complaint. (ECF No. 59).

8 The Court has screened Plaintiff's amended complaint and recommends finding that it  
9 sufficiently states cognizable claims to proceed past the screening stage against (1) Defendants  
10 Kernan, Diaz, Allison, Alfaro, Gipson, Moak, Paris, Prelip, Perez, Pfeiffer, Alafa, Hightower,  
11 Ortiz, Stebbins, Hammer, and Speidel for retaliation in violation of the First Amendment; (2)  
12 Defendants Kernan, Diaz, Allison, Alfaro, Gipson, Moak, Perez, Paris, Prelip, Pfeiffer, Alafa,  
13 Hightower, Ortiz, and Stebbins for violation of the Eighth Amendment for unconstitutional  
14 conditions of confinement; and (3) Kernan, Diaz, Allison, Alfaro, Gipson, Moak, Perez, Paris,  
15 Prelip, Pfeiffer, Alafa for violation of the Fourteenth Amendment's Due Process Clause. The  
16 Court recommends that the claim against Defendants Stebbins and Hammer for excessive force  
17 be dismissed with prejudice.

18 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 19 1. This case proceed on Plaintiff's claims against (1) Defendants Kernan, Diaz,  
20 Allison, Alfaro, Gipson, Moak, Paris, Prelip, Perez, Pfeiffer, Alafa, Hightower,  
21 Ortiz, Stebbins, Hammer, and Speidel for retaliation in violation of the First  
22 Amendment; (2) Defendants Kernan, Diaz, Allison, Alfaro, Gipson, Moak, Perez,  
23 Paris, Prelip, Pfeiffer, Alafa, Hightower, Ortiz, and Stebbins for violation of the  
24 Eighth Amendment for unconstitutional conditions of confinement; and (3)  
25 Kernan, Diaz, Allison, Alfaro, Gipson, Moak, Perez, Paris, Prelip, Pfeiffer, Alafa  
26 for violation of the Fourteenth Amendment's Due Process Clause; and
- 27 2. All other claims be dismissed, with prejudice.

28 These findings and recommendations will be submitted to the United States district judge

1 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-one  
2 (21) days after being served with these findings and recommendations, Plaintiff may file written  
3 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
4 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the  
5 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,  
6 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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IT IS SO ORDERED.

Dated: December 16, 2021

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE