



1 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as  
2 true, courts "are not required to indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*,  
3 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

4 To survive screening, Plaintiff's claims must be facially plausible, which requires  
5 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable  
6 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret*  
7 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully  
8 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility  
9 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969.

## 10 **II. Plaintiff's Allegations**

11 Plaintiff is currently housed at the R.J. Donovan Correctional Facility in San Diego,  
12 California. Plaintiff alleges the events in this action arose while Plaintiff was housed at  
13 California State Prison in Corcoran, California ("Corcoran"). Plaintiff names the following  
14 defendants: (1) A. Arisco, Investigative Services Unit, (2) E. Garza, Sergeant, (3) R. Montano,  
15 Lieutenant, (4) R. Talsa, Associate Warden, (5) D. Sanchez, Captain, (7) Tienda, correctional  
16 officer, (8) Alvarez, psych tech, IC, (9) Diaz, correctional officer, IC, (10) Rosales, correctional  
17 officer, IC, (11) Navarro, sergeant, IC, (12) Vu, psychologist, IC, (13) Lewis, registered nurse,  
18 IC, (14) J. Scalia, correctional officer, IC, (15) J. Perez, counselor, IC, (16) M. Oliveira, admin.,  
19 IC, (17) T. Dunn, admin, IC, (18) Chand, psychologist, (19) Roacha, correctional officer, IC, (20)  
20 White, correctional officer, IC, (21) Hernandez, correctional officer, IC, (22) Acosta, correctional  
21 officer, IC, (23) E. Magallanes, LT, IC, (24) T. Chao, correctional officer, IC, (25) A. Rodriguez,  
22 psych tech., IC, (26) P. Herleman, sergeant, IC, (27) Rakash, psychologist, IC, and (28) Moreno,  
23 correctional officer, IC. All defendants are sued in their individual capacities.

24 In claim 1, Plaintiff alleges a violation of due process of the Fourteenth Amendment.  
25 Plaintiff is a participant in the Mental Health Service delivery system and is a *Coleman v. Wilson*  
26 class member. On August 19, 2019, Plaintiff and his cellmate, Stanford, were not getting along  
27 and agreed to house separately. However, Stanford had a different idea and falsely accused  
28 Plaintiff of sexual assault, as revenge for having to move. Because of the false allegation, an

1 investigation was initiated under the Prison Rape Elimination Act, by Arisco, Garza, the ISU  
2 sergeant, Montano and Talsa. At 11:30 pm, Plaintiff was taken from his cell where Arisco and  
3 Garza were waiting for him with recording devices. They told Plaintiff that Stanford said  
4 Plaintiff sexually assaulted him. Plaintiff fully cooperated with the investigation and gave a  
5 recorded statement. Arisco told Plaintiff that Stanford had made other false claims against  
6 cellmates but that they had to investigate but found it to be “bullshit.” They said they knew  
7 Stanford was lying but still had to put Plaintiff in administrative segregation. Plaintiff alleges  
8 that where officers know that the victim is known to lie to manipulate prison officials, the accused  
9 (Plaintiff) should be given less restrictive treatment. Plaintiff could have been housed in medical  
10 isolation so he could keep his privileges of family contact until investigation was over, because  
11 Arisco, Garza, Montano and Talsa knew the investigation would lead to nothing. They should  
12 have been given authority to decide if Plaintiff should be placed in Ad-Seg or less restrictive  
13 housing.

14 Since Plaintiff suffers from severe mental illness, special consideration should have been  
15 given to protect him from deterioration. It was apparent to defendants that Plaintiff needed a  
16 clinician because the regulations require it, Plaintiff requested it, and Plaintiff was in clear  
17 physical distress. The defendant denied due process because they wanted to leave as it was 1 a.m.

18 Defendants denied Plaintiff written notice of the Ad-Seg placement notice and he did not  
19 receive actual notice until a week later. Defendant falsely claims Plaintiff refused to sign the  
20 notice. They prevented Plaintiff from being able to present witnesses for why his placement was  
21 unnecessary. Plaintiff was in Ad-Seg from August 19 to November 4, 2019, and he was  
22 deteriorating. At the conclusion of the investigation, Plaintiff was cleared. As a result of three  
23 months detention in Ad-Seg, Plaintiff began having severe panic attacks, loss of appetite and loss  
24 of bodily functions, shaking, and became psychotic. Plaintiff was unable to have access to his  
25 mental health team on a daily basis. Defendants dragged the investigation out longer than  
26 necessary by not investigating witnesses.

27 On August 20, 2019, Defendant Sanchez did Plaintiff’s Ad-Seg placement review to  
28 determine whether plaintiff should be retained or released from Ad-Seg. Sanchez was supposed to

1 provide written notice of the charges. Sanchez did not let Plaintiff provide witnesses and would  
2 have had Defendant Arisco repeat that Standford was a known liar. Sanchez had the power to  
3 house Plaintiff in less restrictive housing. When Sanchez arrived, Plaintiff was tied to a holding  
4 cage on suicide watch and waiting for a psychologist, and it was apparent Plaintiff was not going  
5 to survive Ad-Seg.

6 On August 27, 2019, Plaintiff had an Institution Classification Committee (“ICC”) hearing  
7 before Perez, Dunn, Oliveira and Dr. Chand who stripped his due process rights. Plaintiff did not  
8 have his due process rights of 72 hour advance notice, a chance to speak, a chance to present  
9 evidence and call witnesses, and evaluated by a mental health clinician. Perez was the assigned  
10 counselor and representative, and Scalia was his staff assistant. Neither met with Plaintiff before  
11 the hearing or gave him assistance, as required by the regulations. Had they helped him, he  
12 would have been placed in restrictive housing. They consciously decided not to do their jobs  
13 which impacted Plaintiffs. They are assigned to Ad-Seg and know the effects it has on mentally  
14 ill inmates.

15 Chand was his assigned clinician to represent Plaintiff’s mental needs at the ICC. Chang  
16 did not meet with Plaintiff before the hearing, yet represented in his report that he had evaluated  
17 Plaintiff and found him stable and suitable to remain in Ad-Seg without decompensation. It was a  
18 false report. Plaintiff’s mental health needs were not presented, and no reasonable doctor would  
19 have allowed Plaintiff to remain in Ad-Seg, rather than medical isolation. Plaintiff’s mental health  
20 file shows he decompensated in isolation and needs daily interaction with his mental health team.

21 Defendant Dunn was the chairperson of the ICC hearing. He did not allow Plaintiff to  
22 present any documentary evidence, or witness. Dunn and the other members did not allow  
23 Plaintiff to speak at the hearing except to ask his inmate number, then Dunn said he is retaining  
24 Plaintiff in Ad-Seg pending completion of the investigation hearing. Dunn retained Plaintiff in  
25 Ad-Seg for 90 days and Plaintiff was not able to earn good time credits for those 90 days.  
26 Plaintiff assumes that Dunn knew or should have known that Plaintiff was released from PIP just  
27 a month before he was placed in Ad-Seg and should have known that Plaintiff’s mental health  
28

1 could not remain stable in Ad-Seg for three months.

2 Oliveira was the recorder of the hearing, and he was supposed to allow Plaintiff to present  
3 witnesses and evidence to be put on the record. Dunn and the rest of the defendants violated  
4 Plaintiff's due process right and violating procedural due process.

5 In claim 2, Plaintiff alleges violation of the Eighth Amendment. On August 20, 2019,  
6 while in Ad-Seg, Plaintiff began feeling like doing self-harm, because he was falsely accused of  
7 sexual assault. Plaintiff reported to Tienda that he was feeling suicidal and that Plaintiff felt like  
8 hanging himself. Tienda said "I don't see you hanging," and walked away. During morning  
9 medication pass, Plaintiff told Alvarez that he was suicidal and her response was that, "I'm  
10 suicidal too," which delayed Plaintiff from getting treatment for his serious medical need. Alvarez  
11 is a psychiatric technician and knows better than to deny a mentally ill inmate treatment.

12 Rosales came to do his security check and Plaintiff again reported that Plaintiff was  
13 suicidal. Rosales smirked and kept walking and did not activate suicidal prevention protocols.  
14 Plaintiff asked Tienda, Alvarez and Rosales, within the span of an hour, for help and all refused.  
15 Plaintiff did not get to speak to a psychologist until 6 hours later.

16 A doctor or social worker came to speak to another inmate and Plaintiff told her how he  
17 was feeling and she activated the suicide prevention protocols. Plaintiff was removed from his  
18 cell. Rosales handcuffed him, and Plaintiff was taken out of the cell. Diaz attached a triangular  
19 device to the handcuffs. The triangle has a 2 foot linked chain that connects to the handcuffs. The  
20 triangle is a way to stop an inmate from being resistive. Plaintiff was not resistive or combative  
21 and the device should not have been used. Plaintiff believes the device is used to punish inmates  
22 who report them.

23 Rosales and Diaz put Plaintiff in a holding cage and Diaz hooked the triangle to the cage  
24 in a way that left Plaintiff's hands and arms elevated and forced him to face the back of the cage,  
25 and Plaintiff was prevented from sitting down. Plaintiff was in that position for four hours in  
26 excruciating pain tortured by Rosales and Diaz. Throughout the four hours, Plaintiff was in pain  
27 and every time Rosales, Tienda and Diaz conducted security checks, he asked them to take off the  
28 handcuffs. They laughed and just said, you are the one who is suicidal. Plaintiff told Defendant

1 Navarro and he blamed Plaintiff claims “what did you do to my officers.” They acted  
2 intentionally to inflict unnecessary pain.

3 Plaintiff told Alvarez during her medical pass, and she said she would not get involved  
4 and it was between Plaintiff and the officers. When Sanchez arrived two hours into the ordeal, to  
5 do the Ad-Seg review, Plaintiff told her Plaintiff was in a lot of pain and if she would remove the  
6 triangle. She told Plaintiff to tell Sergeant Navarro. She left without doing anything.

7 After 4 hours of being chained, Dr. Wu and RN Lewis arrived. They had treated Plaintiff  
8 before and he reported that the officers were abusing Plaintiff and Plaintiff needed to be admitted  
9 into the mental crisis bed. Neither Dr. Wu or Lewis tried to get the triangle off or report the  
10 defendants.

11 In claim 3, Plaintiff alleges supervisory liability. Plaintiff alleges that Sanchez and  
12 Navarro are in supervisory positions which makes them responsible for everything their  
13 subordinates did to Plaintiff. They also had personal involvement.

14 In Claim 4, Plaintiff alleges denial of mental health treatment. When Vu and Lewis  
15 arrived to do their mental evaluation on Plaintiff, Plaintiff told them he could not handle the  
16 stresses since being taken from his cell on August 19 and was feeling suicidal. Lewis examined  
17 Plaintiff for injury and Vu admitted Plaintiff to the MHCB.

18 Vu reported to Navarro that he was going to move Plaintiff from Ad-Seg to the MHCB.  
19 Navarro interfered with Plaintiff’s mental health treatment because Navarro told Vu not to put  
20 Plaintiff in MHCB because Plaintiff was just trying to get out of Ad-Seg. Vu told Plaintiff that  
21 Plaintiff was going to remain in Ad-Seg.

22 Vu was deliberately indifferent to Plaintiff’s serious medical need because he knows  
23 Plaintiff would continue to deteriorate in Ad-Seg and have long term effects. Vu knew Plaintiff  
24 was in real mental health crisis and would decompensate in Ad-Seg, and it was foreseeable that  
25 Plaintiff would decompensate. Plaintiff in fact decompensated in Ad-Seg and had debilitating  
26 depression and anxiety and had auditory and visual hallucinations. His illness caused him to self-  
27 isolate and Plaintiff spent 24 hours in his cell, could not get himself up to shower, attend groups,  
28 or go outside.

1 In claim 5, Plaintiff alleges excessive force in violation of the Eighth Amendment.  
2 Plaintiff told Navarro that Plaintiff was going to file a grievance against him. Because of it,  
3 Navarro had his subordinates rough Plaintiff up. Plaintiff was taken out of the cage, with Tienda  
4 on one side Diaz on the other and they “chicken winged” Plaintiff, where the officer interlock  
5 their arms under the shoulders of the person who is handcuffed and jack their arms up to make the  
6 person bend at the waist in pain. Diaz told Plaintiff, “it will be hard to file a 602 with two broken  
7 hands.” It was meant to scare Plaintiff not to file a grievance on Navarro.

8 Tienda and Diaz walked Plaintiff to his cell. Tienda went in and took all of Plaintiff’s  
9 bedding. Plaintiff was cold so he began kicking the door and banging his head on the door and  
10 window for a long time. Scalia came for a security check and told plaintiff that if he did not stop  
11 banging his head, the nurse would come and give Plaintiff a shot.

12 Scalia, Rosales, Tienda and Diaz converged on Plaintiff’s cell. Diaz told the Doe control  
13 tower officer to open Plaintiff’s door. When he did, Scalia stepped inside and grabbed plaintiff  
14 by the front of his shirt and punched Plaintiff’s face, two times busting Plaintiff’s nose. Plaintiff  
15 asked for medical treatment and Scalia said that if Plaintiff wanted to report it that Scalia would  
16 claim an “emergency cell extraction.” Plaintiff alleges the other defendants stood by and did  
17 nothing was Plaintiff was attacked.

18 In claim 6, Plaintiff alleges retaliation in violation of the First Amendment. Defendants  
19 retaliated against Plaintiff for protected conduct of seeking mental health treatment and right to  
20 file a grievance. Tienda, Alvarez and Rosales delayed Plaintiff from getting treatment. Rosales  
21 and Diaz put a triangle on Plaintiff and tied him to a cage for hours, and the rest of the defendants  
22 failed to act to take it off. “Navarro, Vu and Lewis denied Plaintiff treatment to stop him from  
23 seeking it in the future.” Navarro, Tienda and Diaz assaulted Plaintiff for telling Navarro that  
24 Plaintiff was going to file a grievance.

25 In claim 7, Plaintiff alleges deliberate indifference to serious medical need. Dr. Rakash  
26 was Plaintiff’s primary psychologist while house in Ad-Seg. For over a month, Dr. Rakash  
27 watched as Plaintiff deteriorated in Ad-Seg and did nothing to help him. He could see that  
28 Plaintiff was not attending mental health groups or going outside or taking showers and was

1 spending 24 hours in his cell. Plaintiff reported to Dr. Rakash Plaintiff's symptoms of low  
2 energy, loss of appetite, panic attack, auditory hallucinations. Plaintiff asked Dr. Rakash for anti-  
3 psychotic medication because the current medication was not working. Plaintiff had to submit a  
4 health care appeal forms on September 11, 2019 and October 20, 2019, and said he had  
5 overwhelming thoughts of death, panic attacks, uncontrolled shaking, eating and sleeping trouble.  
6 The RN referred Plaintiff to his mental health treatment team, which did nothing.

7 Dr. Rakash knew that Plaintiff had a serious mental issue and if untreated could cause  
8 damage. Dr. Rakash acknowledged that Plaintiff needed to be hospitalized in the Psychiatric  
9 Inpatient Program, but Dr Rakash said Corcoran was short on mental health and it took a while to  
10 transfer inmates and that Plaintiff needed to stabilize before he could refer Plaintiff. Dr. Rakash  
11 watched Plaintiff's health decline and knew it was only going to get worse. He chose the course  
12 of treatment of watch, give encouraging words and do nothing. This course was medically  
13 unacceptable and no reasonable clinician would use it by watching their patient decompensate in  
14 solitary confinement. Rakash's deliberate indifference caused Plaintiff to try and kill himself.

15 In claim 8, Plaintiff alleges excessive force. Plaintiff alleges that on November 8, 2019,  
16 Plaintiff had been awake for about three days having auditory and visual hallucinations. Plaintiff  
17 sought psychiatric help and was turned away again. Plaintiff tried to kill himself by hanging. He  
18 blocked his cell door with boxes and a mattress and made a noose, tied it around his neck and  
19 tried to strangle himself.

20 Defendant White discovered Plaintiff hanging and without warning, he opened the door's  
21 tray slot and attempted to pepper spray Plaintiff. It backfired on him because Plaintiff had  
22 barricaded the door to prevent entry. Plaintiff continued to hang himself. White stuck is arm  
23 through the tray-slot, knocked down the barricade and began excessively dowsing Plaintiff with  
24 pepper spray. The effects of the pepper spray caused burning and caused Plaintiff to stop trying  
25 to hang himself. Plaintiff backed up to the tray slot and allowed White to handcuff Plaintiff. The  
26 door was opened and the alarm was triggered. "It was his intention to beat Plaintiff before  
27 medical and responding officers arrived." White pushed Plaintiff to the ground inside the cell,  
28 then jumped on Plaintiff and put his knee on his neck and bounced up and down to inflict

1 unnecessary pain on Plaintiff. White took Plaintiff outside he cell. Acosta put Plaintiff in a  
2 headlock and Roacha grabbed Plaintiff's left arm, and they rammed Plaintiff's head into a wall  
3 and body slammed him to the ground. The all jumped on Plaintiff and began kneeling and  
4 punching Plaintiff. Hernandez was on Plaintiff's back with his knee dug in, which prevented  
5 Plaintiff from getting up.

6 They then picked Plaintiff up. Plaintiff could see responding officers downstairs,  
7 including Magallanes and Herleman watching but not acting. Moreno and Hernandez escorted  
8 Plaintiff towards the stairs. Moreno punched Plaintiff several times on the side of his face. This  
9 was done with Herleman, Magallanes, Rodriguez and other responding officer watching but not  
10 acting to protect Plaintiff.

11 Hernandez, Acosta, Moreno then chicken winged Plaintiff and dragged him with leg irons  
12 on and intentionally knocked Plaintiff's head into the door frame. They rammed him into a  
13 holding cage.

14 Herleman and Magallanes falsified a Rules Violation Report against Plaintiff charging  
15 him with battery on a peace officer. Rodriguez falsely reported that Plaintiff refused to allow the  
16 pepper spray to be washed off. Plaintiff could not wash it off until the next day, with the spraying  
17 burning all night.

18 In claim 9, Plaintiff alleges violation of Equal Protection of the Fourteenth Amendment.  
19 Plaintiff alleges that Tienda, Diaz, Scalia, White, Hernandez, and Moreno "were more prone to  
20 violently attack African-American inmates more than they attacked white or Hispanic inmates."  
21 Plaintiff alleges that the assaults that the witnesses were racially motivated. Hispanic inmates are  
22 treated more respectfully. All defendants have a conscious bias toward Africa American inmates  
23 by the abuse that happens and falsely charging African American inmates with crimes like battery  
24 after the inmate had been attacked.

25 In claim 10, Plaintiff alleges First Amendment Retaliation. On about November 6 or 7,  
26 2019, Diaz and H. Hernandez came to MHCB to serve Plaintiff with the RVR. Diaz threatened  
27 violence against Plaintiff for being in the MHCB and threatened to steal Plaintiff's property.  
28 Seeking and receiving mental and medical health treatment is protected conduct and defendant

1 attempted to chill Plaintiff by threatening him for being successful in getting out of Ad-Seg and  
2 into MHCb.

3 As remedies, Plaintiff seeks compensatory and punitive damages.

### 4 **III. Discussion**

5 Plaintiff's complaint fails to comply with Federal Rules of Civil Procedure 8, 18 and 20  
6 and fails to state a cognizable claim under 42 U.S.C. § 1983. Because he is proceeding pro se,  
7 Plaintiff will be granted leave to amend his complaint to the extent that he can do so in good faith.  
8 To assist Plaintiff, the Court provides the pleading and legal standards that appear relevant to his  
9 claims.

#### 10 **A. Federal Rule of Civil Procedure 8**

11 Pursuant to Rule 8, a complaint must contain "a short and plain statement of the claim  
12 showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Detailed factual allegations  
13 are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
14 conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citation omitted). Plaintiff must  
15 set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on  
16 its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). While factual allegations  
17 are accepted as true, legal conclusions are not. *Id.*; see also *Twombly*, 550 U.S. at 556–57; *Moss*,  
18 572 F.3d at 969.

19 Here, Plaintiff's complaint is not short. It is not a plain statement of his claims showing  
20 that he is entitled to relief. Many of Plaintiff's allegations are conclusory do not state what  
21 happened, when it happened, or which defendant was involved. He often refers to "defendants"  
22 without specifying which defendant. General assertions regarding who knew what about Plaintiff  
23 are not sufficient, and Plaintiff may not merely state the elements of a cause of action without  
24 providing any factual allegations in support of his claims. His allegations that "nothing was  
25 done" for medical care are insufficient. Further, Plaintiff improperly joins claims and the jumble  
26 of references are confusing. If Plaintiff files an amended complaint, it should be a short and plain  
27 statement of his claims, and must include factual allegations identifying what happened, when it  
28

1 happened and who was involved. Fed. R. Civ. P. 8.

2 **B. Federal Rules of Civil Procedure 18 and 20**

3 Plaintiff may not bring unrelated claims against unrelated parties in a single action. Fed.  
4 R. Civ. P. 18(a), 20(a)(2); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v. Smith*,  
5 507 F.3d 605, 607 (7th Cir. 2007); *Mackey v. Price*, 2020 WL 7319420, at \*3–4 (E.D. Cal. Dec.  
6 11, 2020), report and recommendation adopted, 2021 WL 843462 (E.D. Cal. Mar. 5, 2021).

7 Plaintiff may bring a claim against multiple defendants so long as (1) the claim arises out of the  
8 same transaction or occurrence, or series of transactions and occurrences, and (2) there are  
9 commons questions of law or fact. Fed. R. Civ. P. 20(a)(2); *Coughlin v. Rogers*, 130 F.3d 1348,  
10 1351 (9th Cir. 1997). The “same transaction” requirement refers to similarity in the factual  
11 background of a claim. *Id.* at 1349. Only if the defendants are properly joined under Rule 20(a)  
12 will the Court review the other claims to determine if they may be joined under Rule 18(a), which  
13 permits the joinder of multiple claims against the same party.

14 Plaintiff may not raise different claims against different defendants in a single action. For  
15 instance, Plaintiff may not state unrelated claims for his Ad-Seg housing, excessive force,  
16 conditions of confinement (the triangle and cage placement), false reports, medical care and  
17 deliberate indifference while in Ad-Seg and many other claims. Unrelated claims involving  
18 multiple defendants belong in different suits. The complaint is a series of multiple incidents  
19 which happened while Plaintiff was housed in Ad-Seg. Merely because Plaintiff was housed in  
20 Ad-Seg when the incidents occurred does not make every injury or incident related. Plaintiff will  
21 have to decide which claims he wishes to pursue and if unrelated claims are joined, the Court will  
22 select which cognizable claim may proceed. Separate unrelated claims must be filed in separate  
23 lawsuits.

24 **C. Supervisory Liability**

25 To the extent Plaintiff seeks to hold any defendant liable based solely upon their  
26 supervisory role, he may not do so. Liability may not be imposed on supervisory personnel for the  
27 actions or omissions of their subordinates under the theory of respondeat superior. *Iqbal*, 556 U.S.  
28 at 676–77; *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011, 1020–21 (9th Cir. 2010); *Ewing v. City*

1 of *Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir.  
2 2002). “A supervisor may be liable only if (1) he or she is personally involved in the  
3 constitutional deprivation, or (2) there is a sufficient causal connection between the supervisor's  
4 wrongful conduct and the constitutional violation.” *Crowley v. Bannister*, 734 F.3d 967, 977 (9th  
5 Cir. 2013) (citation and quotation marks omitted); accord *Lemire v. Cal. Dep't of Corrs. &*  
6 *Rehab.*, 726 F.3d 1062, 1074–75 (9th Cir. 2013); *Lacey v. Maricopa Cty.*, 693 F.3d 896, 915–16  
7 (9th Cir. 2012) (en banc). “Under the latter theory, supervisory liability exists even without overt  
8 personal participation in the offensive act if supervisory officials implement a policy so deficient  
9 that the policy itself is a repudiation of constitutional rights and is the moving force of a  
10 constitutional violation.” *Crowley*, 734 F.3d at 977 (citing *Hansen v. Black*, 885 F.2d 642, 646  
11 (9th Cir. 1989)) (internal quotation marks omitted).

12 Plaintiff names supervisory defendants. In particular, Plaintiff alleges that Sanchez and  
13 Navarro are in supervisory positions, and alleges their positions make “them responsible for  
14 everything their subordinates did to Plaintiff.” Plaintiff alleges that they “knew” or “should have  
15 known” or “absolutely knew” about conditions. Plaintiff merely relies on these supervising  
16 Defendants’ responsibilities to ensure the safety and health of the prisoners, but this claim is  
17 based on respondeat superior which is not cognizable under section 1983. *Iqbal*, 556 U.S. at 677.  
18 Such conclusory allegations are insufficient to state the causal link between such defendant and  
19 the claimed constitutional violation.

#### 20 **D. Failure to Investigate**

21 Plaintiff alleges the investigation into the false charges against him was slow and delayed.

22 To the extent Plaintiff alleges that Arisco, Garza, Montano and Talsa, or any other  
23 defendant, violated his rights for an inadequate or slow investigation, Plaintiff's claims are not a  
24 basis for a plausible §1983 claim. *Baker v. Beam*, 2019 WL 1455321, at \*6 (E.D. Cal. 2019);  
25 *Drake v. Ibal*, No. 1:22-CV-01149 BAM PC, 2022 WL 18027808, at \*8 (E.D. Cal. Dec. 30,  
26 2022) (no claim for faulty investigation for removal of evidence from the investigative file). To  
27 the degree Plaintiff is trying to hold the individuals or others liable for an independent,  
28 unspecified constitutional violation based upon an allegedly inadequate investigation, there is no

1 such claim. *See Gomez v. Whitney*, 757 F.2d 1005, 1006 (9th Cir. 1985) (per curiam) (“[W]e can  
2 find no instance where the courts have recognized inadequate investigation as sufficient to state a  
3 civil rights claim unless there was another recognized constitutional right involved.”); *Page v.*  
4 *Stanley*, 2013 WL 2456798, at \*8–9 (C.D. Cal. June 5, 2013) (dismissing Section 1983 claim  
5 alleging that officers failed to conduct thorough investigation of plaintiff’s complaints because  
6 plaintiff “had no constitutional right to any investigation of his citizen’s complaint, much less a  
7 ‘thorough’ investigation or a particular outcome”); *Tirado v. Santiago*, No. 1:22-CV-00724 BAM  
8 PC, 2022 WL 4586294, at \*5 (E.D. Cal. Sept. 29, 2022), report and recommendation adopted,  
9 No. 1:22-CV-00724 JLT BAM PC, 2022 WL 16748838 (E.D. Cal. Nov. 7, 2022) (no  
10 constitutional claim for failing to investigate an appeal).

#### 11 **E. Due Process - Ad-Seg Placement**

12 A prisoner does not have a right to a particular classification or custody level under the  
13 Due Process Clause. *See Myron v. Terhune*, 476 F.3d 716, 718 (9th Cir. 2007) (concluding  
14 California prisoner does not have liberty interest in residing at a level III prison as opposed to  
15 level IV prison). Prisoners do not have a liberty interest in remaining housed in the general  
16 prison population. *Hernandez v. Constable*, 2020 WL 2145387, at \*2 (E.D. Cal. Feb. 21, 2020),  
17 report and recommendation adopted, 2020 WL 2126893 (E.D. Cal. May 5, 2020) (citing *Smith v*  
18 *Noonan*, 992 F.3d 987, 989 (9th Cir. 1993); *McFarland v. Cassady*, 779 F.2d 1426, (9th Cir.  
19 1986)). Accordingly, plaintiff does not have a liberty interest in being housed in any particular  
20 prison or to any particular classification.

21 “Typically, administrative segregation in and of itself does not implicate a protected  
22 liberty interest.” *Serrano v. Francis*, 345 F.3d 1071, 1078 (9th Cir. 2003); *see also Sandin v.*  
23 *Connor*, 515 U.S. at 472, 486 (discipline in segregated confinement did not present the type of  
24 atypical, significant deprivation in which a State might conceivably create a liberty interest.)  
25 “[W]hen prison officials initially determine whether a prisoner is to be segregated for  
26 administrative reasons due process only requires the following procedures: Prison officials must  
27 hold an informal nonadversary hearing within a reasonable time after the prisoner is segregated.  
28 The prison officials must inform the prisoner of the charges against the prisoner or their reasons

1 for considering segregation. Prison officials must allow the prisoner to present his views.”  
2 *Toussaint v. McCarthy*, 801 F.2d 1080, 1100-01 (9th Cir. 1986) (footnote omitted), abrogated on  
3 other grounds, *Sandin*, 515 U.S. 472.

4 Plaintiff alleges that because the charges were based on a known liar, he should have been  
5 place in less restrictive housing. But Plaintiff does not have a liberty interest to be housed in less  
6 restrictive housing. Plaintiff alleges he was informed of the charges and told why he was in Ad-  
7 Seg. Plaintiff has stated that within a week of being placed in administrative segregation, he  
8 received an ICC hearing in front of some of the defendants. Plaintiff may be able to state a  
9 cognizable claim but currently does not state a due process claim based on his classification  
10 housing.<sup>1</sup> In addition, Plaintiff fails to state a cognizable claim against Chand or Oliveira as Due  
11 Process does not mandate administrative assistants require witnesses and evidence to be placed  
12 “on the record.”

13 Due process requires that prison officials engage in some sort of periodic review of an  
14 inmate's confinement in segregation. *See Hewitt v. Helms*, 459 U.S. 460, 477 n.9, 103 S.Ct. 864,  
15 74 L.Ed.2d 675; *Toussaint v. McCarthy*, 801 F.2d at 1101. These periodic reviews must be more  
16 than “meaningless gestures” to satisfy due process. *See Toussaint v. McCarthy*, 926 F.2d 800,

---

17  
18 <sup>1</sup> Disciplinary segregation requires more process. Disciplinary segregation as punishment for  
19 violation of jail rules and regulations cannot be imposed without complying with the procedural  
20 requirements of *Wolff v. McDonnell*, 418 U.S. 539 (1974). “Prison disciplinary proceedings are  
21 not part of a criminal prosecution, and the full panoply of rights due a defendant in such  
22 proceedings does not apply.” *Wolff*, 418 U.S. at 556 (1974). With respect to prison disciplinary  
23 proceedings, the minimum procedural requirements that must be met are: (1) written notice of the  
24 charges; (2) at least 24 hours between the time the prisoner receives written notice and the time of  
25 the hearing, so that the prisoner may prepare his defense; (3) a written statement by the fact  
26 finders of the evidence they rely on and reasons for taking disciplinary action; (4) the right of the  
27 prisoner to call witnesses in his defense, when permitting him to do so would not be unduly  
28 hazardous to institutional safety or correctional goals; and (5) assistance to the prisoner where the  
prisoner is illiterate or the issues presented are legally complex. *Id.* at 563-71. As long as the five  
minimum *Wolff* requirements are met, due process has been satisfied. *Walker v. Sumner*, 14 F.3d  
1415, 1420 (9th Cir. 1994), abrogated on other grounds by *Sandin v. Connor*, 515 U.S. 472  
(1995). In addition, “some evidence” must support the decision of the hearing officer,  
*Superintendent v. Hill*, 472 U.S. 445, 455 (1985), and the evidence must have some indicia of  
reliability, *Cato v. Rushen*, 824 F.2d 703, 705 (9th Cir. 1987). The “some evidence” standard is  
not particularly stringent, and the relevant inquiry is whether “there is any evidence in the record  
that could support the conclusion reached....” *Hill*, 472 U.S. at 455-56.

1 802-03 (9th Cir. 1990). Although temporary confinement in administrative segregation typically  
2 does not implicate a protected liberty interest, imposition of an indeterminate term as a result of a  
3 disciplinary charge constitutes a much greater deprivation. *See Madrid*, 889 F.Supp. at 1271  
4 (“defendants may not confine prison gang members in the SHU, nor hold them there on  
5 indeterminate terms, without providing them the quantum of procedural due process required by  
6 the Constitution.”).

7 The decision to continue confinement of an inmate pending investigation of misconduct  
8 charges depends upon circumstances that prison officials will be well aware of—most typically,  
9 the progress of the investigation. *Hewitt v. Helms*, 459 U.S. 460, 477 n.9, 103 S. Ct. 864, 874, 74  
10 L. Ed. 2d 675 (1983) (due process requirements for placement in administrative segregation),  
11 abrogated in part on other grounds by *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132  
12 L.Ed.2d 418 (1995).

13 In this case, Plaintiff alleges that he received notice of the 8/27/19 review hearing and was  
14 denied the opportunity to say anything of substance. However, he does not allege that he was  
15 denied the opportunity to present his views through a written statement or that the notice was  
16 insufficient. Given that his allegations do not demonstrate a violation of the *Hewitt* requirements,  
17 his Due Process claim fails. In addition, the Due Process claims are not properly joined with other  
18 unrelated claims.

#### 19 **F. False Rules Violation Report and Medical Report**

20 It appears Plaintiff’s main complaint is a Due Process violation for being falsely accused  
21 of improper conduct. In addition, Plaintiff claims that defendant Chand falsely reported Plaintiff’s  
22 medical condition that Plaintiff would be able to tolerate placement in Ad-Seg.

23 Prisoners do not have a liberty interest in being free from false accusations of misconduct.  
24 The filing of a false Rules Violation Report by a prison official against a prisoner is not a per se  
25 violation of the prisoner's constitutional rights. *See Muhammad v. Rubia*, 2010 WL 1260425, at  
26 \*3 (N.D. Cal., Mar. 29, 2010), aff’d, 453 Fed. App’x 751 (9th Cir. 2011) (“[A] prisoner has no  
27 constitutionally guaranteed immunity from being falsely or wrongly accused of conduct which  
28 may result in the deprivation of a protected liberty interest. As long as a prisoner is afforded

1 procedural due process in the disciplinary hearing, allegations of a fabricated charge fail to state a  
2 claim under § 1983.”) (citations omitted)

3 The creation of false evidence, standing alone, is not actionable under § 1983. See  
4 *Hernandez v. Johnston*, 833 F.2d 1316, 1319 (9th Cir. 1987) (independent right to accurate prison  
5 record has not been recognized); *Johnson v. Felker*, No. 1:12-cv-02719 GEB KJN (PC), 2013  
6 WL 6243280, at \*6 (E.D. Cal. Dec. 3, 2013) (“Prisoners have no constitutionally guaranteed right  
7 to be free from false accusations of misconduct, so the mere falsification of a report does not give  
8 rise to a claim under section 1983.”) (citations omitted). Moreover, “plaintiff cannot state a  
9 cognizable Eighth Amendment violation based on an allegation that defendant[ ] issued a false  
10 rule violation against plaintiff.” *Jones v. Prater*, No. 2:10-cv-01381 JAM KJN P, 2012 WL  
11 1979225, at \*2 (E.D. Cal. Jun. 1, 2012); *see also Youngs v. Barretto*, No. 2:16-cv-0276 JAM AC  
12 P, 2018 WL 2198707, at \*3 (E.D. Cal. May 14, 2019) (noting that issuance of false rules violation  
13 report does not rise to the level of cruel and unusual punishment) (citations omitted). Likewise,  
14 false medical reports do not give rise to a cognizable claim. *Evans v. Diaz*, No. 1:22-CV-00291  
15 ADA BAM PC, 2022 WL 17417816, at \*12 (E.D. Cal. Dec. 5, 2022) (failure to state a claim for  
16 fabricated medical reasoning in medical report); *Martin v. Pfeiffer*, No. 1:22-CV-00889 AWI  
17 BAM PC, 2022 WL 4345686, at \*8 (E.D. Cal. Sept. 19, 2022), report and recommendation  
18 adopted, No. 1:22-CV 00889 AWI BAM PC, 2022 WL 17406535 (E.D. Cal. Dec. 2, 2022)  
19 (Plaintiff’s complaint fails to state a claim based on allegations of a false medical injury report);  
20 *Sanford v. Eaton*, No. 1:20-CV-00792 BAM(PC), 2021 WL 1172911, at \*7 (E.D. Cal. Mar. 29,  
21 2021)(denying a claim alleging falsified medical report and statements made by Plaintiff),  
22 denying to adopt on other grounds, *Sanford v. Eaton*, No. 1:20-CV00792-JLT BAM(PC), 2022  
23 WL 168530, at \*2 (E.D. Cal. Jan. 19, 2022). False charges or false medical information are not  
24 cognizable claims.

## 25 **G. Eighth Amendment**

### 26 **1. Excessive Force**

27 The Eighth Amendment protects prisoners from inhumane methods of punishment and  
28 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.

1 2006). The unnecessary and wanton infliction of pain violates the Cruel and Unusual  
2 Punishments Clause of the Eighth Amendment. *Hudson v McMillian*, 503 U.S. 1, 5 (1992)  
3 (citations omitted). Although prison conditions may be restrictive and harsh, prison officials must  
4 provide prisoners with food, clothing, shelter, sanitation, medical care, and personal safety.  
5 *Farmer v. Brennan*, 511 U.S. 825, 832–33 (1994) (quotations omitted).

6 “[W]henver prison officials stand accused of using excessive physical force in violation  
7 of the [Eighth Amendment], the core judicial inquiry is...whether force was applied in a good-  
8 faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”  
9 *Hudson*, 503 U.S. at 6-7. Not “every malevolent touch by a prison guard gives rise to a federal  
10 cause of action.” *Id.* at 9. De minimis uses of physical force do not violate the constitution  
11 provided that the use of force is not of a sort “repugnant to the conscience of mankind.” *Whitley*  
12 *v. Albers*, 475 U.S. 312, 327 (1986) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

13 For claims of excessive physical force, the issue is “whether force was applied in a good-  
14 faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”  
15 *Hudson*, 503 U.S. at 7. Relevant factors for this consideration include “the extent of injury... [,]  
16 the need for application of force, the relationship between that need and the amount of force used,  
17 the threat ‘reasonably perceived by the responsible officials,’ and ‘any efforts made to temper the  
18 severity of a forceful response.’ ” *Id.* (quoting *Whitley v. Albers*, 475 U.S. 1078, 1085 (1986) ).  
19 Finally, because the use of force relates to the prison's legitimate penological interest in  
20 maintaining security and order, the court must be deferential to the conduct of prison officials.  
21 *See Whitley*, 475 U.S. at 321–22.

#### 22 Use of Triangle

23 Plaintiff may be able to state a cognizable claim for excessive force. Plaintiff alleges that  
24 the way he was cuffed was painful. He alleges that asked Rosales, Tienda and Diaz to take off  
25 the triangle, but he does not allege how often he told them or if he told them he was in pain. In  
26 addition, this claim is not properly joined with other unrelated claims.

#### 27 Force used in Plaintiff's cell

28 Plaintiff may be able to state a claim for the force used by Scalia busting Plaintiff's nose,

1 and other officers who engaged in force, but this claim is improperly joined with other unrelated  
2 claims.

3 Attempted Suicide Incident on November 8, 2019

4 Plaintiff alleges he was pepper sprayed and otherwise beat up by Defendant White,  
5 Hernandez, Roacha and Acosta and other officers when Plaintiff was trying to commit suicide.  
6 Hernandez, Acosta, Moreno then chicken winged Plaintiff. Plaintiff may be able to state a claim,  
7 but this claim is improperly joined with other unrelated claims.

8 **2. Failure to Intervene**

9 Prison officials have a duty to take reasonable steps to protect inmates from physical  
10 abuse. *Farmer*, 511 U.S. at 832–33; *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005).  
11 “[A] prison official can violate a prisoner's Eighth Amendment rights by failing to intervene.”  
12 *Robins v. Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995).

13 Use of Triangle

14 Plaintiff alleges that Dr. Wu, Alvarez, and RN Lewis saw that Plaintiff was in the triangle  
15 and hooked to the cage, but failed to take the triangle off. Plaintiff fails to state that the medical  
16 defendant had authority to remove Plaintiff from the cage or remove the triangle.

17 Force used in Plaintiff's cell

18 Plaintiff may be able to state a claim for Rosales, Tienda and Diaz failure to stop the force  
19 which resulted in Plaintiff busted nose, but based on the current pleading, Plaintiff fails to state a  
20 cognizable claim. Plaintiff does not allege that the officers were able to see what was happening  
21 and in a position to intervene during the brief incident. This claim is improperly joined with other  
22 unrelated claims.

23 Attempted Suicide Incident on November 8, 2019

24 Plaintiff alleges that Magallanes, Rodriguez and Herleman were watching but not acting  
25 when the officers were using force to stop Plaintiff's act of suicide. Plaintiff may be able to state  
26 a claim, but this claim is improperly joined with other unrelated claims.

27 **3. Deliberate Indifference to Medical Care**

28 A prisoner's claim of inadequate medical care does not constitute cruel and unusual

1 punishment in violation of the Eighth Amendment unless the mistreatment rises to the level of  
2 “deliberate indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.  
3 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). The two-part test for deliberate  
4 indifference requires Plaintiff to show (1) “a ‘serious medical need’ by demonstrating that failure  
5 to treat a prisoner's condition could result in further significant injury or the ‘unnecessary and  
6 wanton infliction of pain,’ ” and (2) “the defendant's response to the need was deliberately  
7 indifferent.” *Jett*, 439 F.3d at 1096. A defendant does not act in a deliberately indifferent manner  
8 unless the defendant “knows of and disregards an excessive risk to inmate health or safety.”  
9 *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). “Deliberate indifference is a high legal standard,”  
10 *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1019 (9th Cir. 2010); *Toguchi v. Chung*, 391  
11 F.3d 1051, 1060 (9th Cir. 2004), and is shown where there was “a purposeful act or failure to  
12 respond to a prisoner's pain or possible medical need” and the indifference caused harm. *Jett*, 439  
13 F.3d at 1096.

14 Negligence or medical malpractice do not rise to the level of deliberate indifference.  
15 *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir. 1980) (citing *Estelle*, 429 U.S. at  
16 105-106). “[A] complaint that a physician has been negligent in diagnosing or treating a medical  
17 condition does not state a valid claim of medical mistreatment under the Eighth Amendment.  
18 Medical malpractice does not become a constitutional violation merely because the victim is a  
19 prisoner.” *Estelle*, 429 U.S. at 106; *see also Anderson v. County of Kern*, 45 F.3d 1310, 1316 (9th  
20 Cir. 1995). Even gross negligence is insufficient to establish deliberate indifference to serious  
21 medical needs. *See Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990). Additionally, a  
22 prisoner's mere disagreement with diagnosis or treatment does not support a claim of deliberate  
23 indifference. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989).

24 Further, a “difference of opinion between a physician and the prisoner—or between  
25 medical professionals—concerning what medical care is appropriate does not amount to  
26 deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978, 987 (9th Cir. 2012) (citing *Sanchez v.*  
27 *Vild*, 891 F.2d at 242, overruled in part on other grounds, *Peralta v. Dillard*, 744 F.3d 1076,  
28 1082–83 (9th Cir. 2014); *Wilhelm v. Rotman*, 680 F.3d 1113, 1122–23 (9th Cir. 2012)) (citing

1 *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1986)). Rather, Plaintiff “must show that the  
2 course of treatment the doctors chose was medically unacceptable under the circumstances and  
3 that the defendants chose this course in conscious disregard of an excessive risk to [his] health.”  
4 *Snow*, 681 F.3d at 988 (citing *Jackson*, 90 F.3d at 332) (internal quotation marks omitted).

5 August 20, 2019 Security Check by Tienda, Rosales and Alvarez

6 Plaintiff alleges he told each person he was suicidal and they smirked, or said something  
7 derogatory or turned away from Plaintiff. Plaintiff may be able to state a cognizable claim against  
8 Tienda, but fails to state a claim against Rosales and Alvarez. Plaintiff should state additional  
9 factual support that each defendant knows of and disregards an excessive risk to inmate health or  
10 safety. Neither Alvarez’s or Rosales’ responses indicate a knowledge and disregard of the risk to  
11 Plaintiff. In addition, this claim is not properly joined with other unrelated claims.

12 Dr. Rakash

13 Plaintiff alleges that Plaintiff reported to Dr. Rakash Plaintiff’s low energy, thoughts of  
14 death, panic attacks and other symptoms, and faults Dr. Rakash for not placing Plaintiff in the  
15 mental health crisis bed and “do nothing” and watch as Plaintiff decompensated. A difference of  
16 opinion between the prisoner and medical providers concerning the appropriate course of  
17 treatment does not give rise to an Eighth Amendment claim. Plaintiff fails to allege facts that any  
18 defendant “knows of and disregards an excessive risk to inmate health or safety.” In addition, this  
19 claim is not properly joined with other unrelated claims.

20 Chand and the ICC meeting

21 Plaintiff alleges that Chand was his assigned clinician to represent Plaintiff’s mental needs  
22 at the ICC. Chand did not meet with Plaintiff before the hearing, yet reported that Plaintiff could  
23 withstand being housed in Ad-Seg. A difference of opinion between the prisoner and medical  
24 providers concerning the appropriate course of treatment does not give rise to an Eighth  
25 Amendment claim. Plaintiff fails to allege facts that any defendant “knows of and disregards an  
26 excessive risk to inmate health or safety.”

27 Vu and Lewis

28 Plaintiff alleges that Vu and Lewis did a mental evaluation, and Plaintiff told them that he

1 could not handle being in Ad-Seg and was suicidal. Lewis examined Plaintiff and Vu admitted  
2 Plaintiff to the crisis bed, but changed his mind. A difference of opinion between the prisoner and  
3 medical providers concerning the appropriate course of treatment does not give rise to an Eighth  
4 Amendment claim. Plaintiff fails to allege facts that any defendant “knows of and disregards an  
5 excessive risk to inmate health or safety.” Plaintiff’s conclusory allegations that these defendant  
6 “know” Plaintiff would decompensate is conclusory. In addition, this claim is not properly joined  
7 with other unrelated claims.

#### 8 4. Conditions of Confinement

9 Plaintiff alleges that the triangle devices should not have been used because he was not  
10 combative or resistive and it is a punitive device.

11 To state an Eighth Amendment claim, Plaintiff must satisfy both the objective and  
12 subjective components of a two-part test. *See Wilson v. Seiter*, 501 U.S. 294, 298–99 (1991);  
13 *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002). First, he must allege Defendants deprived  
14 him of the “ ‘minimal civilized measure of life's necessities.’ ” *Frost v. Agnos*, 152 F.3d 1124,  
15 1128 (9th Cir. 1998) (quoting *Wilson*, 501 U.S. at 304). When determining whether an alleged  
16 deprivation is objectively sufficiently serious to support an Eighth Amendment claim, the court  
17 must consider the circumstances, nature, and duration of the deprivation. *Johnson v. Lewis*, 217  
18 F.3d 726, 731–32 (9th Cir. 2000).

19 Second, Plaintiff must allege facts sufficient to plausibly show each Defendant he seeks to  
20 hold liable had a “sufficiently culpable mind.” *Wilson*, 501 U.S. at 297. “In prison-conditions  
21 cases that state of mind is one of ‘deliberate indifference’ to inmate health or safety.” *Farmer v.*  
22 *Brennan*, 511 U.S. 825, 834 (1994) (citation omitted). That is, that the official must “kn[ow] of  
23 and disregard[ ] an excessive risk to inmate health or safety[.]” *Id.* at 837.

24 Plaintiff's allegation that he was chained using the triangle device and hooked to the cage  
25 where he could not sit for four hours does not rise to the level of a constitutional violation. Such  
26 temporarily unpleasant conditions of confinement do not rise to the level of constitutional  
27 violations. *See Anderson v. County of Kern*, 45 F.3d 1310 (9th Cir. 1995), citing *Hoptowit v. Ray*,  
28 682 F.2d 1237, 1258 (9th Cir. 1982) (abrogated on other grounds by *Sandin v. Conner*, 515 U.S.

1 472 (1995)) (in evaluating challenges to conditions of confinement, length of time the prisoner  
2 must go without basic human needs may be considered). To be cognizable, temporary conditions  
3 of confinement must be severe or prolonged. “[R]outine discomfort inherent in the prison setting”  
4 does not rise to the level of a constitutional violation. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th  
5 Cir. 2006).

6 In addition, to state a claim for violation of the Eighth Amendment, Plaintiff must allege  
7 facts sufficient that each prison official knew of and disregarded a substantial risk of serious harm  
8 to the plaintiff. Moreover, this claim is improperly joined with unrelated claims.

#### 9 **H. First Amendment - Retaliation**

10 “Prisoners have a First Amendment right to file grievances against prison officials and to  
11 be free from retaliation for doing so.” *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2012)  
12 (citing *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009)). “Within the prison context, a  
13 viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a  
14 state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected  
15 conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and  
16 (5) the action did not reasonably advance a legitimate correctional goal.” *Rhodes v. Robinson*, 408  
17 F.3d 559, 567–68 (9th Cir. 2005). “[T]he mere threat of harm can be an adverse action...”  
18 *Brodheim*, 584 F.3d at 1270. A plaintiff must plead facts showing that their “protected conduct  
19 was the substantial or motivating factor behind the defendant's conduct.” *Id.* at 1271. To state a  
20 cognizable retaliation claim, Plaintiff must establish a nexus between the retaliatory act and the  
21 protected activity. *Grenning v. Klemme*, 34 F. Supp. 3d 1144, 1153 (E.D. Wash. 2014).

22 Although the allegations are unclear, Plaintiff claims he engaged in protected conduct of  
23 seeking mental health treatment and saying he would file a grievance and that numerous things  
24 were done in retaliation: the triangle handcuff, being tied to a cage, force by officers. He alleges  
25 that on a different date, November 6 or 7, 2019, he was threatened in retaliation for receiving  
26 mental health treatment in the crisis bed. As currently pled, Plaintiff fails to set forth sufficient  
27 factual allegations to support a claim of retaliation. The allegations are unclear that Plaintiff  
28 engaged in protected conduct for which he was retaliated because he jumbles all conduct together

1 and refers to it as retaliation. Plaintiff fails to allege that the adverse action chilled Plaintiff's First  
2 Amendment rights and that it did not reasonably advance a legitimate correctional goal. Plaintiff's  
3 conclusory allegations as to the many incidents are insufficient to state a claim. Further, this claim  
4 is improperly joined with other unrelated claims.

### 5 **I. Equal Protection**

6 The Equal Protection Clause requires the State to treat all similarly situated people  
7 equally. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87  
8 L.Ed.2d 313 (1985). This does not mean, however, that all prisoners must receive identical  
9 treatment and resources. *See Cruz v. Beto*, 405 U.S. 319, 322 n. 2, 92 S.Ct. 1079, 31 L.Ed.2d 263  
10 (1972); *Ward v. Walsh*, 1 F.3d 873, 880 (9th Cir. 1993); *Allen v. Toombs*, 827 F.2d 563, 568–69  
11 (9th Cir. 1987).

12 “To prevail on an Equal Protection claim brought under § 1983, Plaintiff must allege facts  
13 plausibly showing that ‘ “the defendants acted with an intent or purpose to discriminate against  
14 [them] based upon membership in a protected class,’ ” (citing *Thornton v. City of St. Helens*, 425  
15 F.3d 1158, 1166 (9th Cir. 2005)) (quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir.  
16 2001)), or that similarly situated individuals were intentionally treated differently without a  
17 rational relationship to a legitimate state purpose, *Engquist v. Oregon Department of Agr.*, 553  
18 U.S. 591, 601-02, 128 S.Ct. 2146, 170 L.Ed.2d 975 (2008); *Village of Willowbrook v. Olech*, 528  
19 U.S. 562, 564, 120 S.Ct. 1073, 145 L.Ed.2d 1060 (2000); *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d  
20 580, 592 (9th Cir. 2008); *North Pacifica LLC v. City of Pacifica*, 526 F.3d 478, 486 (9th Cir.  
21 2008).

22 Plaintiff challenges how Tienda, Diaz, Scalia, White, Hernandez, and Moreno treat  
23 African American inmates. Plaintiff has not stated a cognizable equal protection claim. Plaintiff  
24 does not allege that he was discriminated against because of his membership in any protected  
25 class. He also does not allege factual support that he was intentionally treated differently than  
26 other similarly situated inmates without a rational relationship to a legitimate state purpose.  
27 Plaintiff has not provided any factual support for this claim. *Fletcher v. Clendenin*, No. 1:22-CV-  
28 00249 AWI BAM, 2022 WL 2791480, at \*5 (E.D. Cal. July 15, 2022) (Equal Protection claim

1 dismissed for failure to allege factual support for denial of treatment based on membership in a  
2 protected class). Plaintiff cannot challenge the treatment of other inmates in this §1983 action.

### 3 **J. Violation of Consent Decrees**

4 It is unclear whether Plaintiff is claiming that Defendants have violated any consent  
5 decrees, such as in the *Coleman* case. To the extent Plaintiff contends that Defendants have failed  
6 to comply with any remedial order in these cases, his claim fails.

7 It is well-settled that the remedial order issued in *Coleman* and relate cases does not  
8 provide an independent cause of action under § 1983 as the order does not create or expand on a  
9 plaintiff's constitutional rights. *Coleman v. CDCR*, No. 09-cv-02192-SKO PC, 2011 WL  
10 2619569, at \*4 (E.D. Cal. July 1, 2011) (citing *Cagle v. Sutherland*, 334 F.3d 980, 986-87 (9th  
11 Cir. 2003) (consent decrees often go beyond constitutional minimum requirements, and do not  
12 create or expand rights)); *see also Green v. McKaskle*, 788 F.2d 1116, 1123 (5th Cir. 1986)  
13 (remedial decrees remedy constitutional violations but do not create or enlarge constitutional  
14 rights and cannot serve as a substantive basis for damages); *Montecastro v. Newsom*, No. 1:20-  
15 CV-00689 SAB(PC), 2020 WL 6484097, at \*5 (E.D. Cal. Nov. 4, 2020) (“[A]ny violations of the  
16 remedial plan developed in *Armstrong* do not provide an independent basis for relief in this court.  
17 Violations of the *Armstrong* Remedial Plan must be addressed through the procedures provided  
18 by that plan.”), report and recommendation adopted, No. 1:20-CV-00689 NONE SAB (PC), 2020  
19 WL 7319423 (E.D. Cal. Dec. 11, 2020). If Plaintiff has concerns about the actions under the  
20 *Plata/Armstrong/Coleman* consent decrees, he should express those concerns to the class  
21 representative or court in those cases.

### 22 **K. Title 15 and Policy Violation**

23 To the extent that any Defendant has not complied with applicable state statutes or prison  
24 regulations for failure to follow procedures, these deprivations do not support a claim under  
25 §1983. Section 1983 only provides a cause of action for the deprivation of federally protected  
26 rights. *See e.g., Nible v. Fink*, 828 Fed. Appx. 463 (9th Cir. 2020) (violations of Title 15 of the  
27 California Code of Regulations do not create private right of action); *Nurre v. Whitehead*, 580  
28 F.3d 1087, 1092 (9th Cir. 2009) (section 1983 claims must be premised on violation of federal

1 constitutional right); *Prock v. Warden*, No. 1:13-cv-01572-MJS (PC), 2013 WL 5553349, at \*11–  
2 12 (E.D. Cal. Oct. 8, 2013) (noting that several district courts have found no implied private right  
3 of action under title 15 and stating that “no § 1983 claim arises for [violations of title 15] even if  
4 they occurred.”); *Parra v. Hernandez*, No. 08cv0191-H (CAB), 2009 WL 3818376, at \*3 (S.D.  
5 Cal. Nov. 13, 2009) (granting motion to dismiss prisoner's claims brought pursuant to Title 15 of  
6 the California Code of Regulations); *Chappell v. Newbarth*, No. 1:06-cv-01378-OWW-WMW  
7 (PC), 2009 WL 1211372, at \*9 (E.D. Cal. May 1, 2009) (holding that there is no private right of  
8 action under Title 15 of the California Code of Regulations); *Tirado v. Santiago*, No. 1:22-CV-  
9 00724 BAM PC, 2022 WL 4586294, at \*5 (E.D. Cal. Sept. 29, 2022), report and recommendation  
10 adopted, No. 1:22-CV-00724 JLT BAM PC, 2022 WL 16748838 (E.D. Cal. Nov. 7, 2022)  
11 (same).

#### 12 **L. Verbal Harassment**

13 Plaintiff fails to state a cognizable claim for threats. Allegations of name-calling, verbal  
14 abuse, or threats generally fail to state a constitutional claim under the Eighth Amendment, which  
15 prohibits cruel and unusual punishment. See *Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996)  
16 (“[V]erbal harassment generally does not violate the Eighth Amendment.”), opinion amended on  
17 denial of reh'g, 135 F.3d 1318 (9th Cir. 1998); see also *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir.  
18 1987) (holding that a prisoner's allegations of threats allegedly made by guards failed to state a  
19 cause of action). Even in cases concerning “abusive language directed at [a plaintiff's] religious  
20 and ethnic background, ‘verbal harassment or abuse is not sufficient to state a constitutional  
21 deprivation under 42 U.S.C. § 1983.’ ” *Freeman v. Arpaio*, 125 F.3d 732, 738 (9th Cir. 1997)  
22 (quoting *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987)) (alterations omitted),  
23 abrogated on other grounds by *Shakur v. Schriro*, 514 F.3d 878 (9th Cir. 2008). However, verbal  
24 harassment may violate the constitution when it is “unusually gross even for a prison setting and  
25 [is] calculated to and [does] cause [plaintiff] psychological damage.” *Cox v. Kernan*, 2019 WL  
26 6840136, at \*5 (E.D. Cal. Dec. 16, 2019) (alterations in original) (quoting *Keenan*, 83 F.3d 1083  
27 at 1092).

28 ///

1           **IV. Conclusion**

2           As discussed above, the Court finds Plaintiff’s complaint fails to comply with Rules 8, 18,  
3 and 20, and that he has not stated a cognizable claim for relief. Plaintiff will be granted an  
4 opportunity to amend to attempt to cure the identified deficiencies, to the extent he is able to do  
5 so in good faith. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

6           Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what  
7 each named defendant did that led to the deprivation of Plaintiff’s constitutional rights, *Iqbal*, 556  
8 U.S. at 678-79, 129 S. Ct. at 1948-49. Although accepted as true, the “[f]actual allegations must  
9 be [sufficient] to raise a right to relief above the speculative level . . . .” *Twombly*, 550 U.S. at 555  
10 (citations omitted).

11           Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated  
12 claims in his second amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no  
13 “buckshot” complaints). Plaintiff must decide which related claims he wishes to pursue in this  
14 action and which claim he will pursue in a separate action. If Plaintiff’s amended complaint  
15 continues to improperly join claims and defendants, the Court will choose which cognizable  
16 claims, if any, that Plaintiff may pursue. Any amended complaint shall be **limited to 25 pages** in  
17 length, including exhibits. Plaintiff may not join unrelated claims.

18           Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.  
19 *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff’s amended  
20 complaint must be “complete in itself without reference to the prior or superseded pleading.”  
21 Local Rule 220.

22           Based on the foregoing, it is HEREBY ORDERED that:

- 23           1.       The Clerk’s Office shall send Plaintiff a complaint form;
- 24           2.       Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a  
25 first amended complaint curing the deficiencies identified by the Court in this order, or file a  
26 notice of voluntary dismissal;
- 27           3.       Any amended complaint shall be **limited to 25 pages** in length, including exhibits;  
28 and

1           4.       If Plaintiff fails to file an amended complaint in compliance with this order, the  
2 Court will recommend dismissal of this action, with prejudice, consistent with the reasons  
3 discussed in this order.

4  
5 IT IS SO ORDERED.

6       Dated: January 18, 2023

/s/ Barbara A. McAuliffe  
7 UNITED STATES MAGISTRATE JUDGE  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28