

1 The court has reviewed plaintiff's second amended complaint and for the limited purposes
2 of § 1915A screening finds that it states potentially cognizable negligence and Eighth
3 Amendment deliberate indifference to safety claims against defendants Hanlon and Jimenez.¹ *See*
4 ECF No. 19 (alleging that Hanlon fabricated plaintiff's statement, causing plaintiff to be labelled
5 and attacked as a snitch, and that Jimenez was aware of the fabrication and refused to fix it).
6 Plaintiff also alleges that Warden Arnold "covered up" Hanlon's fabrication by "declaring that no
7 policy was violated." *Id.* at 4. Plaintiff fails to articulate how Arnold's declaration in this regard
8 amounted to a violation of his rights. And "[t]here is no respondeat superior liability under
9 section 1983." *Taylor v List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff, who proceeds
10 through counsel, has already had an opportunity to amend his claim against Warden Arnold. The
11 allegations against Arnold in the second amended complaint do not materially differ from those in
12 the prior complaint. Accordingly, the court finds that further leave to amend would be futile.

13 Accordingly, it hereby is ordered that:

- 14 1. Service is appropriate for defendants Hanlon and Jimenez.
- 15 2. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons,
16 an instruction sheet and one copy of the August 16, 2018 second amended
17 complaint.
- 18 3. Within 30 days from service of this order, plaintiff shall complete the attached
19 Notice of Submission of Documents and submit it to the court with the
20 completed summons and USM-285 forms and three copies of the endorsed
21 complaint.
- 22 4. Upon receipt of the necessary materials, the court will direct the United States
23 Marshal to serve defendants pursuant to Federal Rule of Civil Procedure 4
24 without payment of costs. Failure to comply with this order may result in this
25 action being dismissed.

26
27 ¹ Supervisors, such as Lt. Jimenez, are liable for constitutional violations of their
28 subordinates if they know of the violations and fail to act to prevent them. *See Taylor v. List*, 880
F.2d 1040, at 1045 (9th Cir. 1989).

1 Further, IT IS HEREBY RECOMMENDED that defendant Warden Arnold be dismissed
2 from this action.

3 These findings and recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
5 after being served with these findings and recommendations, any party may file written
6 objections with the court and serve a copy on all parties. Such a document should be captioned
7 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
8 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
9 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

10 DATED: November 26, 2018.

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12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VICTOR HUGO BOTELLO,
Plaintiff,
v.
S. HANLON, et al.,
Defendants.

No. 2:18-cv-162-TLN-EFB P

NOTICE OF SUBMISSION OF
DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's
Screening Order:

- 1 completed summons form
- 2 completed forms USM-285
- 3 copies of the endorsed August 16, 2018 second amended complaint

Plaintiff

Dated: