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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALEX LAMOTA MARTI,  
Plaintiff,  
v.  
TODD MANNING, et al.,  
Defendants.

No. 2:21-cv-01829 DB P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims defendants retaliated against him in violation of his First Amendment rights and also violated his Eighth Amendment rights. Plaintiff has paid the filing fee for this action. Presently before the court is plaintiff’s complaint for screening. (ECF No. 1.)

For the reasons set forth below, plaintiff will be given the option to proceed on his cognizable claims or to be given leave to amend his complaint.

**SCREENING**

**I. Legal Standards**

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be

1 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28  
2 U.S.C. § 1915A(b)(1) & (2).

3 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
4 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
5 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
6 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
7 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
8 pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227. Rule 8(a)(2) of  
9 the Federal Rules of Civil Procedure “requires only ‘a short and plain statement of the claim  
10 showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what  
11 the . . . claim is and the grounds upon which it rests.’” Bell Atlantic Corp. v. Twombly, 550 U.S.  
12 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

13 However, in order to survive dismissal for failure to state a claim a complaint must  
14 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain  
15 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,  
16 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
17 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
18 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
19 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

20 The Civil Rights Act under which this action was filed provides as follows:

21 Every person who, under color of [state law] . . . subjects, or causes  
22 to be subjected, any citizen of the United States . . . to the deprivation  
23 of any rights, privileges, or immunities secured by the Constitution .  
24 . . shall be liable to the party injured in an action at law, suit in equity,  
25 or other proper proceeding for redress.

26 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
27 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
28 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). “A  
person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of §

1 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform  
2 an act which he is legally required to do that causes the deprivation of which complaint is made.”  
3 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

4 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of  
5 their employees under a theory of respondeat superior and, therefore, when a named defendant  
6 holds a supervisory position, the causal link between him and the claimed constitutional  
7 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);  
8 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations  
9 concerning the involvement of official personnel in civil rights violations are not sufficient. See  
10 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

## 11 **II. Linkage Requirement**

12 Under Section 1983, a plaintiff bringing an individual capacity claim must demonstrate  
13 that each defendant personally participated in the deprivation of his rights. See Jones v.  
14 Williams, 297 F.3d 930, 934 (9th Cir. 2002). There must be an actual connection or link between  
15 the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
16 Ortez v. Washington County, State of Oregon, 88 F.3d 804, 809 (9th Cir. 1996); see also Taylor  
17 v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

18 Government officials may not be held liable for the actions of their subordinates under a  
19 theory of respondeat superior. Iqbal, 556 U.S. at 676 (stating vicarious liability is inapplicable in  
20 Section 1983 suits). Since a government official cannot be held liable under a theory of vicarious  
21 liability in Section 1983 actions, plaintiff must plead sufficient facts showing that the official has  
22 violated the Constitution through his own individual actions by linking each named defendant  
23 with some affirmative act or omission that demonstrates a violation of plaintiff's federal rights.  
24 Id. at 676.

## 25 **III. Allegations in the Complaint**

26 At all relevant times, plaintiff was an inmate at Mule Creek State Prison (“MCSP”). (ECF  
27 No. 1 at 1.) The complaint names as defendants employed by the California Department of  
28 Corrections and Rehabilitation (“CDCR”): (1) Correctional Sergeant Todd Manning; (2)

1 Correctional Lieutenant D. Pasioles; (3) Correctional Sergeant J. Canela; (4) Correctional  
2 Lieutenant T. Cooper; (5) Correctional Captain A. Avalos; (6) Associate Warden R. Roy; (7)  
3 Chief Deputy Warden B. Holmes; and (8) Correctional Officer S. La Rosa. (Id. at 2.)

4 In his complaint, plaintiff alleges the following: Plaintiff filed three grievances against  
5 defendant La Rosa on November 7, 2020, November 14, 2020, and December 5, 2020. (ECF No.  
6 19-20.) Each of these grievances concerned defendant La Rosa failing to wear a mask over his  
7 nose and mouth. (Id.) The grievances were approved on review. (Id.) In response, defendant La  
8 Rose retaliated against plaintiff by waking plaintiff up “every night that [defendant La Rosa]  
9 worked during the 21:30 count.” (Id. at 20.) Defendant La Rosa also conducted a “retaliatory  
10 cell search” on January 31, 2021. (Id. at 21.) Plaintiff filed a grievance but it was denied and  
11 defendant Manning “threatened plaintiff with disciplinary action” for falsifying documents. (Id.)  
12 This grievance denial was approved by defendant Holmes. (Id.)

13 At 9:30 p.m. on April 27, 2021, plaintiff was awakened by banging loud noises. (Id. at  
14 10.) Plaintiff was later told by other inmates that defendant La Rosa had entered “the shower  
15 used by plaintiff” and removed plastic hooks from the walls using his baton. (Id.) Inmates also  
16 told plaintiff that defendant La Rosa was not wearing a mask at this time. (Id.) On April 29,  
17 2021, plaintiff submitted an inmate grievance against defendant La Rosa complaining that  
18 defendant had damaged plastic hooks purchased by plaintiff and that defendant had violated  
19 COVID-19 protocol by not wearing a mask. (Id. at 12.) Plaintiff was served a Rules Violation  
20 Report (“RVR”) issued by defendant Manning on May 14, 2021. (Id. at 13.) In the RVR,  
21 defendant Manning stated he reviewed plaintiff’s inmate grievance but determined that plaintiff  
22 had falsified the document. (Id.) Specifically, defendant Manning claimed that he had reviewed  
23 a portion of surveillance video and determined that plaintiff’s allegations were “dishonest and/or  
24 false.” (Id. at 14.)

25 Defendants Canela and Cooper “read, reviewed, and approved” the May 14, 2021 RVR.  
26 (Id. at 14-15.) On May 17, 2021, plaintiff sent a “Form GA-22” to defendant Roy requesting that  
27 defendant review the RVR but did not receive a response. (Id. at 15.) Defendant Pasioles  
28 conducted the disciplinary hearing on the RVR. (Id. at 16.) During the hearing, defendant

1 Pasioles denied plaintiff's request for dismissal on First Amendment grounds and found plaintiff  
2 guilty. (Id. at 16-17.) As a penalty, defendant Pasioles "imposed a complete denial of all access  
3 to outdoor exercise (yard) for 60 days, a credit loss of 60 days, and 30 days loss of package  
4 privileges. (Id. at 17.) Defendant Avalos reviewed the hearing results and, after revisions,  
5 approved the findings. (Id.) Defendant Roy also reviewed the hearing results and approved  
6 them. (Id. at 18.)

7 Plaintiff claims that defendants Manning, Pasioles, Canela, Cooper, Avalos, and Roy  
8 violated plaintiff's First Amendment rights by the issuance of the May 14, 2021 RVR. (Id. at 9.)  
9 Plaintiff also alleges that defendant La Rosa retaliated against him by searching his cell in  
10 violation of his First Amendment rights and violated his Eighth Amendment rights by denying  
11 plaintiff sleep and disregarding COVID-19 protocols. (Id.) Plaintiff further alleges that  
12 defendants Manning and Holmes violated First Amendment rights by threatening disciplinary  
13 action in response to plaintiff's grievances. (Id.) Finally, plaintiff claims that defendants  
14 Manning, Pasioles, Canela, Cooper, Avalos, and Roy violated the Eighth Amendment by denying  
15 plaintiff access to outdoor exercise for sixty days. (Id.)

#### 16 **IV. Does Plaintiff State a Claim under § 1983?**

##### 17 **A. Retaliation**

##### 18 **1. Legal Standard**

19 "Of fundamental import to prisoners are their First Amendment rights to file prison  
20 grievances, and to pursue civil rights litigation in the courts. Without those bedrock constitutional  
21 guarantees, inmates would be left with no viable mechanism to remedy prison injustices. And  
22 because purely retaliatory actions taken against a prisoner for having exercised those rights  
23 necessarily undermine those protections, such actions violate the Constitution quite apart from  
24 any underlying misconduct they are designed to shield." Rhodes v. Robinson, 408 F.3d 559, 567  
25 (citations, internal quotations, and footnote omitted) (9th Cir. 2005).

26 "Within the prison context, a viable claim of First Amendment retaliation entails five  
27 basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2)  
28 because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's

1 exercise of his first amendment rights, and (5) the action did not reasonably advance a legitimate  
2 correctional goal.” Id. at 567-68. A plaintiff who fails to allege a chilling effect may still state a  
3 claim if he alleges that he suffered some other harm. Id. at 568, n.11; see also Brodheim v. Cry,  
4 584 F.3d 1262, 1269-71 (9th Cir. 2009). The plaintiff must also plead facts that suggest an  
5 absence of legitimate correctional goals for the conduct he contends was retaliatory. Pratt v.  
6 Rowland, 65 F.3d 802, 806 (9th Cir. 1995).

## 7 **2. Defendant Manning**

8 Plaintiff claims that defendant Manning violated his First Amendment rights by  
9 submitting an RVR against plaintiff in retaliation for plaintiff filing an inmate grievance. (ECF  
10 No. 1 at 13-14.) Plaintiff also alleges that in response to other grievances plaintiff had filed  
11 defendant Manning had previously threatened plaintiff with an RVR. (Id. at 21.)

12 Plaintiff has alleged sufficient facts to state a First Amendment retaliation claim against  
13 defendant Manning. Under the facts in the complaint, the threat of rules violations and eventual  
14 RVR in response to plaintiff’s grievances satisfy the first three elements for a retaliation claim.  
15 Rhodes, 408 F.3d at 567-68. Plaintiff claims that these actions had a chilling effect on the  
16 exercise of his First Amendment rights and there does not appear to be a correctional goal in  
17 threatening plaintiff with a rules violation and issuing an RVR in response to plaintiff’s  
18 grievance. Id.

19 Given the above, plaintiff has stated sufficient facts to state a First Amendment retaliation  
20 claim against defendant Manning.

## 21 **3. Defendants Pasioles, Canela, Cooper, Avalos, and Roy**

22 Defendants Pasioles, Canela, Cooper, Avalos, and Roy were involved at different stages  
23 of the review and that followed from the RVR submitted by defendant Manning. Per the  
24 complaint, defendants Canela and Cooper reviewed and approved the RVR (ECF No. 1 at 14-  
25 15), defendant Pasioles conducted the disciplinary hearing on the RVR (id. at 16), and defendants  
26 Avalos and Roy reviewed and approved the results of the hearing (id. at 17-18).

27 Plaintiff has alleged at least minimally sufficient facts to state First Amendment retaliation  
28 claims against these defendants. The defendants review and approval of the May 14, 2021 RVR

1 and subsequent disciplinary hearing could be an adverse act in response to plaintiff's protected  
2 conduct of filing a grievance. Rhodes, 408 F.3d at 567-68. As stated earlier, such an RVR along  
3 with its subsequent penalties could certainly chill an inmate's speech and does not appear to serve  
4 a legitimate correctional goal. Id.

5 Given the above, plaintiff has stated sufficient facts to state a First Amendment retaliation  
6 claim against defendants Pasioles, Canela, Cooper, Avalos, and Roy.

#### 7 **4. Defendant Holmes**

8 Plaintiff claims that defendant Holmes retaliated against him for threatening disciplinary  
9 action in response to plaintiff's grievances. (ECF No. 1 at 9.) Plaintiff has not alleged sufficient  
10 facts to allege a retaliation claim against defendant Holmes. Based on the allegations in  
11 plaintiff's complaint, defendant Holmes' involvement is limited to approving defendant  
12 Manning's denial of plaintiff's grievance. (Id. at 22.) Plaintiff claims that defendant Manning  
13 threatened plaintiff with disciplinary action for filing grievances and that defendant Holmes had  
14 somehow made the same threat by approving the denial. (Id.)

15 As stated, these facts are not sufficient to show that defendant Holmes took adverse action  
16 against the plaintiff. Rhodes, 408 F.3d at 567-68. Under the facts plaintiff alleged, defendant  
17 Holmes's only involvement was in approving that plaintiff's grievance should be denied. It is not  
18 apparent why defendant Holmes has performed an adverse act as a result of defendant Manning  
19 purportedly threatening the plaintiff. Defendant Holmes also cannot be held responsible for the  
20 actions of their subordinates under a theory of respondeat superior. Iqbal, 556 U.S. at 676.

21 Given the above, plaintiff has failed to allege sufficient facts to state a claim against  
22 defendant Holmes. As plaintiff's complaint also states cognizable claims, plaintiff will be given  
23 the option to proceed only on those claims or to be given leave to amend his complaint.

#### 24 **5. Defendant La Rosa**

25 Plaintiff's final First Amendment claim is against defendant La Rosa. Plaintiff claims  
26 defendant La Rosa retaliated against him for filing grievances by conducting a retaliatory cell  
27 search and interrupting plaintiff's sleep. (ECF No. 1 at 9.)

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1 Plaintiff has alleged sufficient facts to state a retaliation claim against defendant La Rosa.  
2 Plaintiff has alleged defendant took an adverse action against plaintiff in response to plaintiff  
3 filing grievances. Rhodes, 408 F.3d at 567-68. As discussed above, this can also have a chilling  
4 effect on plaintiff's protected activities. Id. Cell searches can be used to further legitimate  
5 correctional goals. See, e.g., Lewis v. Wagner, 14-cv-2264-WQH, 2016 WL 11281165, at \*7  
6 (S.D. Cal. June 7, 2016); Reed v. Tracy, 3:11-cv-00066-HDM-WGC, 2013 WL 6076460, at \*4  
7 (D. Nev. Nov. 18, 2013) ("appropriately performed inmate cell searches undeniably serve a  
8 legitimate correctional goal"). However, plaintiff has alleged that defendant La Rosa solely  
9 searched the cells of inmates who had filed grievances against him. (ECF No. 1 at 21.) If true,  
10 this is sufficient to show that defendant La Rosa's search of plaintiff's cell did not serve to  
11 advance a legitimate correctional goal. Rhodes, 408 F.3d at 567-68.

12 Given the above, plaintiff has alleged sufficient facts in the complaint to state a First  
13 Amendment retaliation claim against defendant La Rosa.

## 14 **B. Eighth Amendment**

15 The Eighth Amendment prohibits the infliction of "cruel and unusual punishments." U.S.  
16 Const. amend. VIII. The unnecessary and wanton infliction of pain constitutes cruel and unusual  
17 punishment prohibited by the Eighth Amendment. Whitley v. Albers, 475 U.S. 312, 319 (1986);  
18 Ingraham v. Wright, 430 U.S. 651, 670 (1977); Estelle v. Gamble, 429 U.S. 97, 105-06 (1976).  
19 Neither accident nor negligence constitutes cruel and unusual punishment, as "[i]t is obduracy  
20 and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited  
21 by the Cruel and Unusual Punishments Clause." Whitley, 475 U.S. at 319.

### 22 **1. Inmate Safety**

23 Under the Eighth Amendment, prison officials have a duty "to take reasonable measures  
24 to guarantee the safety of inmates, which has been interpreted to include a duty to protect  
25 prisoners." Labatad v. Corrections Corp. of America, 714 F.3d 1155, 1160 (9th Cir. 2013) (citing  
26 Farmer, 511 U.S. at 832-33 and Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005)). To  
27 establish a violation of this duty, a prisoner must "show that the officials acted with deliberate

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1 indifference to threat of serious harm or injury to an inmate.” Labatad, 714 F.3d at 1160 (citing  
2 Gibson v. County of Washoe, 290 F.3d 1175, 1187 (9th Cir. 2002)).

3 A failure to protect claim under the Eighth Amendment requires a showing that “the  
4 official [knew] of and disregard[ed] an excessive risk to inmate... safety.” Farmer, 511 U.S. at  
5 837. “Whether a prison official had the requisite knowledge of a substantial risk is a question of  
6 fact subject to demonstration in the usual ways, including inference from circumstantial evidence,  
7 . . . and a factfinder may conclude that a prison official knew of a substantial risk from the very  
8 fact that the risk was obvious.” Id. at 842 (citations omitted). The duty to protect a prisoner from  
9 serious harm requires that prison officials take reasonable measures to guarantee the safety and  
10 well-being of the prisoner. Id. at 832-33; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).  
11 As “only the unnecessary and wanton infliction of pain implicates the Eighth Amendment,”  
12 plaintiff must allege facts showing the defendant acted with a “sufficiently culpable state of  
13 mind.” Wilson, 501 U.S. at 297 (internal quotations marks, emphasis, and citations omitted).

14 Plaintiff claims that defendant La Rosa acted with deliberate indifference to plaintiff’s  
15 safety through “his intentional disregard of COVID-19 protocol”. (ECF No. 1 at 9.) In  
16 particular, plaintiff claims that defendant La Rosa failed to wear a mask on a number of occasions  
17 while inside plaintiff’s dorm area. (Id. at 11, 19-20.) However, plaintiff has not alleged any facts  
18 which indicate that he was injured or placed at any significant risk of serious harm as a result of  
19 defendant La Rosa’s purported deliberate indifference. As such, plaintiff has not alleged  
20 sufficient facts to support a deliberate indifference claim. See Williams v. Wood, 223 Fed. Appx.  
21 670, 671 (9th Cir. 2007) (citing Farmer v. Brennan, 511 U.S. 825, 843, (1994) (a plaintiff’s  
22 “speculative and generalized fears of harm” are not sufficient to show a substantial risk of serious  
23 harm).

## 24 **2. Outdoor Exercise**

25 The Ninth Circuit has found that “[d]eprivation of outdoor exercise violates the Eighth  
26 Amendment rights of inmates confined to continuous and long-term segregation.” Keenan v. Hall,  
27 89 F.3d 1083, 1089 (9th Cir. 1996) (internal citation omitted). The court has also recognized that

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1 outdoor exercise privileges may be restricted for disciplinary purposes. LeMaire v. Maass, 12  
2 F.3d 1444, 1458 (9th Cir. 1993); Spain v. Proconier, 600 F.2d 189, 199 (9th Cir. 1979).

3 Plaintiff claims that his outdoor exercise privileges were revoked for sixty days as a result  
4 of an RVR accusing plaintiff of providing false information in an inmate grievance. (ECF No. 1  
5 at 9.) Defendants may be able to show that a reasonable disciplinary justification exists for  
6 restricting plaintiff's access to outdoor exercise for this period. However, courts have regularly  
7 permitted such claims to proceed on screening despite the possibility that defendants might have a  
8 legitimate justification. See Witkin v. Wise, 2:19-cv-0974-KJM-KJN-P 2019 WL 3530370, at \*3  
9 (E.D. Cal. Aug. 2, 2019); Underwood v. Cox, 1:16-cv-00597-AWI-EPG (PC), 2017 WL  
10 6055828, \*5 (E.D. Cal. Dec. 7, 2017) (findings and recommendations adopted by Underwood v.  
11 Cox, 1:16-cv-00597-AWI-EPG (PC), 2018 WL 372359 (E.D. Cal. Jan. 11, 2018)); Thompson  
12 v. Adams, 1:13-cv-00655-AWI-SKO, 2015 WL 1201353, at \*4 (E.D. Cal. Mar. 16, 2015)  
13 (findings and recommendations adopted by Thompson v. Adams, 1:13-cv-00655-AWI-SKO,  
14 2015 WL 3603870 (E.D. Cal. Mar. 29, 2015). Here, the court will similarly find that plaintiff has  
15 alleged sufficient facts to state a claim on screening. There may exist a legitimate penological  
16 purpose for a sixty-day restriction of plaintiff's access to outdoor exercise. However, this is a  
17 fact-reliant question not suited for this stage of these proceedings.

18 Accordingly, plaintiff has alleged sufficient facts to state a claim for the deprivation of  
19 outdoor exercise in violation of plaintiff's Eighth Amendment rights.

#### 20 **AMENDING THE COMPLAINT**

21 This court finds above that plaintiff's complaint states cognizable claims First  
22 Amendment claims against defendants Manning, Pasioles, Canela, Cooper, Avalos, Roy, and La  
23 Rosa, as well as cognizable Eighth Amendment claims against defendants Manning, Pasioles,  
24 Canela, Cooper, Avalos, and Roy. However, the plaintiff's complaint fails to state any other  
25 cognizable claim.

26 Plaintiff will be given the option to proceed on his cognizable claims or to file an  
27 amended complaint to state additional claims against the above defendants or any other

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1 defendant. Any amended complaint must be complete in itself. The court cannot refer to a prior  
2 complaint to understand the plaintiff's claims.

3 If plaintiff chooses to file an amended complaint, he must address the problems with his  
4 complaint that are explained above. In an amended complaint plaintiff must clearly identify each  
5 defendant and the action that defendant took that violated his constitutional rights. The court is  
6 not required to review exhibits to determine what plaintiff's charging allegations are as to each  
7 named defendant. If plaintiff wishes to add a claim, he must include it in the body of the  
8 complaint. The charging allegations must be set forth in the amended complaint, so defendants  
9 have fair notice of the claims plaintiff is presenting. That said, plaintiff need not provide every  
10 detailed fact in support of his claims. Rather, plaintiff should provide a short, plain statement of  
11 each claim. See Fed. R. Civ. P. 8(a).

12 Any amended complaint must show the federal court has jurisdiction, the action is brought  
13 in the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must  
14 contain a request for particular relief. Plaintiff must identify as a defendant only persons who  
15 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.  
16 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (stating that a person subjects another to the  
17 deprivation of a constitutional right if he does an act, participates in another's act, or omits to  
18 perform an act he is legally required to do that causes the alleged deprivation). "Vague and  
19 conclusory allegations of official participation in civil rights violations are not sufficient." Ivey v.  
20 Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

21 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed.  
22 R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed.  
23 R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or  
24 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

25 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d  
26 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any  
27 heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P.  
28 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be

1 set forth in short and plain terms. See Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002)  
2 (“Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus  
3 litigation on the merits of a claim.”); Fed. R. Civ. P. 8.


4 An amended complaint must be complete in itself, without reference to any prior pleading.  
5 E.D. Cal. R. 220. Once plaintiff files an amended complaint, the original pleading is superseded.  
6 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and has  
7 evidentiary support for his allegations, and for violation of this rule, the court may impose  
8 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

### 9 CONCLUSION

10 For the foregoing reasons, and good cause appearing, IT IS HEREBY ORDERED  
11 as follows:

- 12 1. Plaintiff’s complaint states cognizable claims against defendants Manning, Pasioles,  
13 Canela, Cooper, Avalos, Roy, and La Rosa for retaliation in violation of his First  
14 Amendment rights. It also states a cognizable Eighth Amendment claim against  
15 defendants Manning, Pasioles, Canela, Cooper, Avalos, and Roy.
- 16 2. The complaint fails to state any other cognizable claims or defendants.
- 17 3. Plaintiff may choose to proceed on his cognizable claims set out above or he may choose  
18 to amend his complaint.
- 19 4. Within thirty (30) days of the date of this order plaintiff shall notify the court of how he  
20 wishes to proceed. Plaintiff may use the form included with this order for this purpose.
- 21 5. Plaintiff is warned that his failure to comply with this order will result in a  
22 recommendation that this action be dismissed.

23 Dated: September 16, 2022

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27 DEBORAH BARNES  
28 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALEX LAMOTA MARTI,  
Plaintiff,  
v.  
TODD MANNING, et al.,  
Defendants.

No. 2:21-cv-1829 DB P

PLAINTIFF'S NOTICE ON HOW TO  
PROCEED

Check one:

Plaintiff wants to proceed immediately on his First Amendment retaliation claims against defendants Manning, Pasioles, Canela, Cooper, Avalos, Roy, and La Rosa and his Eighth Amendment claim against defendants Manning, Pasioles, Canela, Cooper, Avalos, and Roy. Plaintiff understands that by going forward without amending the complaint he is voluntarily dismissing all other claims and defendants.

Plaintiff wants to amend the complaint.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Alex Lamota Marti  
Plaintiff pro se