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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHANNON RILEY,

Plaintiff,

v.

CORRECTIONAL OFFICERS S. ROACH  
AND E. MORRIS,

Defendants.

No. C 10-02088 CW (PR)

ORDER DENYING PLAINTIFF'S  
MOTIONS TO FILE SUPPLEMENTAL  
PLEADINGS, FOR APPOINTMENT OF  
COUNSEL, AND FOR LEAVE TO FILE  
A PETITION FOR A WRIT OF  
MANDAMUS; GRANTING PLAINTIFF'S  
MOTION FOR RECONSIDERATION AND  
DISMISSING CLAIM; GRANTING  
DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT

(Docket nos. 36, 37, 42, 46,  
58)

United States District Court  
For the Northern District of California

INTRODUCTION

Plaintiff Shannon Riley, a prisoner at Salinas Valley State  
Prison (SVSP), filed this pro se civil rights action under  
42 U.S.C. § 1983 against Defendants SVSP Correctional Officers S.  
Roach and E. Morris. Plaintiff alleges that Defendants retaliated  
against him for filing an inmate grievance and exercising his  
constitutional right of access to the courts. Defendants move for  
summary judgment. Plaintiff opposes their motion and Defendants  
have filed a reply. Additionally, Plaintiff has filed numerous  
motions.

STATEMENT OF FACTS

1  
2 The facts underlying Plaintiff's retaliation claim are taken  
3 from his two complaints and attached exhibits.<sup>1</sup> In his first  
4 complaint, Plaintiff alleged that Roach "continued to retaliate  
5 and harass [him] by filing false rule violation reports, refusing  
6 to release [him] for work and ultimately causing [him] to seek a  
7 job change [due] to the continuous harassment and retaliation."  
8 First Compl. at 3. In his second complaint, Plaintiff explains  
9 that the alleged retaliation occurred because Plaintiff filed an  
10 inmate grievance in April 2009, against one of Roach's "buddies,"  
11 namely, SVSP Correctional Officer Vasquez. Sec. Compl., Ex. A at  
12 59, Ex. E at 101.

14 Plaintiff alleges that in July 2009, Roach retaliated against  
15 him by "refus[ing] to release [him] for his work assignment" as a  
16 prison barber. Sec. Compl., Ex. E at 98. He alleges that Morris  
17 would let him out of his cell before his work shift to compile a  
18 list of inmates needing haircuts or shaves, which he would then  
19 give to Morris. Pl.'s Decl. Re: Roach at 2; Sec. Compl., Ex. F at  
20 118-119. He says Roach would not let him out of his cell on July  
21 8 and 9, 2009, leaving him unable to compile the list, Pl.'s Decl.  
22 Re: Roach at 2, and that Roach did not allow him to "perform his  
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26 \_\_\_\_\_  
27 <sup>1</sup> Plaintiff filed two different complaints on May 17, 2010.  
28 The first complaint is dated April 13, 2010, and the second  
complaint is dated April 25, 2010.

1 work assignment" from July 7, 2009 through July 9, 2009.<sup>2</sup> Sec.  
2 Compl., Ex. E at 100. Plaintiff claims that on July 8, 2009, he  
3 confronted Roach "about his reason for refusing to release [him]  
4 for his work assignment," and Roach "responded by stating he don't  
5 [sic] like I/M paper pushers specifically when I/M's file against  
6 one of his buddies . . . . C/O Roach was referring to the a [sic]  
7 complaint [Plaintiff] filed against C/O Vasquez." Id.

8  
9 Plaintiff identifies Morris as the staff member "who signs  
10 [the] time cards," and claims that Morris "'falsely documented'  
11 [Plaintiff's] time card as [if he had been] allowed out to perform  
12 his duties" from July 7, 2009 to July 9, 2009. Id. at 99-100.  
13 Plaintiff claims that Morris falsified his time card on other  
14 occasions. Specifically, Plaintiff states, "morris [sic] was in  
15 charge of [Plaintiff's] time cards and there were a number of  
16 times when [Plaintiff] was not allowed out to work for no apparent  
17 reason, yet officer morris [sic] would still log in [Plaintiff's]  
18 time card as if [Plaintiff] did in fact work." Pl.'s Decl. Re:  
19 Morris at 2.  
20

21 In July 2009, Plaintiff filed an inmate grievance against  
22 Roach for retaliation. Sec. Compl. at 4; Sec. Compl., Ex. E at  
23

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24 <sup>2</sup> In the same exhibit, however, Plaintiff states that Roach  
25 did not release him for his work assignment beginning July 6,  
26 2009. Sec. Compl., Ex. E at 98. Plaintiff later clarifies this  
27 statement by stating that July 6, 2009 was the date Roach began  
28 working in the building in which he was housed, not the start date  
of Roach's refusal to release him for his work assignment. Pl.'s  
Decl. Re: Roach at 2.

1 98. Plaintiff's allegations were investigated at the second level  
2 of review. Sec. Compl., Ex. E at 104. In the second level  
3 decision dated September 3, 2009, it was determined that  
4 Plaintiff's appeal was "partially granted" because an inquiry into  
5 Plaintiff's allegations had been conducted. Id. The details of  
6 the inquiry were not disclosed, but the reviewer concluded: "The  
7 inquiry is complete. Staff did not violate CDCR policy." Id. At  
8 the third level of review the second level findings were upheld.  
9 Id. at 96.

11 Plaintiff alleges that on August 19, 2009, he "continued to  
12 experience harassment and retaliation from both officers C/O  
13 Morris and Roach." Sec. Compl. at 5. Plaintiff alleges that he  
14 subsequently attempted to file a grievance against Morris, but it  
15 was "returned by the appeals coordinator alleging it to be a  
16 'duplicate' thereby preventing [him] from exercising his due  
17 process rights and access to court." Id.; Sec. Compl. Ex. J at  
18 129.

20 Plaintiff alleges that on December 24, 2009,<sup>3</sup> Roach  
21 "continued to target [him] for harassment and retaliation" by  
22 filing a false rules violation report (RVR) against him. Sec.  
23 Compl. at 7. Plaintiff was later found guilty of the offense.  
24 Id. at 8.

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26 <sup>3</sup> Plaintiff states that Roach filed this rules violation  
27 report on "December 24, 2010." However, the Court assumes he  
28 meant 2009.

1 On January 1, 2010, Plaintiff was "successful in securing a  
2 job change in an effort to remove himself from the continuous  
3 verbal assaults, arbitrary 'locing [sic] petitioner in his cell'  
4 and/or 'refusing to release petitioner out for work' . . . ." Id.  
5 at 7.

6 Plaintiff alleges that on March 5, 2010, Roach filed "another  
7 false rules violation report" against him. Id.; Sec. Compl., Ex.  
8 X at 187.

9  
10 On May 17, 2010, Plaintiff filed the two complaints in this  
11 action.

12 DISCUSSION

13 I. Motion to Supplement Pleadings

14 Plaintiff has filed a motion to supplement his complaints.<sup>4</sup>  
15 Federal Rule of Civil Procedure 15(d) permits "supplemental  
16 pleadings setting forth transactions or occurrences or events that  
17 have happened since the date of the pleading sought to be  
18 supplemented." The purpose of Rule 15(d) is to promote as  
19 complete an adjudication of the dispute between the parties as is  
20 possible. LaSalvia v. United Dairymen of Ariz., 804 F.2d 1113,  
21 1119 (9th Cir. 1986). "Rule 15(d) is intended to give district  
22 courts broad discretion in allowing supplemental pleadings. The  
23 rule is a tool of judicial economy and convenience." Keith v.  
24  
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26 \_\_\_\_\_  
27 <sup>4</sup> Plaintiff's motion is comprised of two separate motions.  
28 The first was filed on January 6, 2011 and the second was filed on  
May 31, 2011.

1 Volpe, 858 F.2d 467, 473 (9th Cir. 1988). However, "a  
2 supplemental complaint should have some relation to the claim set  
3 forth in the original pleading," and a court may deny leave to  
4 supplement a complaint on grounds of undue delay, prejudice to the  
5 opposing party, or futility. Id. at 474. A claim is futile if no  
6 set of facts could be proved which would support it, or if the  
7 claim would be subject to dismissal. Miller v. Rykoff-Sexton,  
8 Inc., 845 F.2d 209, 214 (9th Cir. 1988).  
9

10 Here, Plaintiff attempts to supplement his complaints by  
11 adding new allegations, and claims against four new Defendants,  
12 namely, Correctional Officers Beyer, Greco, Lopez and Black. May  
13 31, 2011 Mot. to Suppl. at 1. However, most of the new events  
14 described by Plaintiff in his motion to supplement are unrelated  
15 to the claims and Defendants in his complaints. For example, in  
16 his motion, Plaintiff alleges that Beyer and Greco retaliated  
17 against him by, among other things, failing to process his mail  
18 and searching and trashing his cell. Jan. 6, 2011 Mot. to Suppl.  
19 at 2; May 31, 2011 Mot. to Suppl. at 2. Plaintiff implies, but  
20 does not explicitly state, that these retaliatory actions were  
21 taken because he filed a grievance against Roach. Jan. 6, 2011  
22 Mot. to Suppl. at 1. In addition, Plaintiff alleges in his motion  
23 that Lopez and Black improperly searched his cell. May 31, 2011  
24 Mot. to Suppl. at 3, 6. These new allegations are not related to  
25 Plaintiff's retaliation claim against Defendants Roach and Morris.  
26 The only new allegations that involve one of the original  
27  
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1 Defendants pertain to an allegedly retaliatory cell search  
2 conducted by Morris. Id. at 3. But, as will be discussed below,  
3 Plaintiff concedes that Morris's actions were not prompted by a  
4 retaliatory motive and, thus, his proposed new claim of  
5 retaliation against Morris fails.

6 Because the proposed new retaliation claim against Morris  
7 would be futile and the other new allegations and Defendants  
8 described by Plaintiff in his motion to supplement are unrelated  
9 to the claims and Defendants addressed in his complaints,  
10 Plaintiff's motion to supplement his complaints is DENIED.

11 II. Motion for Reconsideration

12 Plaintiff moves the Court to reconsider its December 8, 2010  
13 Order dismissing as unexhausted the claims in Plaintiff's second  
14 complaint against Defendants Medina, Nickerson, Smith and Bocella.  
15 Plaintiff alleged that Medina, Nickerson and Smith failed to  
16 process properly his administrative appeals and/or grievances.  
17 Sec. Compl. at 8.  
18

19 In his motion for reconsideration, Plaintiff argues that the  
20 Court misread his second complaint and that he did allege that he  
21 had exhausted his administrative remedies against Medina,  
22 Nickerson and Smith.<sup>5</sup> Mot. for Recons. at 2. Although this is  
23 not clearly stated in the complaint, it appears that Plaintiff is  
24  
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26 <sup>5</sup> Plaintiff does not deny that he had not exhausted his  
27 administrative remedies against Defendant Bocella when he filed  
28 his second complaint. Thus, the Court's dismissal of the claim  
against Bocella will not be reconsidered.

1 correct. Sec. Compl. at 1, 12. Thus, Plaintiff's motion for  
2 reconsideration of the dismissal of his claim against Medina,  
3 Nickerson and Smith is GRANTED. However, for the reasons  
4 explained below, this claim is DISMISSED without leave to amend.

5 A federal court must conduct a preliminary screening in any  
6 case in which a prisoner seeks redress from a governmental entity  
7 or officer or employee of a governmental entity. See 28 U.S.C.  
8 § 1915A(a). In its review, the court must identify cognizable  
9 claims and dismiss any claims that are frivolous, malicious, fail  
10 to state a claim upon which relief may be granted or seek monetary  
11 relief from a defendant who is immune from such relief. See id.  
12 § 1915A (b)(1),(2). Pro se pleadings must, however, be liberally  
13 construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,  
14 699 (9th Cir. 1988).

16 Here, Plaintiff alleges Medina, Nickerson and Smith failed to  
17 process properly his administrative appeals and/or grievances.  
18 Sec. Compl. at 8. Such allegations fail to state a claim for  
19 relief. There is no constitutional right to a prison  
20 administrative appeal or grievance system; consequently, a prison  
21 official's failure to process grievances is not actionable under  
22 § 1983. See Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003)  
23 (holding prisoner's claimed loss of liberty interest in processing  
24 of administrative appeals does not violate due process because  
25 prisoners lack separate constitutional entitlement to specific  
26 prison grievance system). Further, while a prisoner retains a  
27  
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1 First Amendment right to petition the government for redress of  
2 grievances as to the constitutional claim underlying an  
3 administrative grievance, he possesses no constitutional right to  
4 a response to his grievance from prison officials. See Flick v.  
5 Alba, 932 F.2d 728, 729 (8th Cir. 1991) (holding prisoner's First  
6 Amendment right of access to courts is not compromised by prison's  
7 refusal to entertain grievance). Because Plaintiff has not  
8 alleged facts that state a cognizable claim for relief under  
9 § 1983, his claim against Medina, Nickerson and Smith is DISMISSED  
10 without leave to amend.

12 III. Motion to Appoint Counsel

13 Plaintiff has filed a renewed motion for the appointment of  
14 counsel. The Court may appoint counsel under § 1915(e)(1) only  
15 under "exceptional circumstances." 28 U.S.C. § 1915(e)(2). The  
16 Court must evaluate both: (1) the likelihood of success on the  
17 merits, and (2) the ability of the prisoner to articulate his  
18 claims pro se in light of the complexity of the legal issues  
19 involved. As will be explained below, Plaintiff has not shown a  
20 likelihood of success on the merits of his claims. Furthermore,  
21 the legal issues addressed in the motion for summary judgment are  
22 neither novel nor especially intricate. In fact, Plaintiff has  
23 demonstrated his ability to brief issues adequately in his  
24 opposition to the motion for summary judgment and his other  
25 filings in this case. On this basis, the Court DENIES Plaintiff's  
26 motion for court-appointed counsel.  
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1 IV. Motion for Summary Judgment

2 A. Legal Standard

3 Summary judgment is properly granted when no genuine and  
4 disputed issues of material fact remain and when, viewing the  
5 evidence most favorably to the non-moving party, the movant is  
6 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.  
7 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);  
8 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.  
9 1987).

10  
11 The moving party bears the burden of showing that there is no  
12 material factual dispute. Therefore, the Court must regard as  
13 true the opposing party's evidence, if supported by affidavits or  
14 other evidentiary material. Celotex, 477 U.S. at 324; Eisenberg,  
15 815 F.2d at 1289. The Court must draw all reasonable inferences  
16 in favor of the party against whom summary judgment is sought.  
17 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,  
18 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952  
19 F.2d 1551, 1558 (9th Cir. 1991).

20  
21 Material facts which would preclude entry of summary judgment  
22 are those which, under applicable substantive law, may affect the  
23 outcome of the case. The substantive law will identify which  
24 facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S.  
25 242, 248 (1986). Where the moving party does not bear the burden  
26 of proof on an issue at trial, the moving party may discharge its  
27 burden of showing that no genuine issue of material fact remains  
28

1 by demonstrating that "there is an absence of evidence to support  
2 the nonmoving party's case." Celotex, 477 U.S. at 325. The  
3 burden then shifts to the opposing party to produce "specific  
4 evidence, through affidavits or admissible discovery material, to  
5 show that the dispute exists." Bhan v. NME Hosps., Inc., 929 F.2d  
6 1404, 1409 (9th Cir. 1991). A complete failure of proof  
7 concerning an essential element of the non-moving party's case  
8 necessarily renders all other facts immaterial. Celotex, 477 U.S.  
9 at 323.

11 B. Analysis

12 Prisoners have a First Amendment right to pursue civil rights  
13 litigation in the courts. Rhodes v. Robinson, 408 F.3d 559, 567  
14 (9th Cir. 2005). Prisoners may not be retaliated against for  
15 exercising their right of access to the courts, and this extends  
16 to established prison grievance procedures. Bradley v. Hall, 64  
17 F.3d 1276, 1279 (9th Cir. 1995), abrogated on other grounds by  
18 Shaw v. Murphy, 532 U.S. 223 (2001).

20 A viable claim of First Amendment retaliation within the  
21 prison context entails five basic elements: "(1) An assertion that  
22 a state actor took some adverse action against an inmate  
23 (2) because of (3) that prisoner's protected conduct, and that  
24 such action (4) chilled the inmate's exercise of his First  
25 Amendment rights, and (5) the action did not reasonably advance a  
26 legitimate correctional goal." Rhodes, 408 F.3d at 567-68  
27 (footnote omitted).  
28

1           Retaliatory motive may be shown by the timing of the  
2 allegedly retaliatory act and inconsistency with previous actions,  
3 as well as direct evidence. Bruce v. Ylst, 351 F.3d 1283, 1288-89  
4 (9th Cir. 2003). A plaintiff must show a causal connection  
5 between a defendant's retaliatory animus and a subsequent injury.  
6 Hartman v. Moore, 547 U.S. 250, 259 (2006). The requisite  
7 causation must be but-for causation, i.e., without the prohibited  
8 animus, the adverse action would not have been taken. Id. at 260.  
9 Upon a prima facie showing of retaliatory harm, the burden shifts  
10 to the defendant official to demonstrate that even without the  
11 impetus to retaliate he would have taken the action complained of.  
12 Id. If there is a finding that retaliation was not a but-for  
13 cause of the action of which the plaintiff complains, the claim  
14 fails for lack of causal connection between unconstitutional  
15 motive and resulting harm, despite proof of retaliatory animus in  
16 the official's mind. Id.

19           The prisoner bears the burden of pleading and proving the  
20 absence of a legitimate correctional goal for the conduct of which  
21 he complains. See Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir.  
22 1995). Courts considering retaliation claims brought by prisoners  
23 must keep in mind the potential for "excessive judicial  
24 involvement in day-to-day prison management, which 'often  
25 squander[s] judicial resources with little offsetting benefit to  
26 anyone.'" Pratt, 65 F.3d at 807 (quoting Sandin v. Conner, 515  
27 U.S. 472, 482 (1995)). In particular, courts should "afford  
28

1 appropriate deference and flexibility' to prison officials in the  
2 evaluation of proffered legitimate penological reasons for conduct  
3 alleged to be retaliatory." Id. (quoting Sandin, 515 U.S. at  
4 482).

5 1. Roach

6 a. Refusal to Release for Work Assignment

7 Plaintiff alleges that Roach retaliated against him by  
8 refusing to release him for his work assignment from July 7, 2009  
9 to July 9, 2009. Sec. Compl., Ex. E at 100. Plaintiff's claim  
10 fails for two reasons.  
11

12 First, Plaintiff has not created a triable issue of material  
13 fact as to whether Roach took this action because Plaintiff filed  
14 a grievance against Vasquez. In his opposition to the motion for  
15 summary judgment, Plaintiff explicitly asserts for the first time  
16 that on July 8, 2009, Roach told Plaintiff that he was not  
17 releasing him for his work assignment because Plaintiff filed a  
18 grievance against Vasquez. Opp'n at 8. Roach denies this and  
19 argues that his action could not have been retaliatory because he  
20 did not start working in the building in which Plaintiff was  
21 housed until July 6, 2009, and prior to this date did not know  
22 about Plaintiff or his grievance.<sup>6</sup> Roach Decl. ¶ 5. Thus, there  
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27 <sup>6</sup> Roach has presented undisputed evidence that he was not  
28 working at the prison on July 7, 2009. Thus, the only dates at  
issue are July 8, 2009 and July 9, 2009. Roach Decl. ¶¶ 6-9.

1 is a dispute as to whether Roach harbored a retaliatory animus  
2 when he acted.

3 However, even assuming that Roach did have a retaliatory  
4 motive, Plaintiff fails to demonstrate that Roach's retaliatory  
5 animus was the but-for cause of Roach's action. Although Roach  
6 testifies in his declaration that he does not recall whether he  
7 released Plaintiff for work on July 8 and 9, he declares that he  
8 has refused to release Plaintiff for his work assignment only to  
9 advance legitimate correctional goals. Id. Specifically, Roach  
10 states:  
11

12 I have only ever decided not to release [Plaintiff] for work  
13 to: (1) discipline [Plaintiff] for violating direct orders,  
14 regulations, or operational procedures; (2) to improve safety  
15 and security by keeping [Plaintiff] in his cell when  
16 [Plaintiff] had no haircuts or other barber-related work to  
17 perform; or (3) to maintain safety and security when events  
18 occurred at Salinas Valley State Prison that made it  
19 impossible to safely release [Plaintiff] for his work  
20 assignment.

21 Id.

22 In support of his assertion, Roach points out that he had  
23 only been assigned to that building for two days when Plaintiff  
24 claims he refused to release Plaintiff for work. Id. at ¶¶ 6-9.  
25 He states that prison policy does not provide that inmates who  
26 work as barbers be released from their cells to compile a list of  
27 inmates wanting a haircut; rather, it is the Housing Unit  
28 Officer's responsibility to compile the list. Id.; Morris Decl.,  
Ex. B at 5. Plaintiff has failed to present evidence that Roach,  
on his first two days assigned to the building, was aware that

1 Morris had implemented a different practice of letting Plaintiff  
2 out of his cell to compile the list. Opp'n at 6. Accordingly,  
3 Roach reasonably could have concluded that he would receive a list  
4 of inmates needing haircuts from the Housing Unit Officer, and  
5 Plaintiff would only be released if inmates needed haircuts.  
6 Plaintiff agrees that no such list was compiled on July 8 and 9,  
7 2009. Pl.'s Decl. Re: Roach at 2.  
8

9 It is Plaintiff's burden to provide evidence of the absence  
10 of a legitimate correctional goal for the conduct of which he  
11 complains. Pratt, 65 F.3d at 806. Aside from stating that  
12 Roach's actions were "not taken to achieve a legitimate  
13 penological goal," Opp'n at 15, Plaintiff offers no evidence that  
14 Roach's refusal to release him for his work assignment did not  
15 advance legitimate correctional goals such as those proffered by  
16 Roach. Plaintiff fails to meet his burden.  
17

18 Roach is entitled to summary adjudication of Plaintiff's  
19 retaliation claim to the extent it is based on this ground.

20 b. The RVRs

21 Plaintiff alleges that Roach retaliated against him by  
22 issuing him two false RVRs--the first on December 24, 2009 and the  
23 second on March 5, 2010. This claim fails for two reasons.

24 First, Plaintiff has not created a triable issue of material  
25 fact as to whether Roach issued these RVRs because Plaintiff filed  
26 a grievance against Vasquez. Plaintiff fails to provide evidence  
27 showing a nexus between his grievance against Vasquez and Roach's  
28

1 issuance of the RVRs. Temporal proximity is lacking. Plaintiff  
2 filed the grievance against Vasquez in April 2009. Roach issued  
3 the first RVR in December 2009, eight months after Plaintiff filed  
4 the grievance, and the second RVR in March 2010, eleven months  
5 after the grievance was filed. Plaintiff fails to present  
6 evidence that Roach harbored a retaliatory animus when he issued  
7 these RVRs. However, even assuming that Roach's motivation when  
8 issuing the RVRs was retaliatory, Plaintiff fails to demonstrate  
9 that Roach's retaliatory animus was the but-for cause of Roach's  
10 issuance of the RVRs.  
11

12 The December 24, 2009 RVR was for violating a direct order.  
13 Roach states, "I observed [Plaintiff] passing an item to another  
14 inmate's cell. In the past, I had repeatedly advised [Plaintiff]  
15 that he was prohibited from wandering around Facility D during his  
16 assigned work hours to pass items to other inmates, and had  
17 ordered [Plaintiff] to cease that behavior." Roach Decl. ¶ 15.  
18 Plaintiff does not deny this, but explains his action by stating:  
19 "[I] was assisting [my] neighbor retrieve [sic] 3 polaroid photo's  
20 [sic] that were sitting in front of his cell." Pl.'s Decl. Re:  
21 Roach at 3. The March 5, 2010 RVR was also for violating a direct  
22 order. Roach states, "Instead of reporting directly to his work  
23 assignment, [Plaintiff] visited the upper tier of the building."  
24 Roach Decl. ¶ 16. Roach asserts that he "had previously advised  
25 [Plaintiff] that it was a violation of prison rules and  
26 regulations for him to wander about the facility before reporting  
27  
28



1 to his work assignment, and had ordered [Plaintiff] to cease that  
2 behavior." Id. Aside from stating that Roach's assertions are a  
3 "complete and total fabrication," Pl.'s Decl. Re: Roach at 4,  
4 Plaintiff offers no facts to the contrary, and his conclusory  
5 statement is insufficient to create a triable issue of material  
6 fact. Plaintiff fails to present evidence that Roach's  
7 retaliatory animus was the but-for cause of his issuance of the  
8 RVRs.  
9

10 Second, Plaintiff's claim fails because he has not created a  
11 triable issue of material fact that Roach's issuance of these RVRs  
12 did not reasonably advance legitimate correctional goals. Roach  
13 has provided sufficient evidence to show that his issuance of the  
14 RVRs advanced legitimate correctional goals.

15 Because Plaintiff fails to create triable issues of material  
16 fact regarding whether Roach issued the RVRs because Plaintiff  
17 filed a grievance and whether Roach's actions reasonably advanced  
18 legitimate correctional goals, Roach is entitled to summary  
19 adjudication of Plaintiff's retaliation claim to the extent it is  
20 based on this ground.  
21

22 2. Morris

23 Plaintiff alleges that Morris retaliated against him by  
24 falsifying his time card to indicate that he had been released for  
25 his work assignment when that was not the case. Sec. Compl., Ex.  
26 E at 99-100. Plaintiff's claim fails for two reasons.  
27  
28

1 First, Plaintiff's claim fails because Morris's action was  
2 not adverse to Plaintiff. Plaintiff's claim against Morris is not  
3 that Morris refused to release Plaintiff for his work assignment,  
4 but rather that Morris credited Plaintiff for hours he had not  
5 worked. Plaintiff has not alleged that he suffered any harm as a  
6 result of Morris's alleged retaliatory action. In fact, Plaintiff  
7 received pay and work credits for these hours.  
8

9 Second, Plaintiff's claim fails because he has not created a  
10 triable issue of material fact as to whether Morris's alleged  
11 action was taken because Plaintiff engaged in protected conduct.  
12 In its December 8, 2010 Order, in which it found Plaintiff's  
13 retaliation claim cognizable, the Court construed Plaintiff's  
14 second complaint as alleging that the retaliation by Morris  
15 occurred because Plaintiff filed a grievance against Vasquez.  
16 Dec. 8, 2010 Order at 5-6. That is the claim to which Defendants  
17 have responded. However, in his opposition to Defendants' motion  
18 for summary judgment, Plaintiff now states that Morris's  
19 retaliation was not motivated by the grievance against Vasquez.  
20 Rather, Plaintiff appears to argue that Morris joined in Roach's  
21 retaliatory actions for unspecified reasons. Plaintiff states:  
22

23 [P]etitioner does not claim officer morris retaliated against  
24 petitioner due to a grievance petitioner filed against C/o  
25 Vasquez. Petitioner alleges that officer Roach in fact did  
26 this. Officer morris however seemed to just jump on board  
27 with officer Roach. However, it can be inferred that officer  
28 morris's assistance to officer roach could be construed as  
retaliation to petitioner's grievance against C/o Vasquez.

Pl.'s Decl. Re: Morris at 1.

1 To the extent that Plaintiff's claim of retaliation against  
2 Morris is simply that Morris decided to join in Roach's  
3 retaliatory action, the claim fails. Plaintiff has not provided  
4 evidence demonstrating that Morris's action was taken because  
5 Plaintiff engaged in protected conduct. Paradoxically, Plaintiff  
6 asks the Court to infer that Morris's alleged action was  
7 retaliatory, even as he concedes that he does not believe this  
8 action was prompted by a retaliatory motive.  
9

10 Accordingly, Morris is entitled to summary judgment on  
11 Plaintiff's retaliation claim.

12 V. Qualified Immunity

13 Defendants argue that they are entitled to qualified  
14 immunity. The defense of qualified immunity protects "government  
15 officials . . . from liability for civil damages insofar as their  
16 conduct does not violate clearly established statutory or  
17 constitutional rights of which a reasonable person would have  
18 known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The  
19 threshold question in qualified immunity analysis is: "Taken in  
20 the light most favorable to the party asserting the injury, do the  
21 facts alleged show the officer's conduct violated a constitutional  
22 right?" Saucier v. Katz, 533 U.S. 194, 201 (2001). The relevant,  
23 dispositive inquiry in determining whether a right is clearly  
24 established is whether it would be clear to a reasonable officer  
25 that his conduct was unlawful in the situation he confronted. Id.  
26 at 202.  
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1 On the facts presented herein, viewed in the light most  
2 favorable to Plaintiff, Defendants prevail as a matter of law on  
3 their qualified immunity defense because the record establishes no  
4 constitutional violation. Even if a constitutional violation did  
5 occur, however, Defendants could have reasonably believed their  
6 conduct was lawful. Specifically, even if Roach harbored a  
7 retaliatory animus against Plaintiff, it would not have been clear  
8 to a reasonable officer in Roach's position that his refusal to  
9 release Plaintiff from his cell to go to work on July 8 and 9,  
10 2009, was unconstitutional given that it conformed to prison  
11 policy. Roach understood the policy to be that he would release  
12 inmate barbers if he was given a list by another officer of  
13 inmates needing haircuts. Plaintiff has stated that no such list  
14 was compiled on those dates because he was not let out of his  
15 cell. Pl.'s Decl. Re: Roach at 2. Further, it would not have  
16 been clear to a reasonable officer in Roach's position that  
17 issuing the December 2009 and March 2010 RVRs against Plaintiff  
18 was unconstitutional, where Plaintiff's actions on those dates  
19 were in violation of prison procedures. Finally, it would not  
20 have been clear to a reasonable official in Morris's position that  
21 his decision to "join in" Roach's strict, but lawful, enforcement  
22 of prison procedures was unconstitutional.

23 Accordingly, Defendants are entitled to qualified immunity  
24 with respect to all of Plaintiff's claims, and their motion for  
25 summary judgment is GRANTED for this reason as well.  
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1 VI. Motion for Leave to File a Writ of Mandamus

2 Plaintiff has filed a motion for leave to file a writ of  
3 mandamus to compel the Court to rule on his pending motions.

4 Because Plaintiff's pending motions have now been decided, the  
5 Court DENIES the motion as moot.

6 CONCLUSION

7 For the foregoing reasons, the Court orders as follows:

8 1. Plaintiff's motion to supplement his pleadings is DENIED.  
9 (Docket No. 36).

10 2. Plaintiff's motion for reconsideration is GRANTED.  
11 (Docket No. 42).

12 3. Plaintiff's claim against Defendants Medina, Nickerson and  
13 Smith is DISMISSED without leave to amend.

14 4. Plaintiff's motion for appointment of counsel is DENIED.  
15 (Docket No. 46).

16 5. Defendants' motion for summary judgment is GRANTED.  
17 (Docket No. 37).

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6. Plaintiff's motion for leave to file a writ of mandamus is DENIED. (Docket No. 58).

The Clerk of the Court shall enter judgment and close the file.

This Order terminates Docket numbers 36, 37, 42, 46 and 58.

IT IS SO ORDERED.

Dated: 03/31/12

  
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CLAUDIA WILKEN  
United States District Judge