



1 **BACKGROUND**

2 On December 2, 2009, Plaintiff Jeffrey Ray Coyle (“Plaintiff”), a state prisoner  
3 proceeding pro se and in forma pauperis, filed a civil rights complaint pursuant to 42 U.S.C.  
4 § 1983 against officials at Calipatria State Prison. (Doc. No. 1.) On August 31, 2010, Plaintiff  
5 filed his Second Amended Complaint (“SAC”) against Defendants Rivera, Drake, Janda, Price,  
6 Catlett and Ochoa, alleging causes of action for: (1) retaliation in violation of First  
7 Amendment; (2) Eighth Amendment failure to protect claim; and (3) Eighth Amendment claim  
8 for inhumane conditions of confinement. (Doc. No. 22.) Plaintiff alleges he was housed in  
9 a general population unit of Calipatria State Prison from May 2002 to July 3, 2008. (Doc. No.  
10 22 at 4.) Plaintiff alleges that on July 3, 2008, he was placed in administrative segregation in  
11 retaliation for Plaintiff filing grievances against prison officials. (Id. ¶ 4, 12.) Plaintiff alleges  
12 that he was confined to administrative segregation for seven months. (Id. ¶ 19.) Plaintiff  
13 alleges that Defendants failed to protect him by housing him with prisoners who were in  
14 administrative segregation for disciplinary reasons, which resulted in an inmate attacking  
15 Plaintiff. (Id. ¶ 20-28.) Plaintiff also alleges that by placing Plaintiff in administrative  
16 segregation, Defendants deprived him of outdoor exercise for approximately four months. (Id.  
17 ¶¶ 24, 38.)

18 **DISCUSSION**

19 **I. Legal Standard**

20 To survive a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6),  
21 Plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” Lazy  
22 Y. Ranch v. Behrens, 546 F.3d 580, 588 (9th Cir. 2008) (quoting Bell Atlantic Corp. v.  
23 Twombly, 550 U.S. 544, 570 (2007)). “While a complaint attacked by a Rule 12(b)(6) motion  
24 to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the  
25 ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a  
26 formulaic recitation of the elements of a cause of action will not do.” Twombly, 550 U.S.  
27 at 554. A complaint does not “suffice if it tenders ‘naked assertion[s]’ devoid of ‘further  
28 factual enhancement.’” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Twombly,

1 550 U.S. at 556). “Factual allegations must be enough to raise a right to relief above the  
2 speculative level.” Twombly, 550 U.S. at 554 (citing 5 C. Wright & A. Miller, Federal  
3 Practice and Procedure § 1216, pp. 235–36 (3d ed. 2004)).

4 Generally, factual allegations asserted by pro se petitioners, “however inartfully  
5 pleaded,” are held “to less stringent standards than formal pleadings drafted by lawyers.”  
6 Haines v. Kerner, 404 U.S. 519, 520 (1972). Thus, complaints drafted by inmates proceeding  
7 pro se “must be held to less stringent standards than formal pleadings drafted by lawyers,” as  
8 the Supreme Court has reaffirmed since Twombly. See Erickson v. Pardus, 551 U.S. 89, 94,  
9 (2007) (per curiam); Hebbe v. Pliler, --- F.3d ----, 2010 WL 4673711 at \*3 (9th Cir. Nov. 19,  
10 2010). However, conclusory allegations of law and unwarranted inferences are insufficient  
11 to defeat a motion to dismiss for failure to state a claim. Epstein v. Wash. Energy Co., 83 F.3d  
12 1136, 1140 (9th Cir.1996); see Twombly, 550 U.S. at 555.

## 13 **II. First Amendment Claim for Retaliation**

14 To sue prison officials for First Amendment retaliation under section 1983, Plaintiff  
15 must satisfy five elements: “(1) an assertion that a state actor took some adverse action against  
16 an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled  
17 the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably  
18 advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567–68 (9th Cir.  
19 2005). Prisoners have a First Amendment right to petition the government through prison  
20 grievance procedures. Id. at 567. The Court evaluates a claim for retaliation in light of the  
21 deference that must be accorded to prison officials. Pratt v. Rowland, 65 F.3d 802, 806 (9th  
22 Cir. 1995). Plaintiff must establish a link between the exercise of his constitutional rights and  
23 the allegedly retaliatory action. Id. at 807. Plaintiff also “bears the burden of pleading . . . the  
24 absence of legitimate correctional goals for the conduct of which he complains.” Id. at 806.

25 Plaintiff alleges that on April 24, 2008, Plaintiff filed a grievance against prison staff  
26 for misconduct and conspiracy. (SAC ¶ 13.) Plaintiff alleges that on July 3, 2008, Defendant  
27 Drake retaliated against Plaintiff by placing him in administrative segregation because Plaintiff  
28 filed a grievance against prison officials. (SAC ¶ 4.) The SAC alleges that although

1 Defendant Drake claimed that the reason for placing Plaintiff in administrative segregation was  
2 based on confidential information regarding Plaintiff having a family member employed at the  
3 prison, Drake's actions did not reasonably advance a legitimate correctional goal, because the  
4 confidential information was false. (Id. ¶¶ 5-6.) Plaintiff also alleges that on July 10, 2008,  
5 the prison classification committee upheld the decision to place Plaintiff in administrative  
6 segregation. (Id. ¶ 12.) Plaintiff alleges that Defendants Ochoa, Price and Janda were part of  
7 the classification committee and had knowledge of the ongoing investigation related to the  
8 grievance filed by Plaintiff. (Id. ¶ 13.) Plaintiff alleges that he was confined to administrative  
9 segregation for seven months. (Id. ¶ 19.)

10 Defendants' motion to dismiss argues that Plaintiff fails to state a claim for retaliation,  
11 because Plaintiff fails to establish that his protected conduct was the motivating factor behind  
12 Defendants' conduct. (Doc. No. 24-1 at 5.) Defendants argue that Plaintiff was transferred  
13 to administrative segregation because the wife of Plaintiff's former brother-in-law became  
14 employed at the prison in June 2008. (Id.) Thus, Defendants argue that retaliation was not the  
15 motivating factor behind Defendant Drake's decision to place Plaintiff in administrative  
16 segregation. This argument is better suited to a motion for summary judgment. Here, Plaintiff  
17 has sufficiently alleged that he was placed in administrative segregation because of his  
18 protected conduct.

19 Defendants also argue that Plaintiff fails to allege that their actions had a chilling effect  
20 on him. (Id. at 6.) However, such an allegation is not required. "[A]t the pleading stage, we  
21 have never required a litigant, per impossible, to demonstrate a total chilling of his First  
22 Amendment rights to file grievances and to pursue civil rights litigation in order to perfect a  
23 retaliation claim." Rhodes, 408 F.3d at 568. The test for whether official conduct had a  
24 chilling effect is objective. "[T]he proper First Amendment inquiry asks 'whether an official's  
25 acts would chill or silence a person of ordinary firmness from future First Amendment  
26 activities.'" Rhodes, 408 F.3d at 568 (quoting Mendocino Env'tl. Ctr. v. Mendocino Cnty, 192  
27 F.3d 1283, 1300 (9th Cir.2000)). Consequently, a prisoner alleging a First Amendment  
28 retaliation claim "does not have to demonstrate that his speech was 'actually inhibited or

1 suppressed.” Rhodes, 408 F.3d at 569 (quoting Mendocino Env'tl. Ctr., 192 F.3d at 1300).  
2 Plaintiff has alleged sufficient facts to demonstrate that a person of ordinary firmness could  
3 be silenced in a situation such as that alleged here. Accordingly, the Court DENIES  
4 Defendants’ motion to dismiss Plaintiff’s First Amendment retaliation claim.

### 5 **III. Eighth Amendment Claim for Failure to Protect**

6 Plaintiff alleges Defendants acted with deliberate indifference to Plaintiff’s safety in  
7 violation of his Eighth Amendment right to be free from cruel and unusual punishment when  
8 on October 1, 2008 Defendants failed to protect Plaintiff from an attack by another inmate.  
9 (SAC ¶¶ 20.) Plaintiff alleges he was housed in administrative segregation unit A-5, which  
10 had a high rate of inmate assaults, and that this was known to Defendants. (Id. ¶ 21.) Plaintiff  
11 alleges that unit A-5 housed inmates removed from general population for serious disciplinary  
12 problems such as staff assaults, weapons charges, assault on other inmates, and rioting. (Id.  
13 ¶ 22.)

14 Prison officials have a duty to take reasonable steps to protect inmates from physical  
15 abuse. See Farmer v. Brennan, 511 U.S. 825, 833 (1994); Hearns v. Terhune, 413 F.3d 1036,  
16 1040 (9th Cir. 2005). To allege an Eighth Amendment violation for failure to protect, the  
17 prisoner must establish that prison officials were “deliberately indifferen[t]” to serious threats  
18 to the inmate’s safety. See Farmer, 511 U.S. at 834. To demonstrate that a prison official was  
19 deliberately indifferent to a serious threat to the inmate’s safety, the prisoner must show that  
20 “the official [knew] of and disregard[ed] an excessive risk to inmate . . . safety; the official  
21 must both be aware of facts from which the inference could be drawn that a substantial risk of  
22 serious harm exists, and [the official] must also draw the inference.” Farmer, 511 U.S. at 837;  
23 Gibson v. Cnty. of Washoe, Nev., 290 F.3d 1175, 1187–88 (9th Cir. 2002); Jeffers v. Gomez,  
24 267 F.3d 895, 913 (9th Cir. 2001) (per curiam). To prove knowledge of the risk, however, the  
25 prisoner may rely on circumstantial evidence; in fact, the very obviousness of the risk may be  
26 sufficient to establish knowledge. See Farmer, 511 U.S. at 842. Prison officials may,  
27 however, avoid liability by presenting evidence that they lacked knowledge of the risk. See  
28 id. at 844; Gibson, 290 F.3d at 1187–88.

1 Here, Plaintiff fails to allege that any Defendant knew of a risk to Plaintiff's safety.  
2 Plaintiff alleges that Defendants knew of the history of inmate assaults in administrative  
3 segregation unit A-5. (SAC ¶ 21.) However, these allegations do not rise to a claim for failure  
4 to protect. Prison settings are "always potentially dangerous," and "mere suspicion that an  
5 attack will occur" is insufficient to show that prison officials were deliberately indifferent to  
6 serious threats to the inmate's safety. Berg v. Kincheloe, 794 F.2d 457, 459-61 (9th Cir. 1986).  
7 Because Plaintiff has not alleged that any Defendant consciously disregarded an excessive risk  
8 to his health or safety, he has failed to state an Eighth Amendment claim for failure to protect.  
9 See Farmer, 511 U.S. at 834. Accordingly, the Court GRANTS Defendants' motion to dismiss  
10 Plaintiff's Eighth Amendment claim for failure to protect.

#### 11 **IV. Eighth Amendment Claim for Inhumane Conditions of Confinement**

12 Plaintiff alleges Defendants Janda, Price and Catlett subjected him to inhumane  
13 conditions of confinement while he was housed in administrative segregation because he was  
14 denied outdoor exercise for more than four months from October 1, 2008 until February 5,  
15 2009. (SAC ¶¶ 24, 44.) Plaintiff alleges that the deprivation caused Plaintiff stress, anxiety,  
16 depression, headaches and muscle cramps. (Id. ¶ 24.)

17 An inmate seeking to prove an Eighth Amendment violation must "objectively show  
18 that he was deprived of something 'sufficiently serious,'" and "make a subjective showing that  
19 the deprivation occurred with deliberate indifference to the inmate's health or safety." Foster  
20 v. Runnels, 554 F.3d 807, 812 (9th Cir. 2009) (quoting Farmer, 511 U.S. at 834). "[O]rdinarily  
21 the lack of outside exercise for extended periods is a sufficiently serious deprivation" for  
22 Eighth Amendment purposes. LeMaire v. Maass, 12 F.3d 1444, 1457 (9th Cir. 1993). A  
23 prohibition on outdoor exercise of six weeks is a "sufficiently serious" deprivation to support  
24 an Eighth Amendment claim. See, e.g., Lopez v. Smith, 203 F.3d 1122, 1132-33 (9th Cir.  
25 2000) (en banc); Allen v. Sakai, 48 F.3d at 1086. After the Court determines that an individual  
26 has shown objectively that he was deprived of something sufficiently serious, the court must  
27 consider whether the risk to the inmate was sufficiently obvious to the prison officials that they  
28 must have been aware of the severity of the deprivation. Thomas v. Ponder, 611 F.3d 1144,

1 1150 (9th Cir. 2010). This second step of showing deliberate indifference involves a two part  
2 inquiry: first, the inmate must show that the prison officials were aware of a “substantial risk  
3 of serious harm” to an inmate’s health or safety. Id. (quoting Farmer, 511 U.S. at 837). This  
4 part of our inquiry is satisfied if plaintiff shows that the risk posed by the deprivation is  
5 obvious. Id. Second, the inmate must show that the prison officials had no “reasonable”  
6 justification for the deprivation, in spite of that risk. Id.

7 In order to allege that the risk to Plaintiff’s health was sufficiently obvious to  
8 Defendants, Plaintiff need not show that “an individual prison official had specific knowledge  
9 that harsh treatment of a particular inmate, in particular circumstances, would have a certain  
10 outcome.” Thomas, 611 F.3d at 1151. Rather, whether the risk was obvious is measured in  
11 light of reason and the basic general knowledge that a prison official may be presumed to have  
12 obtained regarding the type of deprivation involved. Id. (citing Farmer, 511 U.S. at 842.)  
13 Although an inmate is required to show awareness of the risk, “a factfinder may conclude that  
14 a prison official knew of a substantial risk from the very fact that the risk was obvious.”  
15 Farmer, 511 U.S. at 842. “[I]f an inmate presents evidence of very obvious and blatant  
16 circumstances indicating that the prison official knew [a substantial risk of serious harm]  
17 existed, then it is proper to infer that the official must have known of the risk.” Foster v.  
18 Runnels, 554 F.3d at 814.

19 In their motion to dismiss, Defendants concede that Plaintiff’s allegation of more than  
20 four-month deprivation of outdoor exercise satisfies the objective requirement. (Doc. No. 24-1  
21 at 9.) Defendants argue, however, that Plaintiff cannot satisfy the subjective element of  
22 deliberate indifference by showing that Defendants Drake, Janda and Price knew of a  
23 substantial risk of harm and acted in furtherance of that knowledge. (Id. at 9-10.) Plaintiff has  
24 alleged facts that support the conclusion that Defendants Catlett, Drake, Janda and Price acted  
25 with deliberate indifference. The risk to Plaintiff’s health was sufficiently obvious such that  
26 any prison official who was aware that Plaintiff was deprived of outdoor exercise for four  
27 months would have known of the obvious risk to Plaintiff’s health.

28 The Court must also consider whether the deprivation of outdoor exercise was

1 reasonable. Thomas v. Ponder, 611 F.3d at 1150. Prison officials may act reasonably in  
2 depriving inmates of exercise when they respond to a “genuine emergency.” Id. at 1154. Such  
3 an emergency may occur following outbreaks of extraordinary levels of violence in a prison.  
4 Norwood v. Vance, 572 F.3d 626, 631 (9th Cir. 2009) (“When violence rises to unusually high  
5 levels, prison officials can reasonably believe it is lawful to temporarily restrict outdoor  
6 exercise to help bring the violence under control.”)

7 Defendants’ motion does not address whether the deprivation was reasonable under the  
8 circumstances. Defendants concede that Plaintiff was not placed in administrative segregation  
9 unit A-5 on July 3, 2008 due to his disciplinary record.<sup>1</sup> Plaintiff alleged that on October 1,  
10 2008, he was transferred to a different administrative segregation unit after being attacked by  
11 an inmate in yard group 2. (SAC ¶ 26.) Plaintiff alleged that on November 12, 2008,  
12 Defendant Catlett offered to transfer Plaintiff back to unit A-5 where he would receive outdoor  
13 exercise in yard group 2 if Plaintiff agreed to accept a cell mate. (Id. ¶ 31.) Plaintiff alleged  
14 that he refused to transfer, because he had been previously assaulted by an inmate in yard  
15 group 2. (Id. ¶ 32.) Plaintiff alleged that he remained in administrative segregation without  
16 outdoor exercise until February 5, 2009. (Id. ¶ 24.) To the extent Defendants conditioned  
17 Plaintiff’s access to outdoor exercise on him agreeing to be transferred back to the yard where  
18 he had been assaulted, their actions were not reasonable, or in response to a “genuine  
19 emergency.” Thomas v. Ponder, 611 F.3d at 1155 (denial of outdoor exercise for over 13  
20 months was not reasonable where prison officials conditioned inmate’s access to outdoor  
21 exercise on his signing a “pledge form” promising that he would not engage in violence while  
22 participating in prison programs). Additionally, Plaintiff’s deprivation was not temporary, and  
23 Defendants did not consider whether there were any alternative means of providing him  
24 outdoor exercise. “Even where security concerns might justify a limitation on permitting a  
25 prisoner ‘to mingle with the general prison population,’ such concerns ‘do not explain why  
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27 <sup>1</sup>Defendants contend that Plaintiff was transferred to administrative segregation because  
28 it became known that a family member of Plaintiff’s ex-wife became employed at the prison  
in June 2008. (Doc. No. 24-1 at 5.)



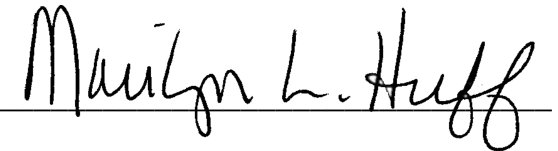
1 other exercise arrangements [are] not made.” Id. (quoting Spain v. Procunier, 600 F.2d 189  
2 at 200 (9th Cir. 1979); see also Lopez, 203 F.3d at 1133 (holding that even if denying Lopez  
3 access to the general recreation yard was reasonable, “it does not explain why Lopez was not  
4 given some other opportunity for outdoor exercise.”). The Court concludes that Plaintiff has  
5 sufficiently alleged a claim for inhumane conditions of confinement based on a four-month  
6 deprivation of outdoor exercise. Accordingly, the Court DENIES Defendants’ motion to  
7 dismiss Plaintiff’s Eighth Amendment claim for inhumane conditions of confinement.

8 **CONCLUSION**

9 For the foregoing reasons, the Court GRANTS Defendants’ motion to dismiss  
10 Plaintiff’s Eighth Amendment failure to protect claim, DENIES Defendants’ motion to dismiss  
11 Plaintiff’s First Amendment retaliation claim, and DENIES Defendants’ motion to dismiss  
12 Plaintiff’s Eighth Amendment claim for inhumane conditions of confinement. The Court  
13 directs Defendants to file an answer to Plaintiff’s Second Amended Complaint on or before  
14 January 31, 2011.

15 **IT IS SO ORDERED.**

16 DATED: January 5, 2011

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19 MARILYN L. HUFF, District Judge

20 UNITED STATES DISTRICT COURT

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