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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TERRELL DESHON LEMONS,
CDCR #P-83680,

Plaintiff,

vs.

A. CAMARILLO, et al.,

Defendants.

Case No.: 3:14-cv-02814-DMS-DHB

**ORDER GRANTING DEFENDANT
VALENZUELA'S MOTION FOR
SUMMARY JUDGMENT**

Terrell Deshon Lemons (“Plaintiff”), a prisoner at Ironwood State Prison in Blythe, California, proceeding pro se and in forma pauperis (“IFP”), is proceeding with a Second Amended Complaint (“SAC”) filed pursuant to the Civil Rights Act, 42 U.S.C. § 1983 (ECF No. 60).

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1 **I. Procedural History**

2 On January 24, 2017, Defendant Valenzuela¹ filed a Motion for Summary Judgment
3 pursuant to FED. R. CIV. P. 56 (ECF No. 142). On February 13, 2017, the Court notified
4 Plaintiff of the requirements for opposing summary judgment pursuant to *Klinge v.*
5 *Eikenberry*, 849 F.2d 409 (9th Cir. 1988) and *Rand v. Rowland*, 154 F.3d 952 (9th Cir.
6 1998) (en banc), and set a briefing schedule (ECF No. 148). Plaintiff was given until June
7 9, 2017, to notify the Court that he did not oppose Defendant Valenzuela’s Motion or file
8 an Opposition. (*Id.* at 2.)

9 That date has long since passed and Plaintiff has not filed an Opposition or any
10 notification relating to the Motion currently before the Court. The Court has determined
11 no oral argument is required, and took Defendant Valenzuela’s Motion for Summary
12 Judgment under submission for resolution on the papers pursuant to S.D. CAL. CIVLR
13 7.1.d.

14 Having carefully considered the record as submitted, the Court now GRANTS
15 Defendant Valenzuela’s Motion for Summary Judgment.

16 **II. Factual Background**

17 **A. Plaintiff’s Claims**

18 On August 15, 2012, while housed at Centinela State Prison (“CEN”), Plaintiff’s cell
19 was searched “during a massive search of Facility C-2 Building.” (SAC at 4.) Plaintiff
20 and his cellmate were returning to their cell at approximately 3:30 p.m. and realized that a
21 radio was missing that was not documented in the cell search. (*Id.* at 4-5.) Plaintiff and
22 his cellmate “called upon Sgt. Cortez and 3rd Watch Building Officer Liss to verify that
23 Plaintiff’s radio was indeed missing.” (*Id.* at 5.)

24 The next day, on August 16, 2012, Plaintiff approached Correctional Officer
25 Camarillo and showed him that the radio had not been documented as confiscated during
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28 ¹ This Motion is brought by Defendant Valenzuela only. The remaining Defendants are not currently moving for summary judgment and remain in this action.

1 the cell search. (*Id.*) Plaintiff alleges Camarillo responded by denying that Plaintiff's name
2 or identification was on the radio. (*Id.*) Plaintiff "immediately produced valid
3 documentation" that showed "Sgt. D. Pollard had recently compensated Plaintiff with that
4 exact radio." (*Id.*) However, Defendant Camarillo "insisted 'he was not giving [Plaintiff's]
5 radio back.'" (*Id.*)

6 Plaintiff then "walked about 10 feet" and spoke to an unidentified Sergeant who
7 "advised [Plaintiff] to 602 (appeal)." (*Id.* at 6.) Plaintiff returned to his cell to begin
8 writing the appeal and later that day a radio was "placed in front of Plaintiff's cell" by
9 another inmate. (*Id.*)

10 On August 23, 2012, Plaintiff was exiting the "chowhall" when Camarillo decided
11 to search Plaintiff. (*Id.*) Plaintiff alleges he complied with the search but the pat down
12 search became "aggressive." (*Id.*) Plaintiff asked Camarillo "why are you grabbing me
13 like that?" (*Id.* at 5.) While receiving no response from Camarillo Plaintiff claims he "felt
14 a shot of pain from his testicles to the gut of his stomach." (*Id.*) Plaintiff alleges he was
15 unable to remain in the "spread eagle" position due to the pain but Camarillo told him to
16 "put your [expletive] hands in the air and squeezed his grasp harder." (*Id.* at 7.) Plaintiff
17 "bucked in an attempt to free himself" but he was "taken to the ground immediately by
18 Defendant Camarillo from the front and Defendants J. Butcher and D. Zamora from
19 behind." (*Id.*)

20 Plaintiff was "subdued and restrained on the ground" by Butcher and Zamora while
21 "Camarillo continued to punch Plaintiff upon the face and while applying a choke-hold."
22 (*Id.*) Plaintiff claims that "after allowing this to go on for some time," Butcher "pulled
23 and/or waved" Camarillo off Plaintiff. (*Id.*)

24 Following this incident, Camarillo allegedly told his supervisors that he "felt 'contra-
25 band' on Plaintiff and Plaintiff resisted." (*Id.*) However, Plaintiff claims that no
26 contraband was ever found on him. (*Id.*) He further claims that Defendants Greenwood,
27 Valenzuela and Pollard "all accepted as true" that Plaintiff had contraband despite no
28 evidence of any contraband. (*Id.* at 8.)

1 Plaintiff was escorted to the Program Office where he “immediately told” Defendant
2 Pollard that Camarillo had used excessive force and that it was “in reprisal for Plaintiff’s
3 complaint about his radio the week prior.” (*Id.*) Plaintiff also claims he told Valenzuela
4 and Greenwood about the excessive force by Camarillo as well. (*Id.*) Plaintiff claims that
5 Greenwood “declined to accept and/or investigate Plaintiff’s version of the events.” (*Id.*
6 at 9.) Greenwood allegedly told Plaintiff that “you are a liar, you assaulted my officer . . .
7 and if it’s the last thing [Greenwood] does, [Greenwood] is going to make sure that Plaintiff
8 would be transferred to Pelican Bay, so that Plaintiff would never see his family again.”
9 (*Id.*)

10 A few hours later, Plaintiff was again brought to the Program Office where he would
11 be transferred to Administrative Segregation (“Ad-Seg”). (*Id.* at 8.) However, Plaintiff
12 claims he realized that his “radio was not on the inventory list/receipt and immediately
13 brought it to Sgt. Pollard’s attention.” (*Id.*) Pollard sent Defendant Ramirez to locate
14 Plaintiff’s radio and bring it to Plaintiff. (*Id.*) When the radio was located, Pollard “signed
15 ‘602’ on the inventory sheet to show she placed the radio in Plaintiff’s property upon
16 departure.” (*Id.*) However, on September 21, 2012, Plaintiff received his “allowable
17 property” while housed in Ad-Seg but there was no radio contained in the property. (*Id.*)
18 Plaintiff appealed the issue and was again “granted a Super III G.E. radio.” (*Id.*)

19 On October 28, 2012, while still housed in Ad-Seg, Plaintiff was permitted to receive
20 “non-contact (behind the glass) visits” with his wife. (*Id.* at 9.) Plaintiff claims that his
21 wife was “ordered to a closed room by a Sgt. or Lt. Ramirez and subjected to being
22 searched in further reprisal and [to] discourage Plaintiff’s wife from visiting.” (*Id.*)

23 On April 3, 2014, Plaintiff “brought this (threat) and other situations where Plaintiff
24 experienced other reprisal/retaliation” to former Warden Miller’s attention. (*Id.*) Plaintiff
25 claims she “assured Plaintiff that this would not occur” while in the presence of
26 Greenwood. (*Id.*) The next day, on April 4, 2014, Plaintiff submitted an “Inmate Request
27 CDCR 22” form to Miller regarding the threat by Greenwood which was received by Miller
28 on April 14, 2014, and forwarded to Defendant Galeana, a correctional counselor. (*Id.* at

1 10.) Galeana then passed Plaintiff's complaint to Defendant Angulo, also a correctional
2 counselor. (*Id.*)

3 On April 21, 2014, Angulo called Plaintiff into his office "to reiterate/reassure
4 Plaintiff that he would indeed be referred by ICC to be transferred to a Level III prison,
5 not a Level IV prison (Pelican Bay State Prison) as previously threatened" by Greenwood.
6 (*Id.*) Four days later, Angulo "retracted this reassurance" on the grounds that there had
7 been a "miscalculation in points." (*Id.*) However, Galeana called Plaintiff into his office
8 to inform him that he was "taking Plaintiff back to ICC for Level III transfer" because he
9 had contacted the "Head Office in Sacramento" to review his calculations for accuracy.
10 (*Id.*)

11 Plaintiff was later called back again to Galeana's office between May 16, 2014, and
12 May 22, 2014, and was told that "some guy in CSR, at Centinela, have a stick up his ass
13 because nobody aggravated your offense to make you a high-risk, high security Level IV
14 inmate." (*Id.*) Previously in August of 2010, Plaintiff claims Valenzuela found Plaintiff
15 "not guilty" of mutual combat with another inmate but "approximately 2 years later, and
16 coincidentally in August of 2012, Plaintiff was re-issued the same rule violation report
17 (RVR) 115 and found 'guilty' for fighting." (*Id.* at 11.) Plaintiff alleges there was no other
18 documentation of this finding other than Valenzuela's entry in a log book. (*Id.*)
19 Plaintiff claims this was done to make him eligible for a Level IV placement. (*Id.*)

20 On June 9, 2014, Plaintiff was transferred to Pelican Bay State Prison, a Level IV
21 prison, by himself in a van. (*Id.*) Plaintiff claims that this was intentional so that his "radio
22 would be confiscated once again, this time without compensation." (*Id.*) Plaintiff claims
23 he was subjected to further acts of retaliation while housed at Pelican Bay. (*Id.* at 11-12.)

24 On August 23, 2012, following the alleged incident with Camarillo, Plaintiff claims
25 Defendant Villalobos-Valenzuela "was on notice and notified of the incident" but waited
26 an "hour and 30 minutes after the excruciating pain" to examine Plaintiff." (*Id.* at 15.)
27 Plaintiff further alleges Villalobos-Valenzuela "failed to report any and all marks, bruises
28 and/or scratches upon Plaintiff's body." (*Id.* at 16.) Plaintiff claims that in the days

1 following the incident, he “started to notice his vision getting blurry in his right eye, the
2 eye Defendant Camarillo was punching, while being restrained.” (*Id.*) Plaintiff did not
3 immediately assume it was serious but it later “flared up and [Plaintiff] had to be rushed to
4 CTC 2-4 weeks later.” (*Id.*) Plaintiff claims to continue to suffer from “negative reactions
5 to bright lights and blurriness.” (*Id.*)

6 **B. Defendant’s Claims**

7 Defendant Valenzuela, a Correctional Lieutenant, was employed at Centinela State
8 Prison (“CEN”) until October of 2013. (*See* Def.’s Valenzuela’s Decl., ECF No. 142-4, ¶
9 1.) As a Lieutenant, Valenzuela’s job responsibilities included “overseeing and
10 supervising the general activities and the day-to-day operations of the facility.” (*Id.* ¶ 2.)
11 In addition, Valenzuela was responsible for “ensuring that staff met all security standards,”
12 as well as serving as a “senior hearing officer” who conducts disciplinary hearings and
13 appeal reviews. (*Id.*) This also included being “responsible for collecting and preparing
14 documents in response to use of force incidents.” (*Id.*)

15 On August 23, 2012, the date of the incident with Defendant Camarillo, Valenzuela
16 was in the program office when he heard “the yard alarm and the institutional radio report
17 an incident” in the dining hall. (*Id.* ¶ 3.) Valenzuela arrived at the scene and “saw that
18 Sergeant Pollard was already handling the incident and that inmate Lemons had been
19 restrained.” (*Id.*) Valenzuela claims that prior to this incident he was “not aware of any
20 purported risk that Officer Camarillo posed to Plaintiff” and that Plaintiff had never
21 expressed any concerns to him about Defendant Camarillo. (*Id.* ¶ 4.)

22 Sergeant Pollard collected reports from each of the individual officers involved in
23 the incident, completed a “CDCR 837 Crime/Incident Report, Part C,” and provided this
24 report to Valenzuela. (*Id.* ¶ 5.) It was Valenzuela’s duty to collect the report from Pollard
25 and conduct his own review of the incident. (*Id.*) Valenzuela was responsible for
26 reviewing the individual reports, preparing a “summary of the events as described by the
27 officers,” and assemble an “Initial Incident Report package.” (*Id.*)

28 On August 23, 2012, Pollard provided Valenzuela with reports from “the officers

1 who participated in or witnessed the incident between Officer Camarillo and inmate
2 Lemons.” (*Id.* ¶ 6.) Following a review of these reports, Valenzuela “prepared a summary
3 of the incident, as had been reported by staff.” (*Id.* ¶ 8.) An administrative disciplinary
4 hearing “on the Rules Violation Report concerning the August 23, 2012 incident” was
5 conducted on May 2, 2014. (*Id.* ¶ 9.) Criminal Charges were also brought against Plaintiff
6 in state court for battery on a peace officer. (*See* Jeffrey Decl., Ex. A, ECF No. 142-3, Pl’s
7 Depo. 102:18-24.) Plaintiff was convicted by a jury and sentenced to six years. (*Id.*) At
8 his trial, Plaintiff was represented by counsel and called several fellow inmates as
9 witnesses. (*Id.* at 102:18 - 103:18.)

10 On May 24, 2012, an administrative hearing was held at CEN regarding the Rules
11 Violation Report and Plaintiff was found “guilty of the charges and assessed 150 days
12 forfeiture of behavioral credits and sentenced to a 12 month term in administrative
13 segregation.” (Valenzuela Decl., Ex. D., ECF No. 142-4, Rules Violation Report dated
14 May 2, 2014.)

15 **III. Defendant Valenzuela’s Motion for Summary Judgment**

16 Defendant Valenzuela seeks summary judgment on the grounds that: (1) Plaintiff
17 waived his Eighth Amendment claims against Valenzuela; (2) Plaintiff cannot establish an
18 Eighth Amendment failure to protect claim or a Fourteenth Amendment due process claim;
19 (3) his Eighth Amendment claim is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994); (4)
20 Valenzuela cannot be sued in his official capacity for monetary damages; and (5)
21 Valenzuela is entitled to qualified immunity. (*See* Def’s. Mem. of P&As in Supp. of Mot.
22 for Summ. J., ECF No. 142-1, at 512-22 (hereafter “Def’s. P&As”).)

23 **A. Standard of Review**

24 Rule 56(a) provides that a court “shall grant summary judgment if the movant shows
25 that there is no genuine dispute as to any material fact and the movant is entitled to
26 judgment as a matter of law.” Fed. R. Civ. P. 56(a).

27 Under summary judgment practice, the moving party always bears the initial
28 responsibility of informing the district court of the basis for its motion, and identifying

1 those portions of “the pleadings, depositions, answers to interrogatories, and admissions
2 on file, together with the affidavits, if any,” which it believes demonstrate the absence of a
3 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting
4 Fed. R. Civ. P. 56(c)) If the moving party meets its initial responsibility, the burden then
5 shifts to the nonmoving party to establish, beyond the pleadings, that there is a genuine
6 issue for trial. *Id.* at 324.

7 To avoid summary judgment, the non-moving party is “required to present
8 significant, probative evidence tending to support h[is] allegations,” *Bias v. Moynihan*, 508
9 F.3d 1212, 1218 (9th Cir. 2007) (citations omitted), and must point to some evidence in
10 the record that demonstrates “a genuine issue of material fact [which], with all reasonable
11 inferences made in the plaintiff[]’s favor, could convince a reasonable jury to find for the
12 plaintiff[].” *Reese v. Jefferson School Dist. No. 14J*, 208 F.3d 736, 738 (9th Cir. 2000)
13 (citing Fed. R. Civ. P. 56; *Celotex*, 477 U.S. at 323). The opposing party cannot rest solely
14 on conclusory allegations of fact or law. *Berg v. Kincheloe*, 794 F.2d 457, 459 (9th Cir.
15 1986).

16 **B. Eighth Amendment Claim**

17 **1. Waiver of claims**

18 Valenzuela moves for summary judgment of the Eighth Amendment claim brought
19 against him on the ground that Plaintiff waived this claim during his deposition. (*See* Def’s
20 P&As at 12.) While it does appear in Plaintiff’s deposition that he intends to bring only
21 due process claims against Valenzuela, his SAC is verified and remains the operative
22 pleading containing an Eighth Amendment claim against Valenzuela. (*See* SAC at 6-12,
23 27.) Therefore, the Court will not enter summary judgment as to this claim on the ground
24 that Plaintiff waived these claims. However, the Court will consider summary judgment
25 on the grounds that Plaintiff has failed to raise a genuine dispute as to any material fact.

26 **2. Failure to Protect Claim**

27 Plaintiff alleges in his SAC that Valenzuela failed to “take disciplinary or other
28 actions to cure the known pattern of physical ‘verbal abuse of inmates by Defendant

1 Camarillo” which “constituted ‘deliberate indifference’ to the Plaintiff and other
2 prisoners[’] safety.” (SAC at 18.)

3 Under the Eighth Amendment, prison officials must “take reasonable measures to
4 guarantee the safety of the inmates.” *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984);
5 *DeShaney v. Winnebago County Dep’t of Social Services*, 489 U.S. 189, 199-200 (1989)
6 (“[W]hen the State takes a person into its custody and holds him there against his will, the
7 Constitution imposes upon it a corresponding duty to assume some responsibility for his
8 safety and general well-being.”). “Protecting the safety of prisoners and staff involves
9 difficult choices and evades easy solutions.” *Berg*, 794 F.2d at 460.

10 Thus, to show that a prisoner has been subject to cruel and unusual punishment by
11 an officer’s failure to protect him, he must point to evidence in the record which shows that
12 the alleged deprivation was objectively “sufficiently serious,” i.e., that the conditions he
13 faced posed a “substantial risk of serious harm.” *Farmer v. Brennan*, 511 U.S. 825, 834
14 (1994). Second, because “only the unnecessary and wanton infliction of pain implicates
15 the Eighth Amendment,” evidence must exist to show the defendant acted with a
16 “sufficiently culpable state of mind.” *Wilson v. Seiter*, 501 U.S. 294, 297 (1991) (internal
17 quotation marks, emphasis and citations omitted); *see also Hudson*, 503 U.S. at 5, 8.

18 In a failure to protect case, “that state of mind is one of ‘deliberate indifference’ to
19 inmate health or safety.” *Farmer*, 511 U.S. at 834. Prison officials display a deliberate
20 indifference to an inmate’s well-being when they know of and consciously disregard an
21 excessive risk of harm to that inmate’s health or safety. *Id.* at 837. “[T]he official must
22 both be aware of facts from which the inference could be drawn that a substantial risk of
23 serious harm exists, and he must also draw the inference.” *Id.* Thus, “deliberate
24 indifference” entails something more than mere negligence, but may be satisfied with proof
25 of something less than acts or omissions “for the very purpose of causing harm,” or that a
26 particular official “acted or failed to act believing that harm actually would befall an
27 inmate; it is enough that the official acted or failed to act despite his knowledge of a
28 substantial risk of serious harm.” *Id.* at 842. “Whether a prison official had the requisite

1 knowledge of a substantial risk” may be inferred if the prisoner produces evidence
2 sufficient to show that the risk was “obvious.” *Id.*

3 As set forth above, Plaintiff alleges in his SAC that Valenzuela, and other prison
4 officials, were aware that Defendant Camarillo was both verbally and physically abusive
5 to inmates. (*See* SAC at 18.) Plaintiff offers no other factual allegations to support his
6 claim. In his Declaration, Valenzuela states “[p]rior to the August 23, 2012 incident,
7 inmate Lemons had never communicated to me any safety concerns he had in regard to
8 Officer Camarillo, or any of the other involved officers.” (Valenzuela Decl. ¶ 4.)
9 Valenzuela also declares that he “was not aware of any purported risk that Officer
10 Camarillo posed to Plaintiff.” (*Id.*) In his deposition, Plaintiff testified that he did not have
11 “any idea” that he was going to have a confrontation with Camarillo on August 23, 2012,
12 and “the whole thing came as a big surprise” to him. (Jeffery Decl., Ex. A at 118:19-25.)
13 Plaintiff offers no specific factual allegations in his SAC or his deposition testimony that
14 Valenzuela knew, or should have known, that Camarillo was a danger to Plaintiff.

15 When the moving party meets its initial obligation demonstrating that no genuine
16 issue exists, the burden shifts to the opposing party to establish that a genuine issue of
17 material fact does exist. *Matsushita Elec. Indus. Co., v. Zenith Radio Corp.*, 475 U.S. 574,
18 586 (1986). Plaintiff provides no factual evidence, exhibits or admissible affidavits to
19 defeat Defendant’s showing that he did not fail to protect him from harm in violation of his
20 Eighth Amendment rights. Accordingly Defendant’s Valenzuela’s Motion for Summary
21 Judgment as to Plaintiff’s Eighth Amendment claims is GRANTED.

22 **C. Due Process Claim**

23 In his SAC, Plaintiff alleges that on August 23, 2012, “Defendants Capt.
24 Greenwood, Lt. Valenzuela, and Sgt. Pollard failed to follow the ‘excessive force
25 procedure/protocol: secure a video interview or secure video facing chowhall.” (SAC at
26 13.)

27 The Due Process Clause prohibits states from “depriving any person of life, liberty,
28 or property, without the due process of law.” U.S. Const. amend. XIV. The procedural

1 guarantees of due process apply only when a constitutionally-protected liberty or property
2 interest is at stake. *See Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974). In order to
3 invoke the protection of the Due Process Clause, Plaintiff must first establish the existence
4 of a liberty interest. *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005); *Sandin v. Conner*, 515
5 U.S. 472 (1995). In *Sandin*, the Supreme Court “refocused the test for determining the
6 existence of a liberty interest away from the wording of prison regulations and toward an
7 examination of the hardship caused by the prison’s challenged action relative to the ‘basic
8 conditions’ of life as a prisoner.” *Mitchell v. Dupnik*, 75 F.3d 517, 522 (9th Cir. 1996)
9 (citing *Sandin*, 515 U.S. at 484); *McQuillion v. Duncan*, 306 F.3d 895, 902-03 (9th Cir.
10 2002) (noting that *Sandin* abandons the mandatory/permissive language analysis courts
11 traditionally looked to when determining whether a state prison regulation created a liberty
12 interest which required due process protection).

13 Thus, “[a]fter *Sandin*, it is clear that the touchstone of the inquiry into the existence
14 of a protected, state-created liberty interest is avoiding restrictive conditions of
15 confinement is not the language of regulations regarding those conditions but the nature of
16 those conditions themselves ‘in relation to the ordinary incidents of prison life.’”
17 *Wilkinson*, 545 U.S. at 223 (quoting *Sandin*, 515 U.S. at 484).

18 Defendant does not argue that Plaintiff has not alleged facts relating to his
19 disciplinary conviction that constitute a liberty interest. Therefore, the Court will presume
20 that Plaintiff has sufficiently alleged a liberty interest. When a liberty interest has been
21 implicated as the result of a disciplinary charge, the Fourteenth Amendment requires prison
22 officials to provide the prisoner with: (1) written notice of the charges at least 24-hours
23 before the hearing; (2) the opportunity to appear in person at the hearing, to call witnesses,
24 and to present rebuttal evidence; and (3) a written statement by the factfinders of the
25 evidence relied on for their decision and the reasons for the action taken by the committee.
26 *Wolff*, 418 U.S. at 564-66; *Neal*, 131 F.3d at 830; *Freeman*, 808 F.2d at 952 (“Although
27 prisoners are entitled to be free from arbitrary action and conduct of prison officials, the
28 protections against arbitrary action ‘are the procedural due process requirements as set

1 forth in *Wolff v. McDonnell.*”).

2 Here, Plaintiff does not dispute that he received written notice or that he was
3 deprived of the right to call witnesses. Instead, Plaintiff argues that he was denied access
4 to evidence to rebut the charges. The only allegation that Plaintiff clearly sets forth as to
5 Defendant Valenzuela is his alleged failure to videotape an interview with Plaintiff
6 following the August 23, 2012 incident. In his deposition testimony, Plaintiff maintains
7 that Valenzuela did not follow protocol and as a result, he could not rebut Defendants
8 assertion that Plaintiff failed to report the alleged excessive force by Camarillo. (Jeffery
9 Decl., Ex. A at 22, 119:20-120:22.) Plaintiff further maintains that Valenzuela denied his
10 due process rights by failing to investigate his claims that Camarillo used excessive force
11 against him. (*See id.* at 23, 121:4-13.)

12 Even if Plaintiff believes that Valenzuela’s investigation was inadequate, that
13 argument alone is insufficient to support a due process claims against Valenzuela. *See*
14 *Gomez v. Whitney*, 757 F.2d 1005, 1006 (9th Cir. 1985) (per curiam) (“[W]e can find no
15 instance where the courts have recognized inadequate investigation as sufficient to state a
16 civil rights claim unless there was another recognized constitutional right involved.”)

17 Defendant argues that the disciplinary hearing came after Plaintiff’s criminal trial at
18 which time he had counsel and witnesses that testified on his behalf. (*See* Def.’s Ps & As
19 at 20.) Moreover, it is not at all clear how the lack of a videotaped interview with Plaintiff
20 would have made any difference in the outcome of Plaintiff’s disciplinary hearing. As
21 Defendant also notes, Plaintiff was able to tell his version of the events that occurred on
22 August 23, 2012 as he testified at both his criminal trial and his disciplinary hearing. (*Id.*)
23 Plaintiff provides no evidence, nor does he point to any evidence in the record, to rebut
24 Defendant’s showing that he was provided with the procedural protections guaranteed by
25 *Wolff*.

26 For all these reasons, Defendant Valenzuela’s Motion for Summary Judgment based
27 on due process violations is GRANTED.

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