

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Krzysztof F. Wolinski v. Lauren Eldridge, et al.

Wolinski v. Eldridge · No. 2:19-CV-2037-DAD-DMC-P · Decided October 15, 2025

SUMMARY

The United States District Court for the Eastern District of California screens Krzysztof F. Wolinski's third amended 42 U.S.C. § 1983 complaint against California prison officials. The court finds cognizable First Amendment retaliation, Fourteenth Amendment due process, supervisory liability, and Eighth Amendment excessive-force claims concerning alleged retaliatory assaults, fabricated disciplinary reports, grievance suppression, and related misconduct, while recommending dismissal of the remaining claims. The document is an order deeming the complaint timely and findings and recommendations issued by a magistrate judge.

OPINION

1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN
DISTRICT OF CALIFORNIA 10 11 KRZYSZTOF F. WOLINSKI, No. 2:19-CV-2037-DAD-
DMC-P 12 Plaintiff, 13 v. ORDER 14 LAUREN ELDRIDGE, et al., And 15 Defendants.
FINDINGS AND RECOMMENDATIONS 16 17 Plaintiff, a prisoner proceeding pro se, brings
this civil rights action pursuant to 18 42 U.S.C. § 1983.

Pending before the Court is Plaintiff's third amended complaint. See ECF No. 19 82. 20 The Court is required to screen complaints brought by prisoners seeking relief 21 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. 22 § 1915A(a).

The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or 23 malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief 24 from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2).

Moreover, 25 the Federal Rules of Civil Procedure require that complaints contain a "... short and plain 26 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a) (2). This 27 means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 28 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ.

P. 8(e)(1)). These rules are satisfied if the 1 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it 2 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege 3 with at least some degree of particularity overt

acts by specific defendants which support the 4 claims, vague and conclusory allegations fail to satisfy this standard.

Additionally, it is impossible for the Court to conduct the screening required by law when the allegations are vague and conclusory. I. PLAINTIFF'S ALLEGATIONS Plaintiff filed his third amended complaint on February 27, 2025. See ECF No. 82. Plaintiff names the following prison officials at the California Health Care Facility (CHCF) in Stockton as defendants: (1) Laura Eldridge; (2) M. Navarro; (3) K. Mim; (4) P. Linehan; (5) R. Nava; (6) N. Lucca; (7) Z. Barraza; (8) S. De Jesus; (9) S. Richardson; (10) G. Gill; (11) D. Harms; and (12) C. Tennis.

See id. at 2-5. Plaintiff alleges a violation of his First, Eighth, and Fourteenth Amendment rights. See id. at 5. Plaintiff contends that on or about May 26, 2018, while incarcerated at CHCF, Plaintiff was the victim of a retaliatory assault by Defendant Harms. See id. at 6. Plaintiff asserts that Defendant Harms attacked Plaintiff in retaliation for reporting that Defendant Harms stole Plaintiff's personal property.

See id. The assault was allegedly recorded on the prison's surveillance system and observed by multiple inmates and nursing staff. See id. According to Plaintiff, Lieutenant Banks confirmed Defendant Harms' misconduct and acknowledged a pattern of assaults on disabled ADA inmates at CHCF. See id. To conceal his unlawful behavior, Defendant Harms allegedly falsified a Rules Violation Report (RVR), No. 5083831, accusing Plaintiff of assault on a peace officer.

See id. Plaintiff contends there was "no penological justification" for Defendant Harms' assault on Plaintiff and that the falsified RVR was a retaliatory misuse of authority. Id. Plaintiff asserts that, due to discipline based on this fabricated report, Plaintiff lost good-time credits and faced other sanctions. See id. Plaintiff contends that on or about June 14, 2018, Defendant Linehan entered Plaintiff's cell and informed him that Plaintiff had been found guilty of the charged RVR, without any hearing, which is required by CDCR regulations and the due process protections outlined in *Wolff v. McDonnell*, 418 U.S. 539 (1974).

See id. Plaintiff claims that he was denied the opportunity to call witnesses, present mitigating evidence, or review the surveillance footage that would prove his innocence. See id. 7 The Plaintiff filed several grievances related to the incident, including CHCF-C- 8 18-02706 and CHCF-C-18-02081. See id. However, Plaintiff asserts that Defendants De Jesus 9 and Richardson, in their role as Grievance Coordinators, suppressed these complaints to shield 10 officers and prevent Plaintiff from exhausting his administrative remedies, thus blocking 11 Plaintiff's ability to pursue judicial review.

See id. Plaintiff further alleges that the Chief Deputy 12 Warden, Defendant Eldridge, was aware of the staff misconduct and the suppression of 13 grievances but intentionally chose not to act. See

id. at 7. Instead, Plaintiff asserts Defendant 14 Eldridge participated in a “code of silence,” acquiescing to the constitutional violations and even 15 dismissively saying to Plaintiff ““sue me.”” Id. 16 As a result of the Defendants’ misconduct and conspiracy, Plaintiff claims he lost 17 good-time credits, was denied educational opportunities, faced wrongful disciplinary actions, and 18 was deprived of access to prison programs.

See id. Plaintiff also states that he experienced 19 emotional distress, PTSD, pain, and fear caused by these retaliatory and abusive acts. See id. 20 Plaintiff alleges that on January 26, 2019, he was subject to deliberate, malicious 21 retaliation, and abuse of authority at the CHCF. See id. at 8. Plaintiff contends that Defendant 22 Gill, a Registered Nurse, conspired with Defendant Lucca, to fabricate a false RVR, No. 23 6396046, accusing Plaintiff of assault on staff.

See id. at 9. Plaintiff asserts that this forged report 24 was filed in retaliation for Plaintiff’s complaints to Defendant Gill’s supervisor that Defendant 25 Gill routinely abandoned her post for hours at a time due to a relationship with another staff 26 member, depriving Plaintiff of medical care and treatment. See id. 27 / / / 28 / / / 1 Plaintiff contends that on January 26, 2019, Plaintiff, who is mobility impaired, 2 requested clean linens after a medical mishap.

See id. When staff allegedly refused Plaintiff’s 3 request for hours, Plaintiff insisted on speaking with a supervisor. See id. According to Plaintiff, 4 instead of resolving the matter informally, unit staff ordered Plaintiff to strip in the dayroom and 5 place Plaintiff’s dirty linens onto the floor. See id. Plaintiff claims that when Plaintiff complied, 6 Defendant Gill triggered an alarm and falsely claimed Plaintiff assaulted her with Plaintiff’s T- 7 shirt.

See id. Plaintiff further asserts that when Defendant Lucca responded to the alarm, he 8 refused to review the surveillance video that would have exonerated Plaintiff and instead co- 9 authored the false RVR. See id. 10 As a result of the alleged assault, Plaintiff was removed from the medical care unit 11 and placed in Administrative Segregation (RHU), where Plaintiff remained for several months.

12 See id. Plaintiff alleges that while placed in segregation, Plaintiff “lost irreplaceable property,” 13 stolen by staff in retaliation for Plaintiff’s complaint. Id. Plaintiff further asserts that Defendant 14 Eldridge was placed on notice of the falsification and staff misconduct. See id. Plaintiff contends 15 Defendant Eldridge again deliberately refused to act, participating in a “code of silence” that 16 suppressed grievances and complaints.

Id. 17 Plaintiff asserts that his due process rights were violated when Defendant Nava 18 conducted a disciplinary hearing lasting less than three minutes.¹ See id. at 9-10. According to 19 Plaintiff, Defendant Nava denied Plaintiff the right to call witnesses, present evidence, or have 20 exculpatory video recordings reviewed, thereby upholding the forged RVR without due process.

21 See id. at 10. Plaintiff states that only after intervention by the Office of the Inspector General
22 (OIG) and CDCR's Office of Internal Affairs was Plaintiff released from RHU and cleared of
the 23 false charges. See id. However, Plaintiff contends that the fraudulent RVR remains in
Plaintiff's 24 file and therefore, Plaintiff continues to be deprived of programs, privileges, and
opportunities.

25 See id. As a result of Defendants' retaliatory actions, Plaintiff alleges he has suffered the loss of
26 27 1 While Plaintiff does not explicitly state which RVR this hearing addressed, Plaintiff
makes this allegation after discussing RVR No. 6396046, and therefore the Court assumes the
hearing was 28 for RVR No. 6396046. 1 personal property (including a radio boombox and JVC
headphones), loss of good-time credits, 2 denial of programs, severe emotional distress, PTSD,
and pain.

See id. at 8 and 10. 3 Next, Plaintiff claims that his First, Eighth, and Fourteenth Amendment
rights 4 were violated. See id. at 10-11. Plaintiff alleges that from March 2018 through December
2021, 5 the CHCF Grievances Office and its coordinators, Defendants De Jesus and Richardson, 6
systematically and intentionally refused to process more than 25 grievances that Plaintiff 7
submitted regarding staff misconduct, forged retaliatory RVRs, and other constitutional 8
violations.

See id. at 11-12. From 2021 through December 2023, Plaintiff allegedly submitted at 9 least 15
additional grievances that were suppressed by "CHCF grievance coordinators, 2" 10 particularly
those involving staff complaints. See id. at 12. Plaintiff claims that this pattern was 11 part of
retaliation against Plaintiff for filing grievances and exercising Plaintiff's right to petition 12 for
redress.

See id. 13 Plaintiff claims that if Plaintiff filed complaints in state court, Plaintiff faced 14 further
retaliation from CHCF staff and officers, including threats intended to discourage Plaintiff 15
from pursuing litigation. See id. In addition to those threats, Plaintiff alleges he was denied access
16 to rehabilitative programs, college enrollment, and "denied endorsement into CHCF" despite
17 being classified as an inmate with serious medical needs.

Id. Plaintiff claims these denials were 18 retaliatory acts intended to punish him for pursuing
grievances and litigation. See id. 19 Between October 2, 2023, and December 28, 2023, Plaintiff
claims the retaliation 20 intensified. See id. During this period, Plaintiff asserts that he was
subjected to "retaliatory 21 placement in RHU and a retaliatory transfer to C.M.F.

[California Medical Facility] Vacaville," 22 and Plaintiff's legal work product and papers were
confiscated, all of which interfered with 23 Plaintiff's ability to pursue litigation. Id. Plaintiff also
claims that "CHF C.C.II A. Chavez," who 24 is not named as a defendant, continues to issue

threats on behalf of the named defendants in an ongoing attempt to suppress Plaintiff's grievances and prevent the exhaustion of remedies.

Id. 2 Plaintiff did not refer to Defendants De Jesus and Richardson by name in this allegation 27 but because Plaintiff previously identified Defendants De Jesus and Richardson as the grievance coordinators, the Court assumes Plaintiff asserts this claim against Defendants De Jesus and 28 Richardson. 1 Plaintiff alleges that on March 16, 2020, Plaintiff was subjected to retaliation and 2 constitutional deprivations after reporting sexual harassment by Officer R. Wall, who is not 3 named as a defendant.

See id. at 13. Plaintiff contends that following Plaintiff's report, Officer 4 Wall engaged in retribution by forging "RVR-115 No. 6979795," falsely charging Plaintiff to 5 justify misconduct and silence Plaintiff's protected speech. See id. at 14. Despite the existence of 6 video evidence corroborating Plaintiff's account, Plaintiff claims Defendant Eldridge again failed 7 to implement any remedy and continued to uphold the "code of silence." Id. Plaintiff asserts that 8 this deliberate refusal violated CDCR regulations and constituted supervisory acquiescence in 9 unlawful conduct, as prohibited under established precedent.

See id. Plaintiff claims that the 10 misconduct of Officer Wall includes using prison computers to watch pornography instead of 11 performing duties, along with theft of Plaintiff's personal property, as recorded on the 12 surveillance system. See id. 13 Plaintiff contends that Defendant Navarro, who was present when Plaintiff initially 14 reported Wall's sexual harassment and theft, later conducted a five-minute hearing on the forged 15 RVR, No. 6979795.

See id. at 15. Plaintiff asserts that Defendant Navarro's actions denied 16 Plaintiff all due process protections guaranteed by the Fourteenth Amendment. See id. Plaintiff 17 further asserts that supervisory liability attaches to Defendant Eldridge for her failure to 18 investigate or correct the misconduct. See id. Despite Plaintiff's efforts to seek redress through 19 OIG intervention, Plaintiff asserts that the forged RVR was only reheard, not dismissed, and 20 Plaintiff was found guilty, again denying Plaintiff of his right to due process.

See id. 21 Plaintiff contends he suffered "continuous infliction of retaliation and deprivation 22 of his Constitutional Rights and Due Process of Law and Equal Protections by [Defendant] 23 Barraza, and [Defendant] Eldridge." See id. at 17. Plaintiff additionally asserts that he was 24 "deliberately victimized by the CHCF Lieutenants' Culture of Malicious Abuse of Authority and 25 Power." Id. Plaintiff asserts these actions were taken to punish him for filing grievances, reporting 26 staff misconduct, and exposing conspiracies involving staff and other inmates.

See id. 27 / / / 28 / / / 1 Plaintiff alleges that on or about July 2019, after reporting that two inmates had 2 conspired to stab a prison doctor, Defendant Barraza retaliated against Plaintiff by issuing a 3 "forged RVR" (No. CHCF-6878869). Id. at 18. Plaintiff states that Defendant Barraza

is 4 responsible for conducting unbiased RVR investigations but instead, Defendant Barraza retaliated 5 by forging the RVR.

Id. at 4. Plaintiff claims that this RVR was filed before Plaintiff was 6 interviewed, and Defendant Mim later conducted a two-minute RVR hearing where Plaintiff was 7 denied the opportunity to call witnesses or present exculpatory evidence. See id. at 18. Plaintiff 8 asserts that he was found guilty, placed on “C” status, and Plaintiff’s personal property (including 9 a boombox radio and television) was confiscated and damaged.

See id. Plaintiff contends this 10 punishment served no legitimate penological goal but was instead designed to chill Plaintiff’s 11 exercise of protected rights. See id. 12 Plaintiff further alleges that this pattern of retaliation was consistent with a culture 13 of “weaponizing” forged RVRs at CHCF, where officers fabricated charges against inmates who 14 reported misconduct.

See id. at 19. Plaintiff asserts that Defendant Eldridge’s deliberate 15 indifference and failure to supervise or correct misconduct make her liable under established 16 supervisory liability principles. Id. 17 Additionally, Plaintiff contends that in March of 2018, at Salinas Valley State 18 Prison (SVSP), Lt. Roger Martinez, who is not named as a defendant, conspired to silence 19 Plaintiff after Plaintiff reported obstruction of court access and misconduct by staff.

See id. at 19. 20 Plaintiff claims Martinez solicited an inmate clerk to draft a false note alleging threats against a 21 doctor, which was used to place Plaintiff in Administrative Segregation and transfer Plaintiff to 22 CHCF in an effort “to mute investigation against Lt. R. Martinez,” other officers and the facility. 23 Id. According to Plaintiff, although handwriting evidence disproved Plaintiff’s authorship of the 24 note, Plaintiff was issued another allegedly forged RVR (No.

4626631). See id. at 20. Once at 25 CHCF, Defendant Linehan allegedly upheld the false charges without a hearing and informed 26 Plaintiff that Plaintiff was found guilty. See id. 27 /// 28 /// 1 Plaintiff asserts that Defendants’ pattern of deliberate and retaliatory abuse 2 violated Plaintiff’s rights under the First, Eighth, and Fourteenth Amendments to the United 3 States Constitution.

See id. at 21. According to Plaintiff, retaliation began after Plaintiff filed 4 allegations of battery assault by Defendant Harms. See id. at 22. Shortly thereafter, Plaintiff was 5 moved to Unit C-2B, where Plaintiff came under the supervision of Defendant Tennis, a 6 corrections officer. See id. Within 24 hours of his transfer, Plaintiff claims that Defendant Tennis 7 confronted Plaintiff, demanding that Plaintiff withdraw Plaintiff’s allegations against Defendant 8 Harms.

See id. When Plaintiff refused, Defendant Tennis threatened Plaintiff to “watch his back.” 9 Id. Plaintiff claims that, in response to these threats and ongoing mistreatment, Plaintiff initiated a 10 hunger strike to protest the abuse, during which he was closely monitored by staff for medical 11 reasons. See id. at 22-23. 12 Plaintiff alleges that Defendant Tennis escalated her retaliation by

filing false and 13 fabricated reports, including a false claim that Plaintiff was caught eating peanut butter, despite 14 medical records confirming Plaintiff's severe allergy to peanuts.

See id. at 23. Plaintiff contends 15 that this falsified report was intended to discredit and punish Plaintiff for exercising Plaintiff's 16 right to file complaints. See id. Plaintiff argues that, when the falsity of the report was exposed, 17 Defendant Tennis allegedly retaliated further by destroying Plaintiff's Durable Medical 18 Equipment, including Plaintiff's oxygen concentrator valued at over \$4,000, his air mattress, and 19 orthopedic braces.

See id. Plaintiff claims that Defendant Tennis told Plaintiff, "'You just f..k 20 with the wrong c/o, you will die before this investigation is completed.'" Id. 21 Plaintiff further alleges that Defendant Tennis subjected Plaintiff to degrading 22 treatment by ordering an unjustified cross-gender strip search and forcing Plaintiff to sit naked on 23 a plastic chair in the dayroom for over 40 minutes, without penological justification.

See id. 24 Plaintiff asserts this was done to humiliate and to retaliate for Plaintiff's refusal to withdraw 25 complaints and Plaintiff's pursuit of a hunger strike. See id. According to Plaintiff, after another 26 staff member intervened to say Plaintiff did not eat the peanut butter, Defendant Tennis replied 27 "'I don't give a f..k he will learn not to mess with me.'" Id. Plaintiff contends that Defendant 28 Linehan knowingly allowed the retaliatory disciplinary process to move forward without 1 affording Plaintiff's due process rights.

See id. at 24. Plaintiff alleges that he "suffered systematic 2 deliberate deprivation of rights and denial of remedy," designed solely to chill Plaintiff's exercise 3 of constitutional rights. Id. Plaintiff claims physical injury, emotional distress, property loss, and 4 ongoing fear of staff reprisals. See id. 5 6 II. DISCUSSION 7 The Court previously screened Plaintiff's second amended complaint.

See ECF 8 No. 58. There, the Court found a number of cognizable claims and dismissed Plaintiff's 9 supervisory liability claim against Defendant Eldridge and his Eighth Amendment claim against 10 Defendant Tennis with leave to amend. See id. at pgs. 6-8. 11 In his third amended complaint, the Court finds the following cognizable 12 retaliation claims against: Defendants Lucca and Gill as to RVR No. 6396046; Defendants De 13 Jesus and Richardson as to their alleged suppression of Plaintiff's grievances filed from March 14 2018 through December 2021; Defendant Harms as to RVR No. 5083831; Defendant Tennis as to 15 the filing of grievances, alleged destruction Plaintiff's medical and personal property, and 16 falsifying reports; and Defendant Barraza as to forged RVR.

The Court finds the following due 17 process claims against: Defendant Nava as to RVR No. 6396046; Defendant Navarro as to RVR 18 No. 6979795; Defendant Mim as to the RVR hearing process; Defendant Linehan as to the June 19 14, 2018, determination that Plaintiff was found

guilty of an RVR; and Defendants De Jesus and 20 Richardson as to suppression of Plaintiff's grievances.

The Court also finds Plaintiff asserts a 21 cognizable excessive force claim against Defendant Harms as to alleged battery assault. 22 As described in detail below, Plaintiff cured the previously identified deficiency 23 and now states a cognizable supervisory liability claim against Defendant Eldridge as to her 24 participation in allegedly suppressing Plaintiff's grievances.

However, Plaintiff did not remedy 25 the previously identified deficiency as to the excessive force claim against Defendant Tennis. 26 Instead, the facts provided as to this claim give rise to a First Amendment Retaliation claim.

The 27 undersigned will recommend this action proceed on the cognizable claims Plaintiff presented in 28 the third amended complaint. 1 A. Supervisory Liability Claim 2 Supervisory personnel are generally not liable under § 1983 for the actions of their 3 employees. See *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no 4 respondeat superior liability under § 1983).

A supervisor is only liable for the constitutional 5 violations of subordinates if the supervisor participated in or directed the violations. See *id.* 6 Supervisory personnel who implement a policy so deficient that the policy itself is 7 a repudiation of constitutional rights and the moving force behind a constitutional violation may 8 be liable even where such personnel do not overtly participate in the offensive act.

See *Redman v. Cnty of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc). A supervisory defendant 10 may also be liable where he or she knew of constitutional violations but failed to act to prevent 11 them. See *Taylor*, 880 F.2d at 1045; see also *Starr v. Baca*, 633 F.3d 1191, 1209 (9th Cir. 2011). 12 When a defendant holds a supervisory position, the causal link between such 13 defendant and the claimed constitutional violation must be specifically alleged.

See *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 15 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel in 16 civil rights violations are not sufficient. See *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th 17 Cir. 1982). "[A] plaintiff must plead that each Government-official defendant, through the 18 official's own individual actions, has violated the constitution." See *Ashcroft v. Iqbal*, 556 U.S. 19 662, 676 (2009).

20 Previously, Plaintiff's supervisory liability claim against Eldridge was dismissed 21 because he had not alleged that Defendant Eldridge personally participated in Plaintiff's alleged 22 constitutional deprivation. See ECF No. 58, pgs. 6-7.

In the third amended complaint, Plaintiff 23 asserts that Eldridge repeatedly refused to act despite notice of specific misconduct and 24 suppressed grievances, acquiesced in a “code of silence,” and told Plaintiff “sue me.” Thus, 25 Plaintiff has cured the prior deficiency, and this Court now finds a cognizable supervisory 26 liability claim against Defendant Eldridge as to failure to prevent ongoing retaliation despite 27 knowledge of such retaliation.

Therefore, the undersigned will recommend that this claim 28 proceed. 1 B. Excessive Force Claim Against Defendant Tennis 2 The treatment a prisoner receives in prison and the conditions under which the 3 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel 4 and unusual punishment. See *Helling v. McKinney*, 509 U.S. 25, 31 (1993); *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

The Eighth Amendment “... embodies broad and idealistic concepts 6 of dignity, civilized standards, humanity, and decency.” *Estelle v. Gamble*, 429 U.S. 97, 102 7 (1976). Conditions of confinement may, however, be harsh and restrictive. See *Rhodes v. 8 Chapman*, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with 9 “food, clothing, shelter, sanitation, medical care, and personal safety.” *Toussaint v. McCarthy*, 10 801 F.2d 1080, 1107 (9th Cir.

1986). A prison official violates the Eighth Amendment only when 11 two requirements are met: (1) objectively, the official’s act or omission must be so serious such 12 that it results in the denial of the minimal civilized measure of life’s necessities; and (2) 13 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of 14 inflicting harm.

See *Farmer*, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison 15 official must have a “sufficiently culpable mind.” See *id.* 16 When prison officials stand accused of using excessive force, the core judicial 17 inquiry is “... whether force was applied in a good-faith effort to maintain or restore discipline, 18 or maliciously and sadistically to cause harm.” *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992); 19 *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986).

The “malicious and sadistic” standard, as 20 opposed to the “deliberate indifference” standard applicable to most Eighth Amendment claims, 21 is applied to excessive force claims because prison officials generally do not have time to reflect 22 on their actions in the face of risk of injury to inmates or prison employees. See *Whitley*, 475 23 U.S. at 320-21.

In determining whether force was excessive, the court considers the following 24 factors: (1) the need for application of force; (2) the extent of injuries; (3) the relationship 25 between the need for force and the amount of force used; (4) the nature of the threat reasonably 26 perceived by prison officers; and (5) efforts made to temper the severity of a forceful response.

27 See *Hudson*, 503 U.S. at 7. The absence of an emergency situation is probative of whether force 28 was applied maliciously or sadistically. See *Jordan v. Gardner*, 986 F.2d 1521, 1528 (9th

Cir. 1 1993) (en banc). The lack of injuries is also probative. See Hudson, 503 U.S. at 7-9.

Finally, 2 because the use of force relates to the prison's legitimate penological interest in maintaining 3 security and order, the court must be deferential to the conduct of prison officials. See Whitley, 4 475 U.S. at 321-22. 5 Plaintiff was informed that he failed to provide facts to show that Defendant 6 Tennis physically injured Plaintiff, and therefore Plaintiff's excessive force claim against 7 Defendant Tennis was not cognizable.

See ECF No. 58, pgs. 7-8. Plaintiff's third amended 8 complaint alleges that Defendant Tennis destroyed medical equipment essential to respond to 9 Plaintiff's disability, ordered a humiliating cross-gender strip search without penological 10 justification, and threatened Plaintiff's life in response to grievances Plaintiff filed. See ECF No. 11 82, pgs. 23-24.

Plaintiff did not remedy the deficiency previously identified as to an excessive 12 force claim. However, the facts are sufficient for a cognizable First Amendment claim. Thus, the 13 undersigned will recommend this claim proceed as a First Amendment Retaliation claim. 14 / / / 15 / / / 16 / / / 17 / / / 18 / / / 19 / / / 20 / / / 21 / / / 22 / / / 23 / / / 24 / / / 25 / / / 26 / / / 27 / / / 28 / / / 1 II.

CONCLUSION 2 Based on the foregoing, the undersigned orders and recommends as follows: 3 1. It is ORDERED that Plaintiffs third amended complaint, ECF No. 82, is 4 || deemed timely. 5 2. It is RECOMMENDED that this action proceed on Plaintiffs third 6 || amended complaint, ECF No. 82, as to the cognizable claims identified herein and as follows: 7 Retaliation claims against: Defendants Lucca and Gill as to RVR No. 6396046; Defendants De Jesus and Richardson as to their alleged suppression of 8 Plaintiff's grievances filed from March 2018 through December 2021; Defendant Harms as to RVR No. 5083831; Defendant Tennis as to the filing of grievances, 9 alleged destruction Plaintiff's medical and personal property, and falsifying reports; Defendant Barraza as to forged RVR; and Defendant Eldridge's 10 supervisory liability as to failure to prevent ongoing retaliation despite knowledge of such retaliation.

Due process claims against: Defendant Nava as to RVR No. 6396046; 12 Defendant Navarro as to RVR No. 6979795; Defendant Mim as to the RVR hearing process; Defendant Linehan as to the June 14, 2018, determination that 13 Plaintiff was found guilty of an RVR; and Defendants De Jesus and Richardson as 14 to suppression of Plaintiffs grievances. Excessive force claim against Defendant Harms as to alleged battery 15 assault.

16 3. It is RECOMMENDED that all other claims be dismissed. 17 These findings and recommendations are submitted to the United States District 18 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 19 | after being served with these findings and recommendations, any party may file written 20 || objections with the court.

Responses to objections shall be filed within 14 days after service of 21 || objections. Failure to file objections within the specified time may waive the right to appeal. See 22 || Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). 23 24 | Dated: October 14, 2025 Co 25 DENNIS M. COTA 26 UNITED STATES MAGISTRATE JUDGE 27 28 13