

ORIGINAL
FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
OCT 21 2024
JEFFREY P. COLWELL
CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-01883-RTG
(To be supplied by the court)

Robert E. Quintano #105549 A.V.C.F.,
Plaintiff

v.

Jury Trial requested:
(please check one)
☒ Yes ☐ No

Sgt. Hale. A.V.C.F.,

Captain Aragon. A.V.C.F.,

Sgt. Palmer. A.V.C.F.,

Mark Fairbaine. A.V.C.F. Warden. "See Attached " Other unknown staff members
, Defendant(s).

(List each named defendant on a separate line. If you cannot fit the names of all defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section B. Do not include addresses here.)

AMENDED PRISONER COMPLAINT

NOTICE

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Offender Quintano DOC# 105549
Date OCT 11 2024

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievances, witness statements, or any other materials to the Clerk's Office with this complaint.

A. PLAINTIFF INFORMATION

You must notify the court of any changes to your address where case-related papers may be served by filing a notice of change of address. Failure to keep a current address on file with the court may result in dismissal of your case.

Robert E. Quintano #105549 12750 Hwy 96 Ln. 13 Ordway CO 81034
(Name, prisoner identification number, and complete mailing address)

(Other names by which you have been known)

Indicate whether you are a prisoner or other confined person as follows: (check one)

____ Pretrial detainee

____ Civilly committed detainee

____ Immigration detainee

x Convicted and sentenced state prisoner

____ Convicted and sentenced federal prisoner

____ Other: (Please explain) _____

B. DEFENDANT(S) INFORMATION

Please list the following information for each defendant listed in the caption of the complaint. If more space is needed, use extra paper to provide the information requested. The additional pages regarding defendants should be labeled "B. DEFENDANT(S) INFORMATION."

Defendant 1: Sgt. Hale. AVCF Unit 2 Sgt. Day shift. 12750 Hwy 96 Ln. 13 Ordway CO 81034
(Name, job title, and complete mailing address)

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? XX Yes ___ No (check one). Briefly explain:

On 1/27/24 I reported a PREA violation to unit Sgt. Hale concerning being sexually harassed by inmate Robert Powers. I spoke w/Sgt. Hale three times at approximately 7:45, 9:00 as well at lunch where he told me to get with him on Monday. Sgt. Hale ignored procedure outlined in AR 100-40 PREA reporting.

Defendant 1 is being sued in his/her XX individual and/or XX official capacity.

Defendant 2: Captain Aragon AVCF 12750 Hwy 96 Ln.13 Ordway CO 81034
(Name, job title, and complete mailing address)

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? XX Yes ___ No (*check one*). Briefly explain:

After being assured I would not be retaliated against, such as being moved out of unit 1, I was moved less than 24 Hours Later to the opposite side of yard even though there was a hold on me by Captain Hext to stay on the 1,2,3 side because I was moved from Limon as I had turned in members of the 211 and Serreno gang members and had a "Hit" on me. Capt. Aragon failed to relay this fact to other staff. Allowing Plaintiff to be retaliated against violating 1st amendment right to be free from retaliation.

Defendant 2 is being sued in his/her XX individual and/or XX official capacity.

Defendant 3: Sgt. Palmer Unit 2, 2nd shift Sgt. AVCF 12750 Hwy 96 Ln.13 Ordway CO 81034
(Name, job title, and complete mailing address)

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? XX Yes ___ No (*check one*). Briefly explain:

Sgt. Palmer put me in danger by escorting Plaintiff to his cell in front of the entire inmate population while wearing bright blue shakedown gloves.

Sgt. Palmer told me while the perpetrator was standing directly behind him to lock down until he could get Mr. Powers moved.

Sgt Palmer put me knowingly in danger by doing so.

Defendant 3 is being sued in his/her XX individual and/or XX official capacity.

C. JURISDICTION

Indicate the federal legal basis for your claim(s): (check all that apply)

XX State/Local Official (42 U.S.C. § 1983)

 Federal Official

As to the federal official, are you seeking:

 Money damages pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)

xx Declaratory/Injunctive relief pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1361, or 28 U.S.C. § 2201

XX Other: (please identify) Retaliation from other unknown staff

D. STATEMENT OF CLAIM(S)

State clearly and concisely every claim that you are asserting in this action. For each claim, specify the right that allegedly has been violated and state all facts that support your claim, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific legal cases to support your claim(s). If additional space is needed to describe any claim or to assert additional claims, use extra paper to continue that claim or to assert the additional claim(s). Please indicate that additional paper is attached and label the additional pages regarding the statement of claims as "D. STATEMENT OF CLAIMS."

CLAIM ONE: Failure to follow procedure after a report of a PREA violation deliberate indifference by not following procedures put in place by CDOC. Sgt.Hale took no action on this complaint violating rules of procedure when a PREA report is made.

Claim one is asserted against these Defendant(s): Sgt.Hale. Supporting facts: after Plaintiff spoke with Sgt. Hale three times on 1/27/2024 at approximately 7:45 am, 9am and during lunch concerning a PREA violation committed by Mr.Powers, 'another inmate' Sgt. Hale failed to follow procedure as he took no action as to Plaintiff's report of the ongoing sexual harassment and, attempted sexual assault by Mr. Powers since his move to C-Pod from A- pod in unit-2. This is a direct violation of procedure under the PREA rules and procedures as well as a direct violation of AR-100-40 both of which state when a PREA violation occurs to report violation to any D.O.C. staff member contract worker PREA hotline or by letter to PREA.

These instructions are posted all over in the Colorado Department of Corrections. In the Pods On the C.D.O.C Television information channel and posted in the foyers as well.

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In the three conversations the Plaintiff had with Sgt.Hale he assured me I would not be moved or retaliated against in any way that he would go to 'bat' for me as he had friends at headquarters.

In the conversations Sgt. Hale stated he would "take care of it." Sgt. Hale failed to follow procedures for PREA reporting violating procedures under these rules and procedures under both Federal and State reporting procedures violating my Constitutional rights. Sgt.Hale after our last conversation in the chow hall at lunch told me to 'get with him on Monday as he would be posted, Sgt. Hale failed to report the violation immediately and left me subject to further sexual harassment and/or attempted sexual assaults by inmate Powers for three days further violating my Constitutional rights. The sexual harassment continued through the weekend from Mr.Powers

After three full days of no action to my complaint to Sgt. Hale I felt I had no choice but to call the PREA hotline to make the report because my safety and mental health were in jeopardy as Sgt. Hale failed to take appropriate action on the matter at hand. Sgt.Hale was deliberately indifferent as he failed to follow procedure and the rules of reporting as he is bound by law to do so thereby leaving the plaintiff to continue to be in fear of his safety causing mental anguish and the continued sexual harassment from Mr.Powers a violation of my due process and failure to report under CDOCs administrative AR-100-40 and AR 1450-01 DOC employees will comply and adhere to all DOC rules and procedures, Sgt. Hale failed to do so and showed deliberate indifference to my safety and failure to report my issues to the proper authorities or higher staff in DOC. Sgt. Hale on the day I was moved stated it was out of his hands that it was the OIG who ordered the move. However after sending a kite to the OIG Shane Cory on 02/02/2024 without a response in a timely manner by OIG Shane Cory I then sent him a detailed letter on 2/13/2024 it was not responded to until 02/22/2024. I was called to security office where I met with Mr. Cory. He claimed he had not received my kite and just read my letter from 02/13/2024. Mr. Cory claimed he had no knowledge of the incident until he opened an E-Mail today in what appeared to be from Major Burkett. So if it was not the OIG who ordered the move according to Sgt. Hale then who was it and why was I moved. It is clear in this argument that I was moved in retaliation for reporting the PREA incident putting me in danger as well as severe emotional trauma. Prison officials failed to follow procedures as well as their assurances of no retaliation against Plaintiff.

In the answer of the step 1 Grievance it claimed there was no retaliation that inmates can be moved depending on facility needs However in the step 2 grievance it claimed Plaintiff was moved due to security reasons DOC cannot be allowed to have it both ways. The Plaintiff was housed in unit two for approximately 18 months and was never deemed or considered a security risk the only security risk here was Mr.Powers continued sexual harassment of other inmates that DOC continues to allow. Step 3 grievance was answered outside of the 45 day time line which of course was denied. CDOC grievance forms do not allow enough room for a proper argument and are generally denied outright.

The Plaintiff to this day suffers from severe emotional trauma as it is clear CDOC staff do not have any intention of living up to their assurances and or promises of no retaliation against the Plaintiff. Prior to speaking to Sgt.Hale the plaintiff Mr.Neely and Mr.Wade 1/26/2024 went to speak to mental health about the sexual abuse. Tina Medina only spoke to Mr.Neely while plaintiff and Mr.Wade sat on the bench. no action was taken by mental health on the PREA incidents yet another failure by CDOC and staff at AVCF.

CLAIM TWO: Retaliation for PREA Reporting Capt. Aragon did not stand by his promises of no retaliation against Plaintiff by being moved. Deliberate indifference cruel and unusual punishment violation of constitutional rights.

Claim two is asserted against these Defendant(s):

Supporting facts: On 1/30/2024 after Sgt. Hale failed to report PREA violations I felt I had no other choice and called the PREA hotline Phone # listed in the Pods as I had been constantly sexually harassed and there was an attempted sexual assault against me by inmate Robert Powers #99754. These incidents occurred shortly after my return to the facility late June 2022 through April 2023 until I was moved into a single cell in C-Pod of the same unit (2). I did report the incidents prior to being moved to C-Pod to Sgt. West, this was in March of 2023 however I did not name Mr. Powers at the time because of the fear of retaliation because Mr. Powers in many ways has control over the unit as well as a certain amount of control over certain staff members as he is Known to be a confidential informant in the unit and tends to get what he wants, he still is and does so to this day.

In April of 2023 I moved to C-Pod so I let the issue go because I was no longer subjected to Mr. Powers sexual advances.

Within a few hours after calling the PREA Hotline I was called to the Shift Commanders office where Captain Aragon asked me about the report. I stated to him I really did not want to talk about it because I did not want to be retaliated against or moved out of the unit. Captain Aragon assured me that I would not be moved or retaliated against in any way. I then and only then agreed to tell him what was going on with Mr. Powers and the report I filed through PREA about the ongoing sexual harassment and the one attempted sexual assault against me by Powers.

“It should be noted that Lt. Lewis was also present and was not directly involved in the questioning but was a witness to the events and statements made by Capt. Aragon “.

I informed him what was going on and when the assaults started ‘see above’ and when they started again after Mr. Powers was moved to C-Pod where I was currently housed and that the sexual harassment and threats were sometimes a daily occurrence.

The Plaintiff gave all the dates of the sexual harassments by Mr. Powers dating back to March of 2023 as well as when they started again a few weeks after Mr. Powers moved to C-Pod on 11/19/23. There was camera footage which I asked Captain Aragon to view as well as save but it is apparent there was no investigation into the dates that were provided or were just ignored along with the camera footage of Mr. Powers just barging into my room or him trying to lure me into his Room or his attempted sexual harassments against Plaintiff that were on camera. There was recent sexual harassment and threats by Powers in just the last few days that were on camera those incidents were obviously not investigated by Captain Aragon.

Captain Aragon failed to relay his assurances of no retaliation by not being moved to other staff members who were involved. Prison officials may not retaliate against an inmate for exercising his constitutional rights. Yet the very next day the plaintiff was moved for exercising a constitutionally protected right. Which would not have occurred had the Plaintiff not exercised those rights by making the report of the PREA violations.

CLAIM THREE: Deliberate Indifference committed by Sgt. Palmer by Failure to follow procedure. Retaliation.

Claim three is asserted against these defendant(s): Sgt. Palmer.

One 1/30/24 before 4PM count after returning from the shift commander's office I was using the sink which is approximately 45 feet from my cell. This facility has dry cells, Sgt. Palmer came up to me he was wearing bright blue shakedown gloves which drew attention to the situation as other inmates immediately noticed as soon as he entered the pod. Sgt. Palmer escorted me to my cell opened my door and instructed me to lock down. After escorting me to my cell he openly stated to stay in my cell until he moved inmate Robert Powers #99754 the subject of my complaint. Powers was directly standing to the right of Sgt. Palmer listening to the instructions that were being given to me by Sgt. Palmer. Sgt. Palmer was aware of Powers presence but made no attempt to hide what he was doing directly in front of Powers. He intentionally threw me under the bus in front of Powers and in front of the entire pod. This act is a direct violation of my confidentiality rights as well as failure to follow procedures outlined under AR-100-40 for PREA reporting.

This blatant disclosure to Powers put me and in danger and caused me severe mental anguish because at this point I felt my life was in danger because of this disclosure to Powers. By the time Powers was moved to A-Pod the entire inmate population in C-pod knew the Plaintiff had made a PREA report against Mr. Powers putting me in danger of retaliation by other inmates and labeling me as a rat by making the report causing me serious mental anguish and fear for my life.

For reporting and exercising my right to do so I was retaliated against by Sgt. Palmer and he was deliberately indifferent to me by knowingly putting me in jeopardy. Sgt. Palmer is not a new employee in the DOC in fact he is a seasoned officer within the DOC and is well aware of the rules and procedures within the DOC. He is fully trained in those rules and procedures yet he chose to disregard the rules and regulations by retaliating against me and violating my constitutional right to confidentiality thereby intentionally putting Plaintiff in danger. In violation of his code of conduct and his signature on DOCs code of conduct under (AR-1450-01B).

Regardless of what the shift commander may or may not told him to do he "Palmer" as a trained officer knew better than to go about the procedure the way he did and knew what the outcome would be. He intentionally put my safety and mental health in danger and to this day causes me emotional distress and the continued fear of being retaliated by Mr. Powers and DOC staff as well as other inmates throughout DOC not only because of the facts here but the fact I turned in members of the 211 gang and the serrenno gangs in Limon prison for them making me pay rent because of the plaintiffs offense. This will later be revealed through discovery.

The 1st amendment right guarantees I be free from retaliation from a constitutionally protected right. My due process has also been violated as well as cruel and unusual punishment because of the way Sgt. Palmer chose to go about things the way he did by knowingly putting the label of being a rat in front of the inmate population in C-Pod and the entire unit by dinner time as well as

putting the Plaintiff at risk of physical harm by Mr.Powers.

The infliction of psychological harm is a violation of the 8th amendment. The deliberate indifference by Sgt. Palmer as he knew exactly that by wearing his bright blue gloves into the pod. When an officer does this it immediately draws attention from the inmates who watch when the officers enter the pod to see whom is getting shook down arrested or in this case drew direct attention to the situation concerning the Plaintiff. Sgt. Palmer failed to take reasonable measures to insure my safety such as having me go to the office to instruct me out of earshot of Mr. Powers to lock down or other measures to assure my safety. Sgt. Palmer's actions speak volumes here. These actions put Plaintiff in harm's way in unit 2 as well as in unit 6 when he was forced to move the very next day considered to be one of the most dangerous units .I was housed in unit 2 for approximately 18 months I am not a problem inmate nor a security risk and in fact can be considered a model inmate. Plaintiff has not had any disciplinary actions against him in approximately 15 years and was not moved until plaintiff filed a PREA report against Mr.Powers.

Sgt. Palmers actions left the Plaintiff embarrassed feelings of quilt shame and in fear of his life and being thought of as a rat for doing what inmates are instructed to do when a PREA violation occurs. The Plaintiff suffers mental anguish because of the actions of Sgt. Palmer. Had the Plaintiff not filed PREA complaint the retaliation would not have occurred which is a violation of Plaintiffs rights to be free for exercising a constitutionally protected right.

Sgt.Palmer failed to follow the rules and procedures outlined in AR 1450-01

The Plaintiff because of his offense are often retaliated against by both other inmates as well as staff solely because of the crime which is well known throughout DOC and prisons in the United States, this is discrimination against the Plaintiff. The Plaintiff also believes because of his Native American belief and practices he was discriminated against by CDOC for Filing the PREA report.

Within 24 hours I was moved to the other side of the yard where my name was recognized and the threats of physical harm and name calling started causing me undue mental harm and in fear of my life and safety because the hold by Capt. Hext went ignored as did the promises, assurance's by staff there would be no retaliation for making the PREA report against Mr.Powers.

On 2/2/2024 I spoke with Major Burkett about the incidents in this complaint and he assured me he would speak to Sgt.Palmer and other staff. Two and a half months later on 4/16/2024 at approximately 3pm while Sgt. Palmer was working in my current unit I asked Palmer if Major Burkett or the OIG Shane Cory had spoken to him about the incident he 'Palmer said no one had talked to him about it'

Here the Plaintiff may assume that there was no investigation done by anyone about any of the facts in this complaint. Under AR-1450-01 code of conduct DOC employees are required to sign a form which states employees will comply with and adhere to all DOC ARs procedures operational memorandums implementation adjustments rules duties legal orders and administrative instructions. All employees will sign DOC code of ethics certificate of review and compliance AR form (1450-01B). DOC and staff have violated their own written regulations in this matter before this Court. AVCF, CDOC and Staff has swept this incident under the rug and most likely other incidences of this nature as well and continue to let Mr.Powers continue to be in violation of the rules and regulations as well as current law that forbid. iT

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E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? X Yes No (*check one*).

If your answer is "Yes," complete this section of the form. If you have filed more than one previous lawsuit, use additional paper to provide the requested information for each previous lawsuit. Please indicate that additional paper is attached and label the additional pages regarding previous lawsuits as "E. PREVIOUS LAWSUITS."

Name(s) of defendant(s): CDOC

Docket number and court: unknown
Pm

Claims raised: medical malpractice

Disposition: (is the case still pending?
has it been dismissed?; was relief granted?) N/A

Reasons for dismissal, if dismissed: qualified immunity

Result on appeal, if appealed: N/A

F. ADMINISTRATIVE REMEDIES

WARNING: Prisoners must exhaust administrative remedies before filing an action in federal court regarding prison conditions. See 42 U.S.C. § 1997e(a). Your case may be dismissed or judgment entered against you if you have not exhausted administrative remedies.

Is there a formal grievance procedure at the institution in which you are confined?

X Yes No (*check one*)

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Did you exhaust administrative remedies?

 X Yes No (*check one*)

G. REQUEST FOR RELIEF

State the relief you are requesting or what you want the court to do. If additional space is needed to identify the relief you are requesting, use extra paper to request relief. Please indicate that additional paper is attached and label the additional pages regarding relief as "G. REQUEST FOR RELIEF."

The Plaintiff respectfully ask this Court enter Judgment in his favor and against the Defendants

- (a) Declaratory relief and other appropriate equitable relief:
- (b) Economic losses on all claims allowed by law.
- (c) Compensatory and consequential damages including damages for emotional distress mental anguish humiliation fear for one's life and pain and continued pain and suffering on all claims allowed by law in an amount to be determined at trial.
- (d) Punitive damages on all claims allowed by law in an amount to be determined at trial.
- (e) Any and all court filing fees and copies postage fees incurred by the Plaintiff.

In all Defendants official capacities.

- (g) (1) Permanent injunction ordering Defendants ensure adequate training of CDOC staff as an obligation of their duties which are required under administrative regulation upon hiring.
- (2) Any further relief this Court deems just and proper.
- (3) Disallow and separate continued homosexual relationship with Mr. Powers and Mr. Clapp.
- (4) Removal and separation of Mr. Powers and Mr. Clapp from AVCF.
- (5) no further retaliation against Plaintiff, such as moving Plaintiff or transfer to a more dangerous facility. Plaintiff believes AVCF is the safest facility for him at this time

H. PLAINTIFF'S SIGNATURE

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. See 28 U.S.C. § 1746; 18 U.S.C. § 1621.

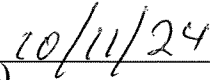
Under Federal Rule of Civil Procedure 11, by signing below, I also certify to the best of my

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knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non frivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.



(Plaintiff's signature _____)



(Date) _____

(Revised November 2022)

ATTACHMENT:

B. DEFENDANT(S) INFORMATION

Defendant 4: Mark Fairbairn Warden AVCF 12750 Hwy 96 Ln.13 Ordway, Co 81034

At the time the claims arose, was this defendant acting under color of state Or federal law? **YES.** Briefly explain: failure to insure procedures supervisory Liability for failure to train or supervise Staff at AVCF.

At the time the claims arose, was the defendants acting under color of state or federal law? **YES.** Briefly explain:

Defendant(s) 5: Unknown John and or Jane Does who were responsible for retaliating against Plaintiff by not following hold order put in place in June of 2023 by Capt Hext.nor the assurances by the shift Commander Capt. Aragon by Moving Plaintiff violating that order and putting Plaintiff in danger by doing so, thereby Putting Plaintiff in danger of physical harm and causing severe mental anguish to the Plaintiff. Plaintiff was to be held on the 1,2,3 side of the yard to insure his safety from two different gangs he had turned in at Limon. The unknown staff involved in moving the plaintiff intentionally put plaintiff in danger by

ignoring the hold that was put on plaintiff by Capt. Hext the unknown staff members who were involved in this move will be later revealed through discovery.

CLAIM FOUR: PREFERENTIAL TREATMENT AND PROTECTION OF Mr. POWERS by Staff at AVCF.

Claim four is asserted against these defendant(s):

Supporting facts: Mr. Powers is a confidential informant and is given special treatment here at AVCF. Mr. Powers for years has sexually harassed and threatened inmates. Staff has let him get away with his actions and staff continues to enable Mr. Powers allowing him to engage in criminal activity. For instance he is in a Homosexual relationship with inmate Timothy Clapp, he has been in this relationship with Mr. Clapp openly for many years, inmates know it and Staff knows it. On the date of my PREA report Mr. Powers and his lover were both moved to A-Pod 'Note' they were both in single cells they were again allowed to move together to A-Pod because Staff allowed it. The very next day when the Plaintiff was moved out of the unit both Mr. Powers and Mr. Clapp were moved right back to C-Pod to the very same cells they were just moved out of, cells C-3-14 and C-3-15. Before this when Mr. Powers and Mr. Clapp were moved initially from A-Pod to C-Pod on 11/19/23 Mr. Powers came to C-Pod and told Mr. Dunkum and his neighbor that they 'Power's and Clapp' were moving to C-Pod, Powers claimed the Lt. had approved the move, However moves are normally not done on a Sunday especially in this case which by staff is considered a convenience move. it was later discovered by Powers through his own words that it was not okayed by the Lt. that he 'Powers' had manipulated staff to get his way. The Move dates of Mr. Powers and Mr. Clapp will later be revealed through the discovery process which will clearly show these statements are matters of fact and not mere speculation on the Plaintiffs part.

Other inmates who have been sexually harassed by Mr. Powers are afraid to come forward for fear they too will be moved or retaliated against. For instance three other inmates who also complained about Mr. Powers were also moved the same day the Plaintiff was moved Mr. Rivers Mr Mc Cracken and Mr. Neely were all moved to the other side of the yard to placate Mr. Powers and to allow him to continue his criminal behavior by enabling him to continue to sexually harass other inmates giving Powers a sense that he can do whatever he likes since he was never punished for his past behavior in prison.

Another example is Mr. Charles Wade who made a report to the shift Commander which was according to Mr. Wade caught on camera Mr. Powers rubbing up against Mr. Wade while he was sitting by the phone "see attachment A. page 1 and 2 double sided as well as attachment B.

relating to the Plaintiff and the three others being moved. My question here is why Mr. Wade Was not moved. Why did Staff finally do the right thing and move the perpetrator instead of the other victims of Mr. Powers by moving the four victims out of the unit.

Staff retaliated against the Plaintiff yet allowed Mr. Powers to again get what Mr. Powers wanted, while at the same time retaliating against the Plaintiff and violating his due process and being deliberately indifferent to the Plaintiff. Staff continues to let Powers and Clapp engage in a criminal relationship. Whether consensual or non-consensual is a violation of the PREA act and State and Federal Laws and CDOC Administrative regulations under AR-100-40.

CLAIM FIVE: Retaliation, cruel and unusual punishment for reporting a constitutionally protected right by unknown Staff members involved in moving me 24 hours after making an official PREA report which is in violation of the constitution for making a report. Plaintiff would not have been moved had he not made that report against Mr. Powers. This is a retaliatory adverse act for exercising that right as well as cruel and unusual punishment in doing so by putting plaintiff in danger and causing severe mental anguish to plaintiff.

On 1/31/2024 I spoke to Captain Hext about the hold that he himself placed on me to stay on the 1,2,3 side on June 6th 2023 because of the issues stated in the previous claims. He told me it was out of his hand and said to me "you are talking to the wrong person" At this point I realized he didn't have any intention of enforcing his own order to keep me out of harm's way Captain Hext order will be produced through the discovery process which will indeed show there was a hold on Plaintiff for the Plaintiffs own safety and protection.

Obviously staff had no concern for my safety both physically and mentally. There was no communication relayed to other unknown staff as to Captains Aragon's guarantees that I would not be moved "witnessed by Lt. Lewis" for exercising my constitutional rights, instead staff intentionally put me at risk by moving to a different unit ignoring the hold by Captain Hext, which put me at risk for retaliation by other inmates as well as other staff.

Unknown staff members who put me in danger will be disclosed through the discovery process in later proceedings.

CLAIM 6: Administrative Regulation AR 100-40 specifically states Page 4 section P sexual harassment Repeated unwanted sexual advances, requests for sexual favors obscene language or verbal comments or actions of a derogatory or comments about body or clothing or obscene language or sexually harassing gestures will not be tolerated that DOC has zero tolerance for retaliation or acts of intimidation. Offenders have right to be free from retaliation for reporting.

The Plaintiff suffered all these violations at the hand of Mr. Powers. As well as at the hands of the defendants. The Plaintiff on 09/29/2024 after making a call to family discovered after repeated rumors concerning Mr. Powers by others here at AVCF through a Google search that in the past before being paroled an article in the Denver Post reported that Mr. Powers Had repeatedly raped another inmate and a Judge ordered that DOC confine him in solitary confinement for 16 months before his mandatory release date. The judge deemed him an extreme risk to his fellow inmates. Mr. Powers was returned to DOC in 2002 for murder charges. It is unknown why Mr. Powers was not charged for the repeated rape of the other inmate and allowed him to be released without charging him for rape. The Colorado Department of corrections must

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be aware of Mr.Powers violent past as well as the repeated rape of another offender and the extreme danger to other inmates. CDOC instead choses to punish those who make claims against Mr.Powers. The Colorado Department of Corrections is responsible as well as staff for allowing this behavior yet they allow him to continue in his predatory behavior unwanted sexual advances and sexual harassment and the possibility that he has raped other inmates since his return to CDOC Whom like many others here at AVCF are afraid to make an report against him because of fear of retaliation that the Plaintiff has suffered by AVCF staff and the Colorado Department of Corrections. Mr.Powers within a few months of his release went on to commit a brutal murder of a young woman. CDOC failed to take proper measures against Mr.Powers. Had that failure by DOC not occurred it is likely this young woman would still be alive today.

CDOC still refuses to take action against Powers to this day and continue to allow him to engage in criminal behavior. Instead of punishing the perpetrator CDOC and AVCF punish his victims. The plaintiff suspects that CDOC allows Powers to have an ongoing open homosexual relationship with Mr.Clapp in hopes that Powers does not rape other inmates which is still unlawful under current rules and regulations CDOC must be held liable for knowingly allowing Powers to continue to engage in this unlawful behavior and his continued sexual harassment predatory behavior and threats of rape against his fellow inmates as he has done with the plaintiff. Mr.Powers is a sexual predator and an extreme risk to his fellow inmates yet CDOC allows him to continue to sexually harass other inmates allowing him to go unpunished for his criminal behavior, knowing full well of his past repeated rape of an inmate and his current unlawful behavior.

CLAIM 7: On 5/16/2024 I was called to checkpoint at approximately 9:25 am to see Captain Mendoza He said he needed to do a 90 day follow up on the PREA issue and claimed he had to also do a 30 and 60 day follow up as well. I asked him why are you doing a 30 and 60 day follow up now since they were not done on time he replied he did not know. This is yet another violation of CDOC not following their own rules or procedures which only shows that CDOC and AVCF does not take their rules and regulations seriously in this particular matter before the court in violation of Plaintiffs constitutional rights.

ATTACHMENT.

B. DEFENDANT(S) INFORMATION

DEFENDANT 5: Unknown Defendants John and or Jane Does
AVCF Staff members or other unknown actors.
12750 Hwy 96 Ln. 13 Ordway Co 81034

At the time the claims in this complaint arose, were these Defendants
Acting under color of state or federal law? YES Briefly explain:

Unknown Defendants responsible for violating the order by Capt. Hext to hold the Plaintiff on the west side of the yard at AVCF because the Plaintiff turned in members of the 211 and serreno gangs in Limon and members of those gangs were located on the east side of AVCF.

Defendants 5 is being sued in his/her x individual and/or x official capacity.

ATTACHMENT

CDOC claims there will be no retaliation for making a PREA report under their own Administrative Regulation 100-40 which in part claims that inmates be free from any repeated or unwanted sexual advances requests for sexual favors obscene or profane language or verbal comments or actions of a derogatory nature sexually suggestive or comments about body or clothing or obscene language or sexually harassing gestures. The plaintiff has suffered these violations at the hands of Mr.Powers as well as threats by 'Powers that he will rape me and knock me out and just take it from the plaintiff in the past, all of which was reported to staff. the AR goes on to state DOC has zero tolerance for retaliation or acts of intimidation. Offenders have the right to be free from retaliation for reporting. Clearly in this matter before the Court that is not the case.

Other examples of improper procedure inconsistencies by CDOC include and not limited to are, on 04/17/2024 inmate Skyler accused inmate Malfy of making sexual advances on him. The accused Mr.Malfy was moved to the other side of the yard. Example 2 on 08/24/2024 Inmate Chris Gonzales was accused of sexual misconduct and was moved to a different pod in the unit. In the Plaintiffs case he was discriminated against and put in a dangerous situation by AVCF Staff and CDOC and allowed the perpetrator to continue in his predatory behavior. This preferential treatment of Mr.Powers cannot continue to be allowed.

This morning 10/11/2024 it came to my attention that Mr.Powers is soliciting others to take measures against the plaintiff, Mr.John Greshner and Mr.Wade. Mr. Grehsner informed plaintiff of this this morning. I have also been informed that the information contained in this complaint has been getting back to staff here at AVCF, how this may be happening is unknown.

The Above statements of facts are in violation of my 1st 8th and 14th amendment rights and possibly others that the Plaintiff may be unaware of at this time. The Plaintiff was retaliated against because he exercised his constitutional rights had plaintiff not exercised his rights the adverse acts by the defendants would not have occurred and this complaint would never have been filed. CDOC and staff here at AVCF are all complicit in the retaliation suffered by the plaintiff and must be held accountable for their actions.

Original form provided free of Charge by CO DOC Legal Services to
15 Sender Quintano DOC# 105549
Date OCT 11 2024

Attachment A. pg 1

The statements given herein are true and correct, and are given freely, Voluntary, and without the promise of compensation or reward, and Swear to same under the penalty of perjury.

- 1.) My name is Charles F. Wade Co.D.O.C. number 80004, and I myself have been approached sexually by inmate Robert Powers #99754.
- 2.) Starting as far back as August of 2022, Mr. Powers is persistent, does not like the word NO and continued to pursue me in an attempt to wear me down.
- 3.) On February 21, 2024 at approx. 17:15 hrs, in the dayhall of Unit 2, C-Pod, and on video surveillance, Mr. Powers came up behind me on my left side, put his hands on me, pressed his hard penis against my left shoulder and told me how he wanted to rape me and take what he wanted.
- 4.) A formal complaint, with diagram, was filed with the Office of the Investigator General here at Arkansas Valley Correctional Facility per P.R.E.A.
- 5.) March 7, 2024 at approx. 09:45 hrs., I was called to the Shift Commanders office and spoke ~~with~~ at length with Lt. Diaz.
- 6.) All that was done was the Unit staff moved Mr. Powers and his lover, Timothy Clapp, from C-Pod, 3rd Tier - cells 14 & 15 to A-Pod, 3rd Tier - cells 14 & 15, since that date, I have had to endure verbal assaults and threats.
- 7.) On July 25, 2024, I filed a Step I Grievance #850-04B with my case manager, Paul Salazar, Unit 2. As of the date of

attacheement A. pg 2

of this statement, August 18, 2024, I have recieved no
response.

Date: August 18, 2024

Respectfully,

Charles F. Wade #80006
Affiant

(2)

Attachment B.

Affidavit and Declaration of Charles F. Wade #80006

I, Charles F. Wade, Co.D.O.C. No. 80006, have been in the Arkansas Valley Correctional Facility since April 11, 2022. Since September 6, 2022, I have lived in C-Pod of Living Unit 2.

On January 30, 2024, I witnessed, at around 13:30 hours, the staff in living unit 2, retaliate against (4) inmates for the filing of a complaint under P.R.E.A. Offenders, Robert Quintano; Newell; McCracken; and Rivers were moved from C-Pod, Living Unit 2 in retaliation for following procedure.

The person (inmate) the complaint was filed against was Robert Powers, Co.D.O.C. No. 99754.

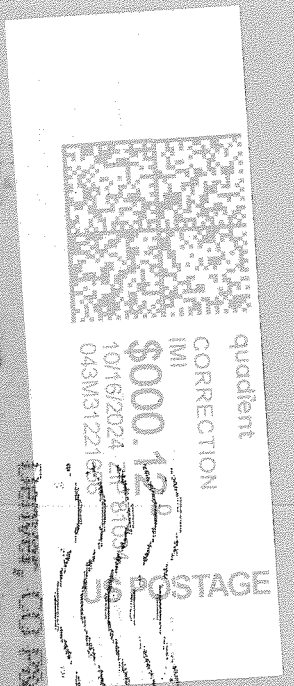
I hereby swear and affirm that the foregoing statements are true and correct to the best of my knowledge and belief, and swear to same under the penalty of perjury, 28 U.S.C. §1746 and 18 U.S.C. §1621

July 24, 2024

Charles F. Wade #80006
Affiant/Declarant

Colorado Department of Corrections
Name Robert Dunlap
Register # 105549
Unit 1-C-2-3
Address 12750 Hwy 96 Ln 13
City/State/Zip Ordway, CO 81034

UNITED STATES Magistrate Judge
UNITED STATES DISTRICT COURT
ALFRED A. ARRAJ UNITED STATES Courthouse
901 19TH STREET
DENVER, COLORADO 80294-3589



DENVER, CO 81034 802-212-2121
FRI 18 OCT 2024 AM



AUCE 1074-24
FACILITY HODVER DATE RCVD 3/21/14
STAFF LAST NAME Robert Duminano ID# RB INT
DOC# OFFENDER NAME INT