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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AL-QUAN JACKSON,)	Case No. CV 12-10393-JST (JEM)
)	
Plaintiff,)	
)	MEMORANDUM AND ORDER
v.)	DISMISSING SECOND AMENDED
)	COMPLAINT WITH
LEROY BACA, et al.,)	LEAVE TO AMEND
)	
Defendants.)	
_____)	

On December 10, 2012, Al-Quan Jackson (“Plaintiff”), proceeding pro se and in forma pauperis, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (“Complaint”). On February 19, 2013, the Court dismissed the Complaint with leave to amend. On March 25, 2013, Plaintiff filed a First Amended Complaint (“FAC”). On February 10, 2014, Defendant Samel Aldama filed an Answer to the FAC. On May 19, 2014, Plaintiff filed a “Motion for Leave to File an Amended Complaint” (“Motion”), and lodged a proposed Second Amended Complaint (“SAC”) with the Court. The Motion sought leave to amend the FAC “to reflect the identity and the actions of the newly named Defendants.” (Motion at 1.) On August 15, 2014, the Court granted Plaintiff leave to amend the FAC and ordered the SAC filed as of May 19, 2014.

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SCREENING STANDARDS

In accordance with the provisions governing in forma pauperis proceedings, the Court must screen the Complaint before ordering service to determine whether the action: (1) is frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2). This screening is governed by the following standards:

A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: (1) the plaintiff fails to state a cognizable legal theory; or (2) the plaintiff has alleged insufficient facts under a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). In determining whether a complaint states a claim on which relief may be granted, allegations of material fact are taken as true and construed in the light most favorable to the plaintiff. Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1988). However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitzke v. Williams, 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

Although a complaint “does not need detailed factual allegations” to survive dismissal, a plaintiff must provide “more than mere labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (rejecting the traditional “no set of facts” standard set forth in Conley v. Gibson, 355 U.S. 41 (1957)). The complaint must contain factual allegations sufficient to rise above the “speculative level,” Twombly, 550 U.S. at 555, or the merely possible or conceivable. Id. at 557, 570.

Simply put, the complaint must contain “enough facts to state a claim to relief that is plausible on its face.” Id. at 570. A claim has facial plausibility when the complaint presents enough facts “to draw the reasonable inference that the defendant is liable.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). This standard is not a probability requirement, but “it asks

1 for more than a sheer possibility that a defendant has acted unlawfully.” Id. A complaint
2 that pleads facts that are merely consistent with liability stops short of the line between
3 possibility and plausibility. Id.

4 In a pro se civil rights case, the complaint must be construed liberally to afford
5 plaintiff the benefit of any doubt. Karim-Panahi v. Los Angeles Police Dept, 839 F.2d 621,
6 623 (9th Cir. 1988). Unless it is clear that the deficiencies in a complaint cannot be cured,
7 pro se litigants are generally entitled to a notice of a complaint’s deficiencies and an
8 opportunity to amend prior to the dismissal of an action. Lucas v. Dept. of Corrections, 66
9 F.3d 245, 248 (9th Cir. 1995) (per curiam); see also Karim-Panahi, 839 F.2d at 623. Only if
10 it is absolutely clear that the deficiencies cannot be cured by amendment should the
11 complaint be dismissed without leave to amend. Id. at 623; see also Cato v. United States,
12 70 F.3d 1103, 1106 (9th Cir. 1995); McQuillon v. Schwarzenegger, 369 F.3d 1091, 1099
13 (9th Cir. 2004) (where amendment would be futile, complaint may be dismissed without
14 leave to amend).

15 After careful review and consideration of the SAC under the relevant standards and
16 for the reasons discussed below, the Court finds that the SAC must be **DISMISSED WITH**
17 **LEAVE TO AMEND.**

18 PLAINTIFF’S ALLEGATIONS

19 Plaintiff alleges that, on December 11, 2011, between the hours of 8:00 a.m. and
20 9:00 a.m., while being transferred between modules at the Men’s Central Jail, he was
21 involved in a verbal altercation with deputies. (SAC at 10-11.)¹ He alleges that, in an
22 attempt to “de-escalate the already hostile situation, [he] voluntarily turned and faced the
23 wall and then proceeded to lay on the ground and placed both of [his] hands behind [his]
24 head.” (SAC at 11.) Plaintiff explains that, “once on the ground[, he] was proned out in a
25 submissive, non-threatening, non-resisting position [when] [several] . . . deputies assaulted
26

27 _____
28 ¹ For ease of reference, the Court labels and refers to the pages in the SAC in consecutive
order, i.e., 1-18.

1 and battered [Plaintiff], used excessive force, [and] conspired to cover up the incident and
2 violate [Plaintiff's] rights[.]” (SAC at 11.)

3 Specifically, Plaintiff alleges that Samuel Aldama placed Plaintiff's hand behind him
4 and in a handcuff. Aldama assaulted Plaintiff by keeping Aldama's right knee on Plaintiff's
5 lower back, pinning him down, thus preventing Plaintiff from protecting himself. Plaintiff
6 further alleges that Deputy Rivera placed his right knee on Plaintiff's left shoulder blade,
7 pinning him down, and grabbed Plaintiff's left wrist with his left hand, thus preventing
8 Plaintiff from protecting himself or rotating his arm in order to place it behind his back to be
9 handcuffed. Plaintiff states Deputy Rivera purposely did so in order to allege Plaintiff was
10 resisting and sprayed Plaintiff with a chemical agent directly in Plaintiff's eyes, ears, nose,
11 and on his head. (SAC at 11-12.) At all times, Deputy De La Torre could see that “there
12 was clearly no way that [Plaintiff] could resist or otherwise offer [his] left hand[,]” and “heard
13 [Plaintiff] offer up [his] hand[,]” yet Deputy De La Torre “disregarded [Plaintiff's] repeated
14 offer[s] [to take his] . . . hands and attempts to comply with the orders given and deliberately
15 tase[re]d [Plaintiff] several times.” (SAC at 11-12.) Deputy Rodriguez pinned Plaintiff's right
16 leg down and prevented him from protecting himself as he watched and encouraged
17 Deputies Rivera and De La Torre attack Plaintiff. According to Plaintiff, Deputy Rodriguez
18 could see that Plaintiff was not resisting and was hindered from placing his hand behind him
19 by Deputy Rivera's right knee over Plaintiff's shoulder. (SAC at 12.) Deputy Ethridge
20 participated in the assault by pinning Plaintiff's left ankle down with Deputy Ethridge's right
21 foot, preventing Plaintiff from moving his foot or protecting himself as Deputies Rivera and
22 De La Torre attacked Plaintiff. (SAC at 13.) Deputy Ethridge was also able to see that
23 Deputy Rivera's right knee and left hand prevented Plaintiff from complying with the
24 Deputies' instructions that he place his left hand behind him. (SAC at 13.)

25 According to Plaintiff, Deputies Moorman, Raniag, Valencia, Navarrete, Hinchman,
26 and Sharp failed to intervene to protect Plaintiff from the use of excessive force by Deputies
27 Rivera, De La Torre, Aldama, Rodriguez, and Ethridge. (SAC at 13-15.) Plaintiff states that
28 Deputies Hinchman, Raniag, Valencia, and Sharp “watched” and/or “observed” the deputies'

1 misconduct. (SAC at 14-15.) According to Plaintiff, Deputies Moorman, Raniag, and
2 Navarrete saw Plaintiff as he voluntarily turned to face the wall and/or laid on the floor and
3 placed his hands behind his head. (SAC at 13-14.) Moreover, Deputy Valencia “had a clear
4 and unobstructed line of sight and could see that[,] with [Plaintiff’s] back and each of [his]
5 limbs being pinned and restrained[,] . . . it was virtually impossible for [Plaintiff] to resist
6 authorities or protect himself[.]” (SAC at 14.) According to Plaintiff, Hinchman held the rank
7 of sergeant at the time of the incident “and had every opportunity to stop and even prevent
8 the attack from happening.” (SAC at 15.) Instead, she “ordered a deputy to continue to use
9 excessive force when she was clearly aware that no force at all was necessary because
10 [Plaintiff] was subdued and in a restrain[ed] position which inhibited [him] from moving at
11 all.” (SAC at 15.)

12 Plaintiff alleges that all the Defendants covered up and/or conspired to cover up the
13 use of excessive force by authoring false reports, failing to report the misconduct, and/or
14 failing to reprimand or discipline the deputies for their misconduct. (SAC at 11-17.)
15 Plaintiff’s false reports and/or cover up claim includes allegations against the following
16 supervisory officials (collectively, “Supervisory Defendants”) who were not present at the
17 scene during the incident:

- 18 • **Sergeant Zonver:** Plaintiff states that “[s]he investigated the incident and
19 watched available video footage of the incident which clearly showed [Plaintiff]
20 being assaulted maliciously and intentionally by Deputies Rivera, De La Torre,
21 Aldama, Rodriguez, and Ethridge.” (SAC at 15.) According to Plaintiff,
22 Sergeant Zonver “approv[ed] of the tactics used and disregard[ed] obvious
23 evidence which proved the illegal actions made by [the] deputies[.]” Moreover,
24 Zonver “coerced all Deputies who wrote a memorandum and told [them] what
25 to say before writing it.” (SAC at 15.)
- 26 • **Defendant Stewart:** Plaintiff explains that she was the watch commander on
27 duty at the time of the incident and also interviewed Plaintiff concerning the
28 incident. Plaintiff informed Stewart of the actions Plaintiff took to avoid conflict

1 with the deputies. Moreover, Stewart viewed a video recording of the incident
2 from the hallway video camera “and saw that the deputies were in direct
3 violation of [Plaintiff’s] rights[.]” (SAC at 15.) Yet, Stewart conspired with the
4 other supervisory officials to cover up the incident and justify the use of force
5 against Plaintiff. (SAC at 15.)

- 6 • **Defendant Alvarez:** Plaintiff states that he was “one of the interviewers of the
7 incident” as well as an investigator. According to Plaintiff, Defendant Alvarez
8 “was provided with clear[.]cut proof of Deputy misconduct . . . [and] failed to
9 correct the situation and reprimand the Deputies involved[or] . . . to report [the
10 misconduct].”
- 11 • **Sergeant Rojo:** Plaintiff states that Rojo was standing at the entrance of the
12 watch commander’s office as Plaintiff awaited there in the hallway to be taken
13 to the disciplinary module. Plaintiff “pleaded” with Rojo to intervene and watch
14 the recording from the hallway video camera and to stop Plaintiff from going to
15 the disciplinary module because he had not violated any rules. Plaintiff gave
16 Rojo a detailed account of the events. Rojo later told Plaintiff he was
17 transferring to another facility. He explained that “he indeed did see [Plaintiff]
18 [i]e down on the ground but that he did not know what was said.” Rojo
19 explained that Plaintiff’s transfer to another facility “was not [Rojo’s] call but
20 that of his supervisors.” According to Plaintiff, Rojo was aware of the deputy
21 misconduct but failed to report or correct it. (SAC at 16.)
- 22 • **Captain Ornelas:** Ornelas told Plaintiff that he viewed the footage from the
23 hallway video camera and personally made the decision to transfer Plaintiff to
24 another facility. According to Plaintiff, after being made aware of the deputy
25 misconduct, Ornelas conspired with his subordinates to cover up the incident.
26 (SAC at 16.)
- 27 • **Captain Fedele:** Plaintiff states this defendant “was made aware of the deputy
28 misconduct and direct violation of [Plaintiff’s] rights by his subordinates” and

1 Bonzelet, 963 F.2d 1258, 1262-63 (9th Cir. 1992) (dismissing action for refusal to comply
2 with court orders to name defendants in the caption). The Court will not order the United
3 States Marshal to serve the amended complaint on any named defendant not identified in
4 the caption.

5 **II. The SAC Fails to Comply With Fed. R. Civ. P. 10.**

6 Fed. R. Civ. P. 10(b) requires a party to “state its claims or defenses in numbered
7 paragraphs, each limited as far as practicable to a single set of circumstances. . . . If doing
8 so would promote clarity, each claim founded on a separate transaction or occurrence . . .
9 must be stated in a separate count[.]” Fed. R. Civ. P. 10(b). “Separate counts will be
10 required if necessary to enable the defendant to frame a responsive pleading or to enable
11 the court and the other parties to understand the claims.” Bautista v. Los Angeles County,
12 216 F.3d 837, 840 (9th Cir. 2000) (citation omitted). “Courts have required separate counts
13 where multiple claims are asserted, where they arise out of separate transactions or
14 occurrences, and where separate statements will facilitate a clear presentation.” Id. at 840-
15 41. “In such cases, separate counts permit pleadings to serve their intended purpose to
16 frame the issue and provide the basis for informed pretrial proceedings.” Id. at 841.
17 ““Experience teaches that, unless cases are pled clearly and precisely, issues are not
18 joined, discovery is not controlled, the trial court’s docket becomes unmanageable, the
19 litigants suffer, and society loses confidence in the court’s ability to administer justice.” Id.
20 (citations omitted).

21 Here, Plaintiff has not separately set forth his diverse claims – including the
22 supporting facts for each claim – as separate counts, so as to allow the court and
23 Defendants to understand the scope and nature of Plaintiff’s allegations. Accordingly, the
24 SAC is subject to dismissal pursuant to Rule 10 because it improperly mixes allegations
25 apparently related to different claims. If Plaintiff wishes to file an amended complaint, he
26 shall set forth each claim as a separate count by clearly numbering and distinguishing from
27 one another every civil rights claim, including the underlying factual allegations for each
28 claim. Any claim that is not clearly numbered or separated from all other claims and

1 accompanied with the alleged facts supporting that claim will not be addressed as a
2 separate claim for relief.

3 **III. The SAC Fails To State A Claim Against Defendants Under Monell.**

4 Plaintiff's SAC names all Defendants in their individual and official capacities. "[A]n
5 official-capacity suit is, in all respects other than name, to be treated as a suit against the
6 entity." Kentucky v. Graham, 473 U.S. 159, 166 (1985). Moreover, a local governmental
7 entity, such as a County, "may not be sued under § 1983 for an injury inflicted solely by its
8 employees or agents. Instead, it is when execution of a government's policy or custom,
9 whether made by its lawmakers or by those whose edicts or acts may fairly be said to
10 represent official policy, inflicts the injury that the government as an entity is responsible
11 under § 1983." Monell v. Dept. of Social Services of City of New York, 436 U.S. 658, 694
12 (1978). Thus, "[i]n order to hold [a local government defendant] liable under § 1983,
13 [Plaintiff] must show (1) that he possessed a constitutional right of which he was deprived;
14 (2) that the [local government entity] had a policy; (3) that the policy amounts to deliberate
15 indifference to [Plaintiff's] constitutional right; and (4) that the policy is the 'moving force
16 behind the constitutional violation.'" Anderson v. Warner, 451 F.3d 1063, 1070 (9th Cir.
17 2006) (citations and internal quotation marks omitted); Dougherty v. City of Covina, 654
18 F.3d 892, 900 (9th Cir. 2011). "There also must be a 'direct causal link' between the policy
19 or custom and the injury, and [Plaintiff] must be able to demonstrate that the injury resulted
20 from a 'permanent and well settled practice.'" Anderson, 451 F.3d at 1070 (citation
21 omitted); Villegas v. Gilroy Garlic Festival Ass'n, 541 F.3d 950, 957 (9th Cir. 2008) (en
22 banc).

23 A local government entity may be held liable for a failure to train its employees only if
24 "the failure to train amounts to deliberate indifference to the rights of persons" impacted by
25 the inaction. City of Canton v. Harris, 489 U.S. 378, 388 (1989). In order to state a claim
26 for failure to train, Plaintiff must allege that "in light of the duties assigned to specific officers
27 or employees the need for more or different training is so obvious, and the inadequacy so
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1 likely to result in the violation of constitutional rights, that the policymakers of the city can
2 reasonably be said to have been deliberately indifferent to the need.” Id. at 390.

3 Here, Plaintiff has failed to identify any policy statements, regulations, officially
4 adopted or promulgated decisions, customs, or practices by which any defendant allegedly
5 inflicted the injuries about which Plaintiff is complaining. Plaintiff states conclusorily that
6 Defendant Baca “created a use of force policy, custom, and method of training which . . .
7 caused [Plaintiff] to be subjected to assault and battery[,]” that “[the] violation of [Plaintiff’s]
8 rights were [sic] a direct result of the policy[,]” and that “[Baca] was aware that this policy,
9 custom, and training would cause anyone it was used on harm[, and] yet he failed to correct
10 it[.]” (SAC at 17.) Plaintiff alleges no facts to support these broad allegations, however. The
11 allegations of the SAC are insufficient to state a claim upon which relief may be granted
12 against the Defendants in their official capacity. See Iqbal, 556 U.S. at 678-79 (legal
13 conclusions must be supported by factual allegations); Dougherty, 654 F.3d at 900 (finding
14 that plaintiff’s conclusory allegations “lack any factual allegations that would separate them
15 from the ‘formulaic recitation of a cause of action’s elements’ deemed insufficient by
16 Twombly.”); Warner v. County of San Diego, 2011 WL 662993, at *3-4 (S.D. Cal. 2011)
17 (“formulaic recitations” of alleged government policy, practice or custom insufficient).

18 **IV. The SAC Fails to State a Claim Against Sheriff Baca In His Individual Capacity.**

19 Liability under § 1983 arises upon a showing of personal participation by the
20 defendant. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002); Fayle v. Stapley, 607 F.2d
21 858, 862 (9th Cir. 1979). To state a claim under section 1983, a plaintiff must allege that (1)
22 the defendant acted under color of state law, and (2) the defendant deprived him of rights
23 secured by the Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178,
24 1185 (9th Cir. 2006). A person deprives another of a constitutional right where that person
25 “does an affirmative act, participates in another’s affirmative acts, or omits to perform an act
26 which [that person] is legally required to do that causes the deprivation of which complaint is
27 made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). “The requisite causal
28 connection can be established not only by some kind of direct, personal participation in the

1 deprivation, but also by setting in motion a series of acts by others which the actor knows or
2 reasonably should know would cause others to inflict the constitutional injury.” Id. at
3 743–44.

4 Thus, supervisory personnel generally are not liable under § 1983 on any theory of
5 respondeat superior or vicarious liability in the absence of a state law imposing such liability.
6 Crowley v. Bannister, 734 F.3d 967, 977 (9th Cir. 2013); Hansen v. Black, 885 F.2d 642,
7 645-46 (9th Cir. 1989). A supervisory official may be liable under § 1983 only if the official
8 was personally involved in the constitutional deprivation, or if there was a sufficient causal
9 connection between the supervisor's wrongful conduct and the constitutional violation.
10 Crowley, 734 F.3d at 977; Hansen, 885 F.2d at 646. “[S]upervisors can be held liable for:
11 1) their own culpable action or inaction in the training, supervision, or control of
12 subordinates; 2) their acquiescence in the constitutional deprivation of which a complaint is
13 made; or 3) for conduct that showed a reckless or callous indifference to the rights of
14 others.” Edgerly v. City and County of San Francisco, 599 F.3d 946, 961 (9th Cir. 2010)
15 (internal quotations and citation omitted).

16 Here, Plaintiff fails to allege any facts that would demonstrate that Sheriff Baca was
17 responsible for the allegedly unconstitutional excessive force used against Plaintiff. There is
18 no indication that Sheriff Baca participated in or directed the excessive force or knew of the
19 constitutional violations and failed to prevent them. Taylor v. List, 880 F.2d 1040, 1045 (9th
20 Cir. 1989) (“A supervisor is only liable for constitutional violations of his subordinates if the
21 supervisor participated in or directed the violations, or knew of the violations and failed to
22 act to prevent them.”). Plaintiff’s conclusory statement that Baca “created a use of force
23 policy, custom, and method of training which . . . caused [Plaintiff] to be subjected to assault
24 and battery[,]” that “[the] violation of [Plaintiff’s] rights were [sic] a direct result of the
25 policy[,]” and that “[Baca] was aware that this policy, custom, and training would cause
26 anyone it was used on harm[, and] yet he failed to correct it[,]” (SAC at 17), is wholly
27 conclusory and insufficient. Thus, Plaintiff has failed to state a claim against Baca in his
28 individual capacity.

1 **V. Plaintiff's Allegations of Cover Up And/Or Conspiracy To Cover Up Misconduct**
2 **Fail to State a Claim on Which Relief May be Granted.**

3 **A. False Reports and Cover Up.**

4 The falsification of disciplinary reports does not state a standalone constitutional
5 claim. See, e.g., Lee v. Whitten, 2012 WL 4468420, *4 (E.D. Cal. 2012). Indeed, there is
6 no constitutional right to a prison administrative appeal or grievance system, Ramirez v.
7 Galaza, 334 F.3d 850, 860 (9th Cir. 2003), cert. denied, 541 U.S. 1063 (2004); Mann v.
8 Adams, 855 F.2d 639, 640 (9th Cir. 1988), and a prisoner has no constitutionally
9 guaranteed right not to be falsely or wrongly accused of conduct which may result in the
10 deprivation of a protected liberty interest. Sprouse v. Babcock, 870 F.2d 450, 452 (8th Cir.
11 1989) ("Sprouse's claims based on the falsity of the charges and the impropriety of
12 Babcock's involvement in the grievance procedure, standing alone, do not state
13 constitutional claims."); Freeman v. Rideout, 808 F.2d 949, 951 (2d Cir. 1986) ("The prison
14 inmate has no constitutionally guaranteed immunity from being falsely or wrongly accused
15 of conduct which may result in the deprivation of a protected liberty interest."). In sum,
16 Plaintiff's allegations of false reports and cover up, standing alone, do not state a cognizable
17 constitutional claim. See, e.g., Higgins v. Medina, 2009 WL 3255268, *3 (E.D. Cal. 2009)
18 (finding not cognizable plaintiff's due process claim arising from the falsification of reports
19 and other documents relating to incident of excessive force because prisoners do not have
20 an independent right, grounded in the Due Process Clause, to an accurate prison record).

21 **B. Conspiracy to Issue False Reports and Cover Up.**

22 A conspiracy claim brought under section 1983 requires proof of "an agreement or
23 meeting of the minds to violate constitutional rights," Franklin v. Fox, 312 F.3d 423, 441 (9th
24 Cir. 2001) (internal quotation marks and citation omitted), and an "actual deprivation of . . .
25 constitutional rights [that] resulted from the alleged conspiracy." Hart v. Parks, 450 F.3d
26 1059, 1071 (9th Cir. 2006) (internal quotation marks and citation omitted). "To be liable,
27 each participant in the conspiracy need not know the exact details of the plan, but each
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1 participant must at least share the common objective of the conspiracy.” Franklin, 312 F.3d
2 at 441 (internal quotation marks and citation omitted).

3 Here, Plaintiff has failed to allege any facts to demonstrate a specific agreement
4 between Defendants. Instead, his claim is based on speculation and conclusory allegations.
5 See Ivey, 673 F.2d at 268 (“Vague and conclusory allegations of official participation in civil
6 rights violations are not sufficient. . . .”). It is not enough to state the existence of a
7 conspiracy, without alleging facts. “Threadbare recitals of the elements of a cause of action,
8 supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678.
9 Moreover, for the reasons discussed above, see supra at § IV.A., the conspiracy claim fails
10 because Plaintiff “does not show that any actual deprivation of his constitutional rights
11 resulted from the alleged conspiracy.” Woodrum v. Woodward County, Okla., 866 F.2d
12 1121, 1126 (9th Cir. 1989) (no liability for conspiracy under section 1983 “unless there is an
13 actual deprivation of civil rights”).

14 **VI. Due Process: Disciplinary Proceedings.**

15 Plaintiff further alleges that the Supervisory Defendants (except Fedele and Rojo)
16 failed to ensure that Plaintiff was provided a disciplinary hearing, notice of a hearing, a
17 statement of what rules were violated, documentation of the charges, and/or a grievance
18 form. (Complaint at 15-17.)

19 The Due Process Clause protects individuals against the deprivations of life, liberty,
20 or property without due process of law. Wilkinson v. Austin, 545 U.S. 209, 221 (2005).
21 “[T]hose who seek to invoke its procedural protection must establish that one of these
22 interests is at stake.” Id.

23 Although a prisoner charged with a disciplinary violation is entitled to certain due
24 process protections, those protections “adhere only when the disciplinary action implicates a
25 protected liberty interest in some ‘unexpected matter’ or imposes an ‘atypical and significant
26 hardship on the inmate in relation to the ordinary incidents of prison life.’” Serrano v.
27 Francis, 345 F.3d 1071, 1077-78 (9th Cir. 2003), cert. denied, 543 U.S. 825 (2004) (quoting
28 Sandin v. Connor, 515 U.S. 472, 484 (1995)). Typically, placement in segregated housing

1 in and of itself does not implicate a protected liberty interest. Serrano, 345 F.3d at 1078;
2 May v. Baldwin, 109 F.3d 557, 565 (9th Cir. 1997) (“[A]dministrative segregation falls within
3 the terms of confinement ordinarily contemplated by a sentence.”); Windham v. Cal. Dep’t of
4 Corrs., 385 F.App’x 657, 658 (9th Cir. 2010), cert. denied, 131 S.Ct. 979 (2011)
5 (“[P]risoners generally have no protected liberty interest . . . against placement in
6 administrative segregation.”). Likewise, prisoners generally have no protected liberty
7 interest in being incarcerated at a particular prison. See Meachum v. Fano, 427 U.S. 215,
8 225-29 (1976).

9 Here, Plaintiff fails to allege that Defendants imposed an “atypical and significant
10 hardship on [Plaintiff] in relation to the ordinary incidents of prison life.” Serrano, 345 F.3d
11 at 1077-78. Because Plaintiff fails to allege the deprivation of a protected liberty interest, his
12 due process claim fails.

13 **VII. Equal Protection.**

14 Plaintiff appears to state that Defendants’ actions violated the Equal Protection
15 Clause. (SAC at 10.) An equal protection violation requires a showing that persons
16 similarly situated were unfairly treated differently. See City of Cleburne v. Cleburne Living
17 Center, 473 U.S. 432, 439 (1985); Shakur v. Schriro, 514 F.3d 878, 891 (9th Cir. 2008). A
18 showing of invidious discriminatory intent is also required. See Village of Arlington Heights
19 v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 265 (1977); Navarro v. Block, 72 F.3d
20 712, 716 (9th Cir. 1996). Intentional discrimination means that a defendant acted at least in
21 part because of a plaintiff’s membership in a protected class. See Barren v. Harrington, 152
22 F.3d 1193, 1194 (9th Cir.), cert. denied, 525 U.S. 1154 (1999); Maynard v. City of San Jose,
23 37 F.3d 1396, 1404 (9th Cir. 1994). Plaintiff’s allegations are insufficient to state an Equal
24 Protection claim.

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1 **VIII. Plaintiff's Allegations Are Sufficient To Assert Excessive Force Claims Against**
2 **Deputies Aldama, Rivera, De La Torre, Rodriguez, Ethridge, Moorman, Raniag,**
3 **Valencia, Navarette, Hinchman, and Sharp.**

4 The Cruel and Unusual Punishments Clause of the Eighth Amendment protects
5 prisoners from the use of excessive physical force. Wilkins v. Gaddy, 559 U.S. 34, 36
6 (2010) (per curiam); Hudson v. McMillian, 503 U.S. 1, 8-9 (1992). What is necessary to
7 show sufficient harm under the Eighth Amendment depends upon the claim at issue, with
8 the objective component being contextual and responsive to contemporary standards of
9 decency. Hudson, 503 U.S. at 8 (quotation marks and citations omitted). For excessive
10 force claims, the core judicial inquiry is whether the force was applied in a good-faith effort
11 to maintain or restore discipline, or maliciously and sadistically to cause harm. Wilkins, 559
12 U.S. at 37.

13 Not every malevolent touch by a prison guard gives rise to a federal cause of action.
14 Wilkins, 559 U.S. at 37-38. Necessarily excluded from constitutional recognition is the de
15 minimis use of physical force, provided that the use of force is not of a sort repugnant to the
16 conscience of mankind. Id. In determining whether the use of force was wanton and
17 unnecessary, courts may evaluate the extent of the prisoner's injury, the need for
18 application of force, the relationship between that need and the amount of force used, the
19 threat reasonably perceived by the responsible officials, and any efforts made to temper the
20 severity of a forceful response. Hudson, 503 U.S. at 7.

21 While the absence of a serious injury is relevant to the Eighth Amendment inquiry, it
22 does not end it. Hudson, 503 U.S. at 7. The malicious and sadistic use of force to cause
23 harm always violates contemporary standards of decency. Wilkins, 559 U.S. at 37-38.
24 Thus, it is the use of force rather than the resulting injury which ultimately counts. Id. at 38.

25 An officer cannot escape liability simply because "he sits back and does nothing" to
26 further the excessive force. Kraft v. Laney, 2005 WL 2042310, *5 (E.D. Cal. 2005)
27 ("Inactivity in the face of circumstances in which the reasonable police officer would know
28 that he needed to take steps to avoid the use, or continued use, of excessive force on a

1 detainee will lead to liability.”) (citing Lolli v. County of Orange, 351 F.3d 410, 418 (9th Cir.
2 2003)); see Fundiller v. Cooper City, 777 F.2d 1436, 1441-42 (11th Cir.1985) (“It is not
3 necessary that a police officer actually participate in the use of excessive force in order to
4 be held liable under section 1983. Rather, an officer who is present at the scene and who
5 fails to take reasonable steps to protect the victim of another officer's use of excessive
6 force, can be held liable for his nonfeasance.”). Nor does one have to be a supervisor in
7 order to obtain this type of “inactivity” liability. Kraft, 2005 WL 2042310, *5; Webb v. Hiykel,
8 713 F.2d 405, 408 (8th Cir. 1983) (concluding that an officer has “a duty to prevent the use
9 of . . . force, even if the officers beating [the victim] were [the officer's] superiors”). The
10 Court finds that Plaintiff's allegations are sufficient at the screening stage to state a claim for
11 use of excessive force, in violation of the Eighth Amendment, against Deputies Aldama,
12 Rivera, De La Torre, Rodriguez, Ethridge, Moorman, Raniag, Valencia, Navarete,
13 Hinchman, and Sharp.

14 * * * * *

15 For the reasons set forth herein, the Second Amended Complaint is **DISMISSED**
16 **WITH LEAVE TO AMEND.**

17 If Plaintiff desires to pursue this action, he is **ORDERED** to file a Third Amended
18 Complaint within **thirty (30) days** of the date of this Order, which remedies the deficiencies
19 discussed above. Plaintiff may not add additional claims or defendants or amend the claims
20 included in the SAC in any other way without prior leave of court. See Fed. R. Civ. P. 15(a).
21 Plaintiff must name separately each individual defendant against whom he brings his claims,
22 identify clearly the factual basis for each of his claims and the particular constitutional
23 violation, and articulate the connection between each named defendant and each claim. If
24 Plaintiff wishes to name any of the Supervisory Defendants² in an amended complaint, he
25 must allege facts demonstrating the Supervisory Defendants deprived Plaintiff of rights

26
27 ² As set forth above, the Supervisory Defendants consist of Sergeant Zonver, Defendant
28 Stewart, Defendant Alvarez, Sergeant Rojo, Captain Ornelas, Captain Fedele, and Sergeant Kevin
Roberts.

1 secured by the Constitution. The allegations as presently stated are insufficient as to the
2 Supervisory Defendants.

3 If Plaintiff chooses to file a Third Amended Complaint, it should: (1) bear the docket
4 number assigned in this case; (2) be labeled "Third Amended Complaint"; (3); be filled out
5 exactly in accordance with the directions on the form; and (4) be complete in and of itself
6 without reference to the previous complaints or any other pleading, attachment or
7 document. The Clerk is directed to provide Plaintiff with a blank Central District of California
8 civil rights complaint form, which Plaintiff must fill out completely and resubmit.

9 Within thirty (30) days of Service of the Third Amended Complaint, Defendant Samel
10 Aldama shall either notify the Court that he is standing on his original Answer or file an
11 Amended Answer.

12 **Plaintiff is admonished that, if he fails to file a Third Amended Complaint by the**
13 **deadline set herein, the Court may recommend that this action be dismissed for**
14 **failure to prosecute and/or failure to comply with a Court order.**

15
16 DATED: August 18, 2014

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE