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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DANIEL R. PEREZ,

Plaintiff,

v.

KEN CLARK, et al.,

Defendants.

CASE NO. 1:08-cv-00466-OWW-SMS PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF CERTAIN
CLAIMS AND DEFENDANTS

(Doc. 15)

OBJECTIONS DUE WITHIN THIRTY DAYS

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Findings and Recommendations Following Screening of Amended Complaint

I. Procedural History

Plaintiff Daniel R. Perez (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on February 15, 2008. On October 3, 2008, the Court issued an order finding that the complaint stated claims under the Eighth Amendment against Defendants Olmos, Perez, Sanchez, Paz, and Munoz for use of excessive physical force, against Defendant Munoz for the unconstitutional conditions of confinement in cell 232, and against Defendants Marquez, Jimenez, Haines, and Talle for denial of medical care, but did not state any other cognizable claims. Plaintiff was ordered to either file an amended complaint or notify the Court of his willingness to proceed only on the claims found to be cognizable. On November 5, 2008, Plaintiff filed an amended complaint.

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1 **II. Screening Requirement**

2 The Court is required to screen complaints brought by prisoners seeking relief against a
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
4 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
5 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
6 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).
7 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
8 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
9 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

10 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
11 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.
12 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and
13 plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a).
14 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the
15 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading
16 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330
17 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements
18 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257
19 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

20 **III. Plaintiff’s Amended Complaint**

21 **A. Summary of Allegations**

22 Plaintiff is currently housed at Salinas Valley State Prison in Soledad. The events giving rise
23 to the claims at issue in this action allegedly occurred at California State Prison-Corcoran. Plaintiff
24 names prison staff members Clark, Roberson, Castello, Silva, Blanks Olmos, Perez, Sanchez, Paz,
25 Munoz, Marquez, Jimenez, Haines, and Talle as defendants, and alleges claims for violation of the
26 Eighth Amendment of the United States Constitution.

27 Plaintiff alleges that after refusing to accept a cellmate who was a danger to him, he was
28 placed in cell 232 by Defendant Munoz as punishment. The cell was located in a unit for mental

1 health patients on medication and Plaintiff was subjected to loud banging day and night. Plaintiff
2 alleges that inmates without mental health issues are not supposed to be housed in that unit, and he
3 was unable to sleep, read, or think for many days, which included days he was in court.

4 On September 28, 2006, after returning from court and refusing to return to cell 232, Plaintiff
5 was told he was going to be placed in a regular administrative segregation unit. After being
6 restrained, Plaintiff realized he was being taken to cell 232 and let his legs go limp. Defendants
7 Olmos, Perez, Sanchez, Paz, and Munoz proceeding to slam him to the ground, beat him, and kick
8 him. Plaintiff alleges that he was taken to a holding cell and Defendant Perez placed the lanyard
9 triangle attached to Plaintiff's handcuffs approximately nine feet in the air, which forced Plaintiff
10 to stand on his toes to avoid tearing his shoulder blades and experiencing even greater pain. Plaintiff
11 alleges that in addition to extreme pain and other injuries, he suffered tendon and ligament damage
12 as a result of the incident.

13 Plaintiff was subsequently re-housed in cell 117 in the same unit. Plaintiff was placed on
14 management cell status and had only the pair of boxers he was wearing. Plaintiff did not have a
15 mattress, a blanket, clothing, toilet paper, toothpaste, or a toothbrush. Plaintiff alleges his cell was
16 right next to an exterior door that was left open day and night, subjecting him to cold air. Plaintiff
17 was on management cell status for ten days, and during that time, Plaintiff repeatedly asked for
18 medical treatment for his injuries but was denied care by Defendants Marquez, Jimenez, Haines, and
19 Talle.

20 **B. Excessive Force Claim**

21 The unnecessary and wanton infliction of pain violates the Cruel and Unusual Punishments
22 Clause of the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5, 112 S.Ct. 995 (1992)
23 (citations omitted). For claims of excessive physical force, the issue is "whether force was applied
24 in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm."
25 Hudson, 503 U.S. at 7. Although de minimis uses of force do not violate the Constitution, the
26 malicious and sadistic use of force to cause harm always violates the Eighth Amendment, regardless
27 of whether or not significant injury is evident. Id. at 9-10; see also Oliver v. Keller, 289 F.3d 623,

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1 628 (9th Cir. 2002) (Eighth Amendment excessive force standard examines de minimis uses of force,
2 not de minimis injuries)).

3 Plaintiff's allegations describing the incident of physical force on September 28, 2006, are
4 sufficient to give rise to a claim for relief against Defendants Olmos, Perez, Sanchez, Paz, and
5 Munoz for use of excessive physical force.

6 **C. Claims Arising From Conditions in Cells 232 and 117**

7 The Eighth Amendment protects prisoners from inhumane methods of punishment and from
8 inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006).
9 Extreme deprivations are required to make out a conditions of confinement claim, and only those
10 deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form
11 the basis of an Eighth Amendment violation. Hudson, 503 U.S. at 9 (citations and quotations
12 omitted). In order to state a claim for violation of the Eighth Amendment, the plaintiff must allege
13 facts sufficient to support a claim that prison officials knew of and disregarded a substantial risk of
14 serious harm to the plaintiff. E.g., Farmer v. Brennan, 511 U.S. 825,847, 114 S.Ct. 1970 (1994);
15 Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

16 Plaintiff's allegations concerning that level of noise he was subjected to in cell 232 are
17 sufficient to state a claim against Defendant Munoz under the Eighth Amendment. Keenan v. Hall,
18 83 F.3d 1083, 1090 (9th Cir. 1996). However, Plaintiff's allegations regarding the conditions of
19 cell 117 are not sufficient. Assuming the conditions as alleged were sufficient to state an Eighth
20 Amendment claim, Plaintiff has not linked any named defendants to placement in the cell and the
21 conditions complained of. Hydrick v. Hunter, 500 F.3d 978, 987-88 (9th Cir. 2007).

22 **D. Medical Care Claim**

23 "[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
24 must show 'deliberate indifference to serious medical needs.'" Jett v. Penner, 439 F.3d 1091, 1096
25 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)). The two part
26 test for deliberate indifference requires a plaintiff to show (1) "'a serious medical need' by
27 demonstrating that 'failure to treat a prisoner's condition could result in further significant injury or
28 the unnecessary and wanton infliction of pain,'" and (2) "the defendant's response to the need was

1 deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059
2 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th
3 Cir. 1997) (en banc) (internal quotations omitted)).

4 Plaintiff has sufficiently alleged the need for medical care for his injuries and the failure of
5 Defendants Marquez, Jimenez, Haines, and Talle to respond to his requests for treatment.
6 Accordingly, Plaintiff states a claim for violation of the Eighth Amendment.

7 **E. Defendants Clark, Roberson, Castello, Silva, and Blanks**

8 Under section 1983, Plaintiff is required to show that Defendants (1) acted under color of
9 state law, and (2) committed conduct which deprived Plaintiff of a federal right. Hydrick, 500 F.3d
10 at 987. “A person deprives another of a constitutional right, where that person ‘does an affirmative
11 act, participates in another’s affirmative acts, or omits to perform an act which [that person] is legally
12 required to do that causes the deprivation of which complaint is made.’” Id. at 988 (quoting Johnson
13 v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite causal connection can be established
14 not only by some kind of direct, personal participation in the deprivation, but also by setting in
15 motion a series of acts by others which the actor knows or reasonably should know would cause
16 others to inflict the constitutional injury.’” Id. (quoting Johnson at 743-44).

17 Plaintiff has not alleged any facts which support his claim that Warden Clark, Sergeant
18 Roberson, and Correctional Officers Castello, Silva, and Blanks violated his constitutional rights.
19 Supervisory personnel such as Defendants Clark and Roberson may not be held liable under
20 respondeat superior theory, Hydrick at 988, and Defendant Blank’s compliance with Defendant
21 Munoz’s order to strip Plaintiff’s cell is insufficient to support a claim under section 1983 because
22 mere placement in a stripped down cell does not violate the Constitution as a matter of law, see
23 Hudson, 503 U.S. at 9 (“[E]xtreme deprivations are required to make out a[n] [Eighth Amendment]
24 conditions-of-confinement claim.”). There are no factual allegations concerning Defendants Castello
25 and Silva.¹

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27 ¹ In an attachment to the complaint that Plaintiff represents is not part of the amended complaint, court
28 record p. 51, Plaintiff asserts that Defendants Castello, Silva, and Blanks were present during the incident of force
against him, court record p. 55. Plaintiff’s exhibits are not properly incorporated, Fed. R. Civ. P. 10(c), and it is not
the duty of the Court to comb through unincorporated exhibits to sift out facts. However, even if the Court were to
consider the attachment, the mere presence of Defendants Castello, Silva, and Blanks is insufficient to impose

1 **IV. Conclusion and Recommendation**

2 Plaintiff's amended complaint states claims under the Eighth Amendment against Defendants
3 Olmos, Perez, Sanchez, Paz, and Munoz for use of excessive physical force, against Defendant
4 Munoz for the unconstitutional conditions of confinement in cell 232, and against Defendants
5 Marquez, Jimenez, Haines, and Talle for denial of medical care. However, the amended complaint
6 does not state any other cognizable claims. Plaintiff was previously given leave to amend to cure
7 these deficiencies but was unable to do so. Accordingly, further leave to amend is not warranted,
8 Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987), and the Court HEREBY RECOMMENDS:

- 9 1. This action proceed on Plaintiff's amended complaint, filed November 5, 2008,
10 against Defendants Olmos, Perez, Sanchez, Paz, and Munoz for use of excessive
11 physical force, against Defendant Munoz for the unconstitutional conditions of
12 confinement in cell 232, and against Defendants Marquez, Jimenez, Haines, and
13 Talle for denial of medical care;
- 14 2. Plaintiff's claim arising from the conditions of confinement in cell 117 be dismissed,
15 with prejudice, for failure to state a claim; and
- 16 3. Defendants Clark, Roberson, Castello, Silva, and Blanks be dismissed based on
17 Plaintiff's failure to state any claims upon which relief may be granted against them.

18 These Findings and Recommendations will be submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**
20 **days** after being served with these Findings and Recommendations, Plaintiff may file written
21 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
22 Findings and Recommendations." Plaintiff is advised that failure to file objections within the

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liability on them under section 1983 for use of excessive force. Hydrick, 500 F.3d at 988.

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
2 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 **Dated:** February 3, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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