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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

RICHARD PAREDEZ,

Plaintiff,

v.

JAMES YATES, et al.,

Defendants.

CASE NO. 1:10-CV-01672-AWI-DLB PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF  
CERTAIN CLAIMS AND DEFENDANTS

(DOC. 11)

OBJECTIONS, IF ANY, DUE WITHIN  
TWENTY-ONE DAYS

**I. Background**

Plaintiff Richard Paredez (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action by filing his complaint on September 15, 2010. Doc. 1. On May 6, 2011, the Court screened Plaintiff’s complaint and found that it stated a cognizable retaliation claim against Defendant Ramirez, but failed to state any other claims. Doc. 9. Plaintiff was provided the opportunity to either file a first amended complaint or notify the Court of his willingness to proceed only against Defendant Ramirez. On May 31, 2011, Plaintiff filed his first amended complaint. Doc. 11.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or

1 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
2 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been  
3 paid, the court shall dismiss the case at any time if the court determines that . . . the action or  
4 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §  
5 1915(e)(2)(B)(ii).

6 A complaint must contain “a short and plain statement of the claim showing that the  
7 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
8 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
9 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing  
10 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual  
11 matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Id.* (quoting *Twombly*,  
12 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are not. *Id.*

## 13 **II. Summary Of First Amended Complaint**

14 Plaintiff was previously incarcerated at Pleasant Valley State Prison (“PVSP”) in  
15 Coalinga, California, where the events giving rise to this action occurred. Plaintiff names as  
16 Defendants: warden James Yates, and correctional officers M. Hernandez, Phealon, John Doe,  
17 and Ramirez.

18 Plaintiff alleges the following. Defendant Yates was aware of numerous inmate  
19 grievances filed against Defendant Hernandez and failed to act by minimizing Defendant  
20 Hernandez’s contact with inmates. Am. Compl. 3A-B. On August 7, 2009, Defendant  
21 Hernandez forced Plaintiff out of his assigned cell and to Plaintiff’s knees. *Id.* at 3C. A cell  
22 search was conducted, during which Defendant Hernandez threatened Plaintiff and his cell mate  
23 for disrespecting Defendant Hernandez’s first watch officer. *Id.* at 3D. Defendant Hernandez  
24 swept Plaintiff’s property onto the floor, including a bowl of soup onto Plaintiff’s personal  
25 property. *Id.* Plaintiff sat on his knees and handcuffed behind his back. *Id.* Defendant  
26 Hernandez grabbed Plaintiff by his wrist and lifted him to his feet, bending the wrist until  
27 Plaintiff moaned in pain. *Id.* He then shoved Plaintiff into the cell. *Id.* Plaintiff contends that  
28 his left wrist was swollen and had scarring. *Id.* at 3B. Plaintiff also contends that he suffered

1 psychological and mental injury. *Id.* at 3F. Defendant Hernandez placed Plaintiff and his cell  
2 mate on CTQ (confined to quarters) status. *Id.* at 3G-3H. Defendant Phealon witnessed  
3 Defendant Hernandez's alleged use of excessive force and failed to act. *Id.* at 3I-3J. Defendant  
4 John Doe was the watch tower officer who opened Plaintiff's cell door to allow Defendants  
5 Hernandez and Phealon to act. *Id.* at 3K-3L. Defendant John Doe did not act to prevent  
6 excessive force, and did not allow Plaintiff to leave his CTQ without prior approval from the A-  
7 yard captain. *Id.* at 3L. Plaintiff was not permitted to seek medical attention for his alleged  
8 injuries because of the CTQ. *Id.* at 3M.

9         On August 10, 2009, Defendant Ramirez was packing Plaintiff's property and found a  
10 grievance written by Plaintiff concerning being wrongfully placed on CTQ by Defendant  
11 Hernandez. *Id.* at 3N. Defendant Ramirez removed the grievance from Plaintiff's property and  
12 shoved it into Defendant's open shirt. *Id.* Defendant handcuffed Plaintiff and escorted him to  
13 counselor's office. *Id.* There, correctional officers B. Davis and John Doe 2 yelled at Plaintiff  
14 and attempted to get Plaintiff to lie and say that Plaintiff and his cell mate owed money. *Id.* at  
15 3O. Plaintiff refused, and Defendant Ramirez became angry. *Id.* Defendant Ramirez asked why  
16 Plaintiff was trying to take down his partner (presumably, Defendant Hernandez). *Id.* Defendant  
17 Ramirez told Plaintiff that he would not come back to the yard if he stated that he owed money.  
18 *Id.* Plaintiff refused, at which point Defendant Ramirez informed Plaintiff that his life was going  
19 to be hell on this yard and that Plaintiff could not file his 602 grievance. *Id.*

20         Defendant Ramirez told Plaintiff Defendant Hernandez would return tomorrow to handle  
21 Plaintiff personally. *Id.* Defendant then secured Plaintiff in the C-section shower for 3 hours  
22 during the night dayroom program, while leaving Plaintiff's cell door open. *Id.* Because  
23 Plaintiff was afraid for his life, he took a razor to his wrist to attempt suicide in order to be  
24 removed from the cell before Defendant Hernandez returned. *Id.*

25         Plaintiff requests as relief monetary damages for past and future pain and suffering,  
26 including shame, humiliation, emotional distress, mental distress, and for the use of excessive  
27 force.

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1 **III. Analysis**

2 **A. Eighth Amendment - Excessive Force**

3 “What is necessary to show sufficient harm for purposes of the Cruel and Unusual  
4 Punishments Clause [of the Eighth Amendment] depends upon the claim at issue . . . .” *Hudson*  
5 *v. McMillian*, 503 U.S. 1, 8 (1992). “The objective component of an Eighth Amendment claim is  
6 . . . contextual and responsive to contemporary standards of decency.” *Id.* (internal quotation  
7 marks and citations omitted). The malicious and sadistic use of force to cause harm always  
8 violates contemporary standards of decency, regardless of whether or not significant injury is  
9 evident. *Id.* at 9; *see also Oliver v. Keller*, 289 F.3d 623, 628 (9th Cir. 2002) (Eighth  
10 Amendment excessive force standard examines *de minimis* uses of force, not *de minimis*  
11 injuries). However, not “every malevolent touch by a prison guard gives rise to a federal cause  
12 of action.” *Hudson*, 503 U.S. at 9. “The Eighth Amendment’s prohibition of cruel and unusual  
13 punishments necessarily excludes from constitutional recognition *de minimis* uses of physical  
14 force, provided that the use of force is not of a sort repugnant to the conscience of mankind.” *Id.*  
15 at 9-10 (internal quotations marks and citations omitted).

16 Plaintiff fails to state a claim against Defendant Hernandez. The alleged force used by  
17 Defendant Hernandez in this instance is at most *de minimis*. “A prison official can violate a  
18 prisoner’s Eighth Amendment rights by failing to intervene.” *Robins v. Meecham*, 60 F.3d 1436,  
19 1442 (9th Cir. 1995). Plaintiff fails to state a claim against Defendants Phealon and Doe. First,  
20 Plaintiff has not sufficiently alleged that the use of force here was excessive. Second, Plaintiff  
21 fails to allege facts which indicate Defendants Phealon and Doe had the opportunity to intervene.

22 **B. Eighth Amendment - Medical Care**

23 Plaintiff contends that Defendant John Doe did not allow Plaintiff seek medical care for  
24 his swollen wrist. The Eighth Amendment prohibits cruel and unusual punishment. “The  
25 Constitution does not mandate comfortable prisons.” *Farmer v. Brennan*, 511 U.S. 825, 832  
26 (1994) (quotation and citation omitted). A prisoner’s claim of inadequate medical care does not  
27 rise to the level of an Eighth Amendment violation unless (1) “the prison official deprived the  
28 prisoner of the ‘minimal civilized measure of life’s necessities,’” and (2) “the prison official

1 ‘acted with deliberate indifference in doing so.’” *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th  
2 Cir. 2004) (quoting *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002) (citation omitted)).  
3 The deliberate indifference standard involves an objective and a subjective prong. First, the  
4 alleged deprivation must be, in objective terms, “sufficiently serious . . . .” *Farmer*, 511 U.S. at  
5 834 (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)). Second, the prison official must “know[]  
6 of and disregard[] an excessive risk to inmate health or safety . . . .” *Id.* at 837.

7 Plaintiff fails to allege a sufficiently serious harm, and thus fails to state a claim against  
8 John Doe for denial of medical care.

### 9 **C. Supervisory Liability**

10 Plaintiff names warden Yates as a Defendant, based on a theory of supervisory liability.  
11 The term “supervisory liability,” loosely and commonly used by both courts and litigants alike, is  
12 a misnomer. *Iqbal*, 129 S. Ct. at 1949. “Government officials may not be held liable for the  
13 unconstitutional conduct of their subordinates under a theory of *respondeat superior*.” *Id.* at  
14 1948. Rather, each government official, regardless of his or her title, is only liable for his or her  
15 own misconduct. When the named defendant holds a supervisory position, the causal link  
16 between the defendant and the claimed constitutional violation must be specifically alleged. *See*  
17 *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th  
18 Cir. 1978). To state a claim for relief under § 1983 for supervisory liability, Plaintiff must allege  
19 some facts indicating that the defendant either: personally participated in the alleged deprivation  
20 of constitutional rights; knew of the violations and failed to act to prevent them; or promulgated  
21 or “implemented a policy so deficient that the policy ‘itself is a repudiation of constitutional  
22 rights’ and is ‘the moving force of the constitutional violation.’” *Hansen v. Black*, 885 F.2d 642,  
23 646 (9th Cir. 1989) (internal citations omitted); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.  
24 1989).

25 Because Plaintiff fails to allege an excessive force claim against Defendant Hernandez, he  
26 also fails to state a claim against Defendant Yates on a theory of supervisory liability. Plaintiff  
27 has not alleged facts which demonstrate Defendant Yates had knowledge of an underlying  
28 constitutional violation against Plaintiff and failed to act.

1           **D. First Amendment - Inmate Grievance**

2           Prisoners have a constitutional right to file inmate grievances. *Brodheim v. Cry*, 584 F.3d  
3 1262, 1269 (9th Cir. 2009) (citing *Rhodes v. Robinson*, 408 F.3d 559, 566 (9th Cir. 2005), and  
4 *Bruce v. Ylst*, 351 F.3d 1283, 1288 (9th Cir. 2003)). Here, Plaintiff alleges that Defendant  
5 Hernandez and Doe prevented Plaintiff from filing an inmate grievance by placing him on CTQ  
6 status. Plaintiff has not sufficiently alleged a claim. Plaintiff fails to allege sufficient facts which  
7 indicate that Defendants Hernandez and Doe prevented Plaintiff from filing an inmate grievance  
8 regarding this issue. Being placed on CTQ appears to be a temporary status, and it is not clear if  
9 CTQ status would prevent Plaintiff from filing his grievance.

10           Plaintiff does state a cognizable First Amendment claim against Defendant Ramirez.  
11 Plaintiff alleges that Defendant Ramirez told him that he could not file a grievance against  
12 Defendant Hernandez, and that Defendant Hernandez would be in to work the next day to handle  
13 Plaintiff personally. Defendant Ramirez also allegedly took Plaintiff's inmate grievance from his  
14 property. This is sufficient to allege a chilling effect on Plaintiff's right to file an inmate  
15 grievance. *Rhodes*, 408 F.3d at 567.

16 **IV. Conclusion And Recommendation**

17           Based on the foregoing, it is HEREBY RECOMMENDED that:

- 18           1. This action proceed against Defendant Ramirez for violation of the First  
19 Amendment by denying Plaintiff the right to file an inmate grievance;  
20           2. Plaintiff's claims against Defendants Yates, Hernandez, Phealon, and John Doe  
21 are dismissed for failure to state a claim upon which relief may be granted; and  
22           3. Defendants Yates, Hernandez, Phealon, and John Doe be dismissed from this  
23 action.

24           These Findings and Recommendations will be submitted to the United States District  
25 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **twenty-**  
26 **one (21) days** after being served with these Findings and Recommendations, the Plaintiff may  
27 file written objections with the Court. The document should be captioned "Objections to  
28 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file

1 objections within the specified time may waive the right to appeal the District Court's order.

2 *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

3 IT IS SO ORDERED.

4 **Dated: October 3, 2011**

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE

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