

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NICHOLAS MORAN,
Plaintiff,
v.
K. DUTRA, et al.,
Defendants.

Case No. 1:11-cv-0914-LJO-MJS
FINDINGS AND RECOMMENDATIONS FOR
DENIAL OF DEFENDANTS AUTEN AND
DUTRA’S MOTION TO DISMISS
(ECF No. 23)
FOURTEEN-DAY OBJECTION DEADLINE

Plaintiff Nicholas Moran (“Plaintiff”) is a prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

The Court screened Plaintiff’s First Amended Complaint (Am. Compl., ECF No. 11) and found that it stated cognizable claims against Defendants Ryan and Dedee for inadequate medical care and against Defendants Dutra and Auten for excessive force under the Eighth Amendment of the United States Constitution (ECF Nos. 12, 13).

Defendants Dutra and Auten move to dismiss Plaintiff’s claims pursuant to Federal Rule of Civil Procedure 12(b)(6) because Plaintiff is allegedly pursuing a 42 U.S.C. § 1983 suit as a means of contesting a rules violation conviction that altered the length of his sentence without first successfully challenging his conviction under 28 U.S.C. § 2254. (Defs.’ Mot., ECF No. 23.) Plaintiff filed an opposition. (Pl.’s Opp’n, ECF No. 28.) Defendants filed a reply. (Defs.’ Reply, ECF No. 29.)

1 Pursuant to Local Rule 230(*l*), Defendants Dutra and Auten’s motion is now ready
2 for ruling.

3 **I. LEGAL STANDARD**

4 **A. Motion to Dismiss Standard**

5 “The focus of any Rule 12(b)(6) dismissal . . . is the complaint,” Schneider v.
6 California Dept. of Corr., 151 F.3d 1194, 1197 n.1 (9th Cir. 1998), which must contain “a
7 short and plain statement of the claim showing that the pleader is entitled to relief . . . ,”
8 Fed. R. Civ. P. 8(a)(2). “To survive a motion to dismiss, a complaint must contain
9 sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’”
10 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550
11 U.S. 544, 555 (2007)); Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).
12 The mere possibility of misconduct falls short of meeting this plausibility standard. Iqbal,
13 556 U.S. at 678-679; Moss, 572 F.3d at 969.

14 Detailed factual allegations are not required, but “[t]hreadbare recitals of the
15 elements of a cause of action, supported by mere conclusory statements, do not suffice,”
16 Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 555), and courts “are not required to
17 indulge unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th
18 Cir. 2009) (internal quotation marks and citation omitted).

19 **B. Heck Bar**

20 It has long been established that state prisoners cannot challenge the fact or
21 duration of their confinement in a section 1983 action and their sole remedy lies in
22 habeas corpus relief. Wilkinson v. Dotson, 544 U.S. 74, 78 (2005). Often referred to as
23 the favorable termination rule or the Heck bar, this exception to section 1983’s otherwise
24 broad scope applies whenever state prisoners “seek to invalidate the duration of their
25 confinement - either directly through an injunction compelling speedier release or
26 indirectly through a judicial determination that necessarily implies the unlawfulness of the
27 State’s custody.” Wilkinson, 544 U.S. at 81 (emphasis added). Thus, “a state prisoner’s
28 § 1983 action is barred (absent prior invalidation) - no matter the relief sought (damages

1 or equitable relief), no matter the target of the prisoner's suit (state conduct leading to
2 conviction or internal prison proceedings) - if success in that action would necessarily
3 demonstrate the invalidity of confinement or its duration." Id. at 81-2. Heck v. Humphrey,
4 512 U.S. 477, 489 (1994) (until and unless favorable termination of the conviction or
5 sentence occurs, no cause of action under § 1983 exists).

6 **II. PLAINTIFF'S CLAIMS**

7 Plaintiff allegations are as follows:

8 On July 7, 2009, Plaintiff was summoned to the medical clinic at PVSP after he
9 reported he was in pain. (Am. Compl. at 4.) Defendant Dedee interviewed Plaintiff and
10 called him a liar. (Id.) She told Plaintiff she would make an appointment for him to see
11 the doctor in thirty days and failed to provide him with any immediate treatment. (Id.)
12 Defendant Ryan entered the room and indicated she knew about Plaintiff's previous
13 medical requests but failed to process them. (Id. at 5.) Plaintiff asked for a wheelchair
14 but instead Defendants Dutra and Auten were asked to escort Plaintiff out of the clinic.
15 (Id.) Plaintiff tried to walk out of the clinic but he could not do so. (Id.) Defendants Dutra
16 and Auten tackled Plaintiff, threw him to the floor, cuffed him, placed a knee on Plaintiff's
17 back, and cut his left wrist. (Id. at 5-6.) Defendants Dutra and Auden, with additional
18 staff members, dragged Plaintiff out of the office. (Id. at 6.)

19 From the clinic Plaintiff was taken to a holding cell. (Am. Compl. at 6.) Plaintiff
20 asked Defendants Dutra and Auten, as well as other staff members, to loosen the
21 handcuffs but his requests were ignored. (Id.) Eventually Defendants Dutra and Auten
22 dragged Plaintiff to the program office. (Id.) While doing this they insulted him and told
23 him to walk. (Id.) Plaintiff was found guilty of a rules violation report for disruptive
24 behavior. (Id. at Ex. 9.)

25 **III. ANALYSIS**

26 Defendants Auten and Dutra's argument that Plaintiff's claims are Heck barred is
27 without merit.

28 Although Plaintiff did lose credits for refusing to leave a medical building after he

1 was given orders to do so (Am. Compl. at Ex. 9), a finding in Plaintiff's favor here would
2 not require the invalidity of the Rules Violation Report. Plaintiff's First Amended
3 Complaint does not dispute the sequence of events giving rise to the rules violation and
4 the lost credits. Plaintiff acknowledges that he did not leave the medical building as
5 directed because he was in too much pain, but alleges that the force used to make him
6 leave was excessive and also that he was denied adequate medical care. (Id. at 5.) If a
7 jury were to find that Plaintiff's version of events were correct, it would not require the
8 Rules Violation Report to be undone.

9 At this stage of the proceedings, it does not appear that Plaintiff's version of the
10 events contradicts the findings of the Rules Violation Report to such a degree that the
11 findings of the Rules Violation Report could not stand if Plaintiff were to prevail on his
12 claims. Plaintiff concedes that he did not leave the clinic as directed. That failure is the
13 basis for the findings of the Rules Violation Report. This case challenges not the basis
14 for the rules violation, but rather the reasonableness of the force used in response to
15 that refusal.

16 Plaintiff's claims would only be barred by the favorable termination rule if a finding
17 in his favor on the claim would necessarily imply the invalidity of the disciplinary
18 conviction. Wilkinson, 544 U.S. at 81-2; Edwards v. Balisok, 520 U.S. 641, 80-81
19 (1997). A finding that defendants' use of force was unprovoked and constituted
20 excessive force would not necessarily imply the invalidity of his Rules Violation Report.
21 The Court does not find that Plaintiff's excessive force and inadequate medical care
22 claims are barred by the favorable termination rule.

23 **IV. CONCLUSION AND RECOMMENDATION**

24 Based on the foregoing, the Court HEREBY RECOMMENDS that Defendants
25 Auten and Dutra's motion to dismiss (ECF No. 23) be denied.

26 These Findings and Recommendations are submitted to the United States District
27 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
28 Within fourteen (14) days after being served with these Findings and Recommendations,

1 any party may file written objections with the Court and serve a copy on all parties. Such
2 a document should be captioned "Objections to Magistrate Judge's Findings and
3 Recommendations." Any reply to the objections shall be served and filed within ten days
4 after service of the objections. The parties are advised that failure to file objections
5 within the specified time may waive the right to appeal the District Court's order.
6 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: August 15, 2013

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE