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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 ANTWOINE BEALER,

12 Plaintiff,

13 vs.

14 WARDEN OF KVSP, et al.,

15 Defendants.
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1:12-cv-01516-AWI-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTION IN LIMINE BE DENIED, AND
THAT DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT BE DENIED
(ECF Nos. 48, 59.)

OBJECTIONS, IF ANY, DUE WITHIN
THIRTY DAYS

20 **I. BACKGROUND**

21 Antwoine Bealer ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis
22 with this civil rights action pursuant to 42 U.S.C. § 1983. On September 14, 2012, Plaintiff
23 filed the Complaint commencing this action. (ECF No. 1.) This case now proceeds with the
24 Fourth Amended Complaint filed on March 28, 2014, against defendants Correctional Officer
25 (C/O) S. Rios and Sergeant (Sgt.) Brannum ("Defendants") for use of excessive force in
26 violation of the Eighth Amendment.¹ (ECF No. 21.)
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28 ¹ On October 29, 2014, the court issued an order dismissing all other claims and defendants from
this action for Plaintiff's failure to state a § 1983 claim. (ECF No. 33.)

1 On April 13, 2015, Defendants filed a motion for summary judgment.² (ECF No. 48.)
2 On May 11, 2015, Plaintiff filed an opposition to the motion.³ (ECF No. 55.) On May 18,
3 2015, Defendants filed a reply to the opposition. (ECF No. 57.)

4 Defendants' motion for summary judgment is now before the court. Local Rule 230(l).
5 For the reasons set forth below, the court recommends that Defendants' motion be denied on
6 the grounds that Plaintiff's excessive force claim is not barred by the rule in Heck v.
7 Humphrey⁴, and Defendants failed to show an absence of a triable issue of fact.

8 **II. SUMMARY JUDGMENT STANDARD**

9 Any party may move for summary judgment, and the Court shall grant summary
10 judgment if the movant shows that there is no genuine dispute as to any material fact and the
11 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks
12 omitted); Washington Mutual Inc. v. U.S., 636 F.3d 1207, 1216 (9th Cir. 2011). Each party's
13 position, whether it be that a fact is disputed or undisputed, must be supported by (1) citing to
14 particular parts of materials in the record, including but not limited to depositions, documents,
15 declarations, or discovery; or (2) showing that the materials cited do not establish the presence
16 or absence of a genuine dispute or that the opposing party cannot produce admissible evidence
17 to support the fact. Fed. R. Civ. P. 56(c)(1) (quotation marks omitted). The Court may
18 consider other materials in the record not cited to by the parties, but it is not required to do so.
19 Fed. R. Civ. P. 56(c)(3); Carmen v. San Francisco Unified School Dist., 237 F.3d 1026, 1031
20 (9th Cir. 2001); accord Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010).

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23 ² Concurrently with their motion for summary judgment, Defendants served Plaintiff with the
24 requisite notice of the requirements for opposing the motion. Woods v. Carey, 684 F.3d 934, 939-41 (9th Cir.
25 2012); Rand v. Rowland, 154 F.3d 952, 960-61 (9th Cir. 1998).

26 ³ Based on the mailbox rule of Houston v. Lack, 487 U.S. 266, 108 S.Ct. 2379 (1988), a pro se
27 prisoner's court filing is deemed filed at the time the prisoner delivers it to prison authorities for forwarding to the
28 court clerk. Douglas v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009). The court finds Plaintiff's opposition,
signed on May 3, 2015, to be timely filed under the mailbox rule.

⁴ 512 U.S. 477, 486-87 (1994).

1 Defendant does not bear the burden of proof at trial and in moving for summary
2 judgment, he need only prove an absence of evidence to support Plaintiff's case. In re Oracle
3 Corp. Securities Litigation, 627 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp. v. Catrett,
4 477 U.S. 317, 323, 106 S.Ct. 2548 (1986)). If Defendant meets his initial burden, the burden
5 then shifts to Plaintiff "to designate specific facts demonstrating the existence of genuine issues
6 for trial." Id. (citing Celotex Corp., 477 U.S. at 323). This requires Plaintiff to "show more
7 than the mere existence of a scintilla of evidence." Id. (citing Anderson v. Liberty Lobby, Inc.,
8 477 U.S. 242, 252, 106 S.Ct. 2505 (1986)).

9 In judging the evidence at the summary judgment stage, the Court may not make
10 credibility determinations or weigh conflicting evidence, Soremekun v. Thrifty Payless, Inc.,
11 509 F.3d 978, 984 (9th Cir. 2007) (quotation marks and citation omitted), and it must draw all
12 inferences in the light most favorable to the nonmoving party and determine whether a genuine
13 issue of material fact precludes entry of judgment, Comite de Jornaleros de Redondo Beach v.
14 City of Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011) (quotation marks and citation
15 omitted), cert. denied, 132 S.Ct. 1566 (2012). The Court determines only whether there is a
16 genuine issue for trial and in doing so, it must liberally construe Plaintiff's filings because he is
17 a pro se prisoner. Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010) (quotation marks
18 and citations omitted).

19 **III. PLAINTIFF'S CLAIMS AT ISSUE⁵**

20 Plaintiff is in the custody of the California Department of Corrections and
21 Rehabilitation (CDCR), currently housed at Corcoran State Prison (CSP) in Corcoran,
22 California. The events giving rise to the claims at issue in this action allegedly occurred at
23 Kern Valley State Prison (KVSP) in Delano, California, when Plaintiff was incarcerated there.

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27 ⁵ Plaintiff's Fourth Amended Complaint is verified and his allegations constitute evidence where
28 they are based on his personal knowledge of facts admissible in evidence. Jones v. Blanas, 393 F.3d 918, 922-23
(9th Cir. 2004). The summarization of Plaintiff's claim in this section should not be viewed by the parties as a
ruling that the allegations are admissible. The Court will address, to the extent necessary, the admissibility of
Plaintiff's evidence in the sections which follow.

1 Plaintiff claims that defendants Rios and Brannum used excessive force against him in
2 violation of the Eighth Amendment. Plaintiff's allegations follow.

3 On November 1st, 2010, Officers Rios and Brannum were escorting Plaintiff to the
4 Program Office for refusing a cell mate. Officer Brannum said to Plaintiff repeatedly, "You're
5 running the yard now?!" Plaintiff asked him what he was talking about. Shortly after, Plaintiff
6 was pushed/thrown to the ground and Officer Brannum said, "Sometimes we think that we are
7 being tough, then we find out that we are not so tough," while Plaintiff's arms were being bent
8 in awkward positions and knees were being placed in Plaintiff's back and on his legs.
9 Afterward, Plaintiff was placed in the cage inside the Program Office. Plaintiff was bleeding
10 from his injuries and was examined by a nurse. Plaintiff was placed in the ASU
11 (Administrative Segregation Unit) for approximately 7 months.

12 **IV. DEFENDANTS' UNDISPUTED FACTS**

13 1. Plaintiff Bealer is a prisoner in the custody of the California Department of Corrections
14 and Rehabilitation (CDCR) and was incarcerated at the Kern Valley State Prison (KVSP), on
15 November 1, 2010. (Hancock Decl. ¶3.)

16 2. Defendant Rios was a correctional officer employed by CDCR at KVSP on November
17 1, 2010. (Rios Decl. ¶1.)

18 3. Defendant Brannum was a correctional sergeant employed by CDCR at KVSP on
19 November 1, 2010. (Brannum Decl. ¶1.)

20 4. On November 1, 2010, at approximately 4:54 p.m., Defendants Brannum and Rios
21 escorted Bealer to the Program Office for his placement in Administrative Segregation for
22 refusal to accept a cellmate. (Brannum Decl. ¶4; Rios Decl. ¶4.)

23 5. Bealer was issued a CDC-115 rule violation report for refusing a cellmate/refusing
24 assigned housing under CCR 3005(c). (Brannum Decl. ¶6; Rios Decl. ¶6; Hancock Decl. ¶4,
25 Ex. B.)

26 6. Bealer has a long history of refusing to accept cellmates. (Brannum Decl. ¶7; Rios Decl.
27 ¶ 7.)

1 7. Defendants Rios and Brannum escorted Bealer, who was handcuffed, out of building 7.
2 (Brannum Decl. ¶¶4, 8, 9; Rios Decl. ¶¶4, 8, 9.)

3 8. While crossing the grass in the yard, Bealer was informed he was going to
4 Administrative Segregation placement for his refusal to accept a cellmate and for violating
5 CCR 3005 (c), Refusing Housing Assignment. (Brannum Decl. ¶10; Rios Decl. ¶10.)

6 9. Upon hearing this, Bealer became resistive by holding his feet in front of himself to stop
7 the escort. (Brannum Decl. ¶11; Rios Decl. ¶11.)

8 10. Both Defendants Rios and Brannum ordered Bealer to continue. (Brannum Decl. ¶ 12;
9 Rios Decl. ¶12.)

10 11. After crossing the grass area and going onto the asphalt, Bealer stated “This is bullshit”
11 and turned toward Officer Rios and attempted to head-butt him. (Brannum Decl. ¶14; Rios
12 Decl. ¶14.)

13 12. A minimal amount of physical force was then used to gain control of Bealer. (Brannum
14 Decl. ¶23; Rios Decl. ¶23.)

15 13. Defendant Brannum was on Bealer’s left side holding onto Bealer’s left forearm.
16 (Brannum Decl. ¶15.) When Bealer attempted to strike Defendant Rios, Defendant Brannum
17 pulled back and upward while holding onto Bealer’s forearm. (Brannum Decl. ¶15.) With
18 Defendants Brannum and Rios’ combined weight, they were able to put Bealer on the ground.
19 (Brannum Decl. ¶¶16-18; Rios Decl. ¶¶17-19.)

20 14. Defendant Rios was on Bealer’s right side holding onto Bealer’s right forearm when
21 Bealer attempted to head-butt him. (Rios Decl. ¶15.) Defendant Rios lifted Bealer’s right
22 forearm up, bending Bealer at the waist, and forced him to the ground. (Brannum Decl. ¶¶16-
23 18; Rios Decl. ¶¶ 17-19.)

24 15. Leg restraints were placed on Bealer following the incident. (Brannum Decl. ¶21; Rios
25 Decl. ¶21.)

26 16. Bealer alleges he was assaulted by Defendants Rios and Brannum after Defendant
27 Brannum repeatedly stated, “you’re running the yard now” to Bealer and then he was pushed to
28 the ground by Rios and Brannum. (Fourth Amd. Compl. ¶4.)

1 17. Bealer was escorted to the infirmary where an abrasion to Bealer's right knee and the
2 back of his left ankle were noted on the Medical Report of Injury or Unusual Occurrence
3 following the incident. (Hancock Decl. ¶3, Ex. A.)

4 18. Bealer claims he received additional injuries that were not documented. (Fourth Amd.
5 Compl. ¶4.)

6 19. Defendant Rios also received a minor injury from the incident. (Hancock Decl. ¶3, Ex.
7 A.)

8 20. Bealer was issued a CDC 115 Rules Violation Report in connection with this incident,
9 charging him with violating the California Code of Regulations, Title 15, Section 3005 (d)(1),
10 for the specific attempted battery of a peace officer. (Hancock Decl. ¶3, Ex. A.)

11 21. Bealer was rehousing in Administrative Segregation as a result of the incident. (Hancock
12 Decl. ¶3, Ex. A.)

13 22. Bealer received a CDC-115 Rules Violation Report authored by Defendant Rios on
14 November 11, 2010 for the November 1, 2010 incident, charging Bealer with "assault on a
15 police officer resulting in use of excessive force." (Hancock Decl. ¶3, Ex. A.)

16 23. On February 4, 2011, Bealer appeared at a disciplinary hearing on the Rules Violation
17 Report. (Hancock Decl. ¶3, Ex. A.)

18 24. Bealer pled "not guilty" to the charges at the hearing stating, "I didn't assault no one."
19 The plea was considered and the defense was offered. (Hancock Decl. ¶3, Ex. A.)

20 25. The hearing officer set forth the facts and evidence substantiating the charge, finding
21 the following: On November 1, 2010, at approximately 4:54 p.m., Bealer suddenly attempted
22 to turn toward Rios and attempted to strike Rios on the head with his head and right shoulder
23 while Rios and Brannum were walking on the Facility A Upper Yard between building 8 and
24 the patio area. (Hancock Decl. ¶3, Ex. A.)

25 26. The Senior Hearing Officer found there was no evidence at the hearing to exonerate
26 Bealer and that a finding of guilty was appropriate. (Hancock Decl. ¶3, Ex. A.)

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1 27. The Senior Hearing Officer who presided over the hearing found Bealer guilty of
2 violating Cal. Code Regs. tit. 15, § 3005(d)(1) “force or violence – assault on a peace officer
3 resulting in use of force.”¹ (Hancock Decl. ¶3, Ex. A.)

4 28. As a result of this rules-violation conviction, Bealer was assessed one hundred and fifty
5 days loss of behavioral/work credit and ninety-days loss of privilege. (Hancock Decl. ¶3, Ex.
6 A.)

7 29. The CDC 115 Rules Violation Report was never overturned. (Hancock Decl. ¶5, Ex. A.)

8 **V. PLAINTIFF’S STATEMENT OF FACTS⁶**

9 1. On November 1, 2010, I was told that I was going to be placed in “the Hole”
10 (Administrative Segregation) for refusing a cell mate, and to turn around and “cuff up.”

11 2. I complied.

12 3. The hand cuffs were placed on me.

13 4. After the door was opened, I was told to step to the left side of the door.

14 5. My pants were then stripped off, forcefully, and I was told to take off my shoes.

15 6. On the way down the stairs, I had to keep myself from falling. By the way, I was being
16 escorted.

17 7. After we got outside of the building, Officer Brannum kept placing his right leg into my
18 path as were walking and stating, “You’re running the yard now,” repeatedly.

19 8. I kept asking him what he was talking about.

20 9. While talking to Officer Brannum I kept turning to the left to face him.

21 10. Office Rios kept saying, “Face front.”

22 11. As we got near the front on the tower, I was pushed/thrown to the ground and battered.

23 12. I kept hearing someone say, “He’s not resisting.” (Officers Brannum and Rios know
24 this to be true.)

25 13. I was then leg-shackled and taken to the MTA Office.

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28 ⁶ Plaintiff did not cite evidence for these thirteen facts. Fed. R. Civ. P. 56(c)(1).

1 **VI. PLAINTIFF’S MOTION IN LIMINE**

2 A motion in limine is ordinarily used to exclude evidence from trial.⁷ Here, however,
3 Plaintiff has filed a motion in limine to exclude evidence at the summary judgment stage of this
4 action. (ECF No. 59.) Plaintiff argues that his prison assault conviction is prejudicial to his
5 excessive force claims, because this civil action is not an appeal of a criminal conviction, and
6 the assault charge confuses the issues.

7 “The court may exclude relevant evidence if its probative value is substantially
8 outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues,
9 misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”
10 Fed. R. Evid. 403. Evidence is relevant if (a) it has any tendency to make a fact more or less
11 probable that it would be without the evidence, and (b) the fact is of consequence in
12 determining the action.” Fed. R. Evid. 401.

13 Here, Plaintiff’s assault conviction is relevant to Defendants’ argument in the motion
14 for summary judgment that Plaintiff’s excessive force claims are barred by the Heck rule. The
15 court finds that the probative value of the conviction at this stage of the proceedings outweighs
16 the danger of any unfair prejudice to Plaintiff or confusion of the issues. Therefore, Plaintiff’s
17 motion in limine should be denied.⁸

18 **VII. DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

19 Defendants argue that defendants Brannum and Rios did not use excessive force against
20 Plaintiff in violation of the Eighth Amendment, that defendants Brannum and Rios are entitled
21 to qualified immunity, and that Plaintiff is Heck-barred from pursuing this action. Defendants
22 support their motion with the Declarations of R. Brannum, S. Rios, and B. Hancock, and
23 documents from Plaintiff’s prison file including, inter alia, a copy of Rules Violation Report
24 No. FA-10-11-001. (ECF Nos. 48-4, 48-5, 48-6.)

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27 ⁷ A party may use a motion in limine to exclude inadmissible or prejudicial evidence before it is
28 actually introduced *at trial*. See Luce v. United States, 469 U.S. 38, 40 n.2 (1984) (emphasis added).

⁸ If this case proceeds to trial, Plaintiff shall have another opportunity to bring motions in limine
concerning evidence to be used at trial.

1 **A. Heck v. Humphrey Rule**

2 Defendants claim that Plaintiff's excessive force claims against defendants Brannum
3 and Rios are barred by the Supreme Court's decisions in Heck v. Humphrey, 512 U.S. 477,
4 486-87 (1994) and Edwards v. Balisok, 520 U.S. 641, 648 (1997), because an award for
5 damages would necessarily imply the invalidity of his disciplinary conviction for assault of a
6 peace officer pursuant to Cal. Code Regs., tit. 15 § 3005(d)(1). Because Plaintiff's disciplinary
7 conviction has not been invalidated and his forfeited behavioral credits have not been restored,
8 Defendants argue that Plaintiff's excessive force claims are inconsistent with his disciplinary
9 conviction, and thus, must be brought in a habeas action, not pursuant to 42 U.S.C. § 1983.

10 Uncontroverted evidence in the record shows that after investigation and a disciplinary
11 hearing conducted on February 4, 2011, Plaintiff was convicted of assault on a peace officer
12 Resulting in the Use of Force in violation of Cal. Code Regs., tit. 15 § 3005(d)(1), and assessed
13 a 150-day loss of credits which have not been restored. Defendants submit as evidence a copy
14 of Rules Violation Report No. FA-10-11-001, retrieved from Plaintiff's case records and
15 authenticated by the CDCR's custodian of records, B. Hancock. (Hancock Decl., ECF No. 48-
16 ¶¶3, 5; Exh. A at 5-12.)

17 **Discussion**

18 “A state prisoner cannot use a § 1983 action to challenge the ‘fact or duration of his
19 confinement,’ because such an action lies at the ‘core of habeas corpus.’” Simpson v. Thomas,
20 528 F.3d 685, 693 (9th Cir. 2008) (quoting Preiser v. Rodriguez, 411 U.S. 475, 489 (1973)).
21 Thus, where a § 1983 action seeking damages alleges constitutional violations that would
22 necessarily imply the invalidity of a conviction or sentence, the prisoner must first establish
23 that the underlying sentence or conviction has already been invalidated on appeal, by a habeas
24 petition, or terminated in his favor via some other similar proceeding. Heck, 512 U.S. at 438-
25 37. This “favorable termination” rule applies to prison disciplinary proceedings, if those
26 proceedings resulted in the loss of good-time or behavior credits. Balisok, 520 U.S. at 646-48
27 (holding that claim for monetary and declaratory relief challenging validity of procedures used
28 to deprive prisoner of good-time credits is not cognizable under § 1983); see also Wilkinson v.

1 Dotson, 544 U.S. 74, 81-82 (2005) (explaining that “a state prisoner’s § 1983 action is barred
2 (absent prior invalidation) no matter the relief sought (damages or equitable relief), no matter
3 the target of the prisoner’s suit (state conduct leading to conviction or internal prison
4 proceedings) if success in that action would necessarily demonstrate the invalidity of
5 confinement or its duration” (emphasis omitted)). Stated another way, a § 1983 claim is barred
6 if the “plaintiff could prevail only by negating ‘an element of the offense of which he has been
7 convicted.’” Cunningham v. Gates, 312 F.3d 1148, 1153-54 (9th Cir. 2002) (citing Heck, 512
8 U.S. at 487 n. 6). However, when the § 1983 claim does not necessarily implicate the
9 underlying disciplinary action (or criminal conviction), it may proceed. See Muhammad v.
10 Close, 540 U.S. 749, 754-55 (2004).

11 In several cases, the Ninth Circuit has applied Heck’s favorable termination requirement
12 to consider, and sometimes preclude, excessive force claims brought pursuant to 42 U.S.C. §
13 1983. For example, in Cunningham, the case upon which Defendants rely, the Ninth Circuit
14 found § 1983 excessive force claims filed by a prisoner who was convicted of felony murder
15 and resisting arrest were barred by Heck because his underlying conviction required proof of an
16 “intentional provocative act” which was defined as “not in self defense.” 312 F.3d at 1152. A
17 finding that police had used unreasonable force while effecting the plaintiff’s arrest, the court
18 held, would “call into question” the validity of factual disputes which had necessarily already
19 been resolved in the criminal action against him. Id. at 1154. However, in Smith v. City of
20 Hemet, 394 F.3d 689 (9th Cir. 2005), the Ninth Circuit considered whether excessive force
21 allegations of a prisoner who pled guilty to resisting arrest pursuant to Cal. Penal Code §
22 148(a)(1) were also barred by Heck and found that “Smith’s § 1983 action was not barred . . .
23 because the excessive force may have been employed against him subsequent to the time he
24 engaged in the conduct that constituted the basis for his conviction.” Id. at 693. Under such
25 circumstances, the Ninth Circuit held that Smith’s § 1983 action “neither demonstrated nor
26 necessarily implied the invalidity of his conviction.” Id.; see also Sanford v. Motts, 258 F.3d
27 1117, 1120 (9th Cir. 2001) (“If the officer used excessive force subsequent to the time Sanford
28 interfered with the officer’s duty, success in her section 1983 claim will not invalidate her

1 conviction. Heck is no bar.”); Hooper v. County of San Diego, 629 F.3d 1127, 1134 (9th Cir.
2 2011) (holding that a conviction for resisting arrest under Cal. Penal Code § 148(a)(1) does not
3 “bar a § 1983 claim for excessive force under Heck if the conviction and the § 1983 claim are
4 based on different actions during ‘one continuous transaction’”).

5 Here, unlike the defendants in Cunningham, defendants Brannum and Rios have not
6 shown that Plaintiff’s excessive force claims against them are necessarily inconsistent with his
7 adjudication of guilt for assault on a peace officer. Thus, this court cannot say that Plaintiff’s
8 excessive force claims “necessarily imply the invalidity” of his assault conviction. Heck, 512
9 U.S. at 487. The factual context in which the force was used is disputed. Thus, even though
10 Plaintiff was found guilty of willfully committing an assault by attempting to strike Officer
11 Rios on the head with his head and right shoulder, Officers Brannum and Rios, if Plaintiff’s
12 testimony is believed, nevertheless could be found liable for responding “maliciously and
13 sadistically” with the intent to cause him harm. See Hudson v. McMillian, 503 U.S. at 1, 7
14 (1992); Simpson v. Thomas, No. 2:03-cv-0591 MCE GGH, 2009 WL1327147 at *4 (E.D. Cal.
15 May 12, 2009) (success on the plaintiff’s Eighth Amendment excessive force claim would not
16 necessarily invalidate his battery conviction pursuant to Cal. Code Regs., tit. 15 § 3005(c)
17 because “even if Defendant acted unlawfully by using excessive force, Plaintiff could still have
18 been guilty of battery”); accord Gipbsin v. Kernan, No. CIV S-07-0157 MCE EFB P, 2011 WL
19 533701 at *5-6 (E.D. Cal. 2011); Gabalys v. Plainer, No. CIV S-09-0253-CMK, 2010 WL
20 4880637 at *7 (E.D. Cal. 2010) (“It is possible for defendants to have used excessive force and
21 for plaintiff to have attempted to assault a correctional officer. Thus, success on plaintiff’s civil
22 rights claims would not necessarily imply that the guilty finding and resulting loss of good-time
23 credits is invalid.”); Candler v. Woodford, No. C 04-5453 MMC, 2007 WL 3232435 at *7
24 (N.D. Cal. Nov. 1, 2007) (“Because defendants have not shown that a finding of their use of
25 excessive force would necessarily negate an element of the battery offense, the Court cannot
26 conclude that plaintiff’s claims are barred under Heck.”)

27 Based on the foregoing, the court does not find that Plaintiff’s excessive force claims
28 are barred by the Heck rule.

1 **B. Excessive Force – Eighth Amendment Claim**

2 **1. Legal Standards**

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”
5 Hudson, 503 U.S. at 8. “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.” Id. at 9. “The Eighth Amendment’s prohibition of cruel and unusual punishments
13 necessarily excludes from constitutional recognition *de minimis* uses of physical force,
14 provided that the use of force is not of a sort ‘repugnant to the conscience of mankind.’” Id. at
15 9-10 (internal quotations marks and citations omitted).

16 “[W]henver prison officials stand accused of using excessive physical force in
17 violation of the Cruel and Unusual Punishments Clause, the core judicial inquiry is . . . whether
18 force was applied in a good-faith effort to maintain or restore discipline, or maliciously and
19 sadistically to cause harm.” Id. at 7. “In determining whether the use of force was wanton and
20 unnecessary, it may also be proper to evaluate the need for application of force, the relationship
21 between that need and the amount of force used, the threat reasonably perceived by the
22 responsible officials, and any efforts made to temper the severity of a forceful response.” Id.
23 (internal quotation marks and citations omitted). “The absence of serious injury is . . . relevant
24 to the Eighth Amendment inquiry, but does not end it.” Id.

25 **2. Defendants’ Position**

26 Defendants argue that their actions of subduing Plaintiff by pushing him to the ground
27 after he attempted to assault Officer Rios do not amount to an excessive use of force as a matter
28 of law. Defendants assert that there is no evidence to show that the minimal force used was

1 used for any reason other than to restore discipline and order. Defendants also assert that
2 Plaintiff only received minimal injuries consisting of scrapes on his knee and ankle from the
3 incident. Defendants argue that the undisputed evidence shows they reasonably perceived
4 Plaintiff to pose a threat to safety, they employed force only after Plaintiff attempted to assault
5 defendant Rios, and the force utilized to subdue Plaintiff was reasonable and minimal.
6 Defendants' evidence consists of their declarations.

7 "On November 1, 2010 at approximately 4:54 p.m., I was tasked to assist
8 with the escort of Plaintiff Bealer from Building 7 to the Program Office
9 to await placement in Administrative Segregation for refusing to accept a
10 cellmate. Plaintiff Bealer is a prisoner in the custody of the CDCR and
11 was incarcerated at KVSP on November 1, 2010. Bealer was previously
12 issued a CDC-115 rule violation report for refusing a cellmate/refusing
13 assigned housing under CCR 3005(c). Bealer has a long history of
14 refusing to accept cellmates. Correctional Officer Rios was also tasked
15 with the escort. Bealer was handcuffed for the escort. While crossing
16 the grass in the yard, correctional officer Rios informed Bealer he was
17 going to Administrative Segregation placement for his refusal to accept a
18 cellmate and for violating CCR 3005(c), Refusing Housing Assignment.
19 Upon hearing this, Bealer became resistive by holding his feet in front of
20 himself to stop the escort. Correctional Officer Rios and I ordered
21 Bealer to continue. Bealer initially complied, but was visibly upset.
22 When we arrived on the asphalt on the Facility A upper yard, without
23 warning, Bealer aggressively thrust his head and right shoulder toward
24 Rios in an attempt to head-butt him, knocking both Rios and myself off
25 balance. Based on Bealer's attempt to head-butt correctional officer
26 Rios, I reacted by lifting Bealer's left arm back and upward, as I was
27 located on Bealer's left side holding onto his left forearm. Our
28 combined efforts caused Bealer to bend at the waist. Rios ordered
Bealer to get down. He did not comply. Based on Bealer's refusal to
comply with correctional officer Rios' order, Rios and I used our
combined body weight and momentum to force Bealer to the ground. I
called a Code 1 Resistive Inmate via my institutional radio. I maintained
control of Bealer's left arm until responding staff arrived."

"My use of physical holds and force on Bealer was necessary because he
attempted to assault correctional officer Rios by head-butting him.
Bealer refused to comply with our orders to continue walking across the
yard and then to get down after he attempted to assault correctional
officer Rios. My use of physical force to subdue Bealer after he
displayed combative conduct was solely to regain control of him and to
secure my safety, that of other correctional staff and inmates, and that of
Bealer himself. I never had any malicious intent to harm Bealer during
the escort."

(Decl. of R. Brannum, ECF No. 48-4 ¶¶4-20, 23.)

"On November 1, 2010 at approximately 4:54 p.m., I was tasked with
escorting Plaintiff Bealer from Building 7 to the Program Office to await
placement in Administrative Segregation for refusing to accept a

1 cellmate. Plaintiff Bealer is a prisoner in the custody of the CDCR and
2 was incarcerated at KVSP on November 1, 2010. Bealer was previously
3 issued a CDC-115 rule violation report for refusing a cellmate/refusing
4 assigned housing under CCR 3005(c). Bealer has a long history of
5 refusing to accept cellmates. Correctional Sergeant Brannum was
6 tasked with assisting me with the escort. Bealer was handcuffed for the
7 escort. While crossing the grass in the yard, I informed Bealer he was
8 going to Administrative Segregation placement for his refusal to accept a
9 cellmate and for violating CCR 3005(c), Refusing Housing Assignment.
10 Upon hearing this, Bealer became resistive by holding his feet in front of
11 himself to stop the escort. Sergeant Brannum and I ordered Bealer to
12 continue. Bealer was initially compliant but kept repeating, ‘This is
13 fucking bullshit.’ After crossing the grass area and going onto the
14 asphalt on the Facility A upper yard between FAB8 and the patio area,
15 Bealer suddenly attempted to turn toward me quickly and attempted to
16 strike me on the head with his head and right shoulder. Based on
17 Bealer’s attempt to head-butt me, I reacted by moving my head out of the
18 way and lifted his right arm upward, as I was located on Bealer’s right
19 side holding onto his right forearm. Our combined efforts caused Bealer
20 to bend at the waist. I ordered Bealer to get down. He did not comply.
21 Based on Bealer’s refusal to comply with my order, Sergeant Brannum
22 and I used our combined body weight and momentum to force Bealer to
23 the ground. I called a Code 1 Resistive Inmate via my institutional radio.
24 I maintained control of Bealer’s right arm until responding staff arrived.”

“My use of physical holds and force on Bealer was necessary because he
attempted to assault me by head-butting me. Bealer refused to comply
with my orders to continue walking across the yard and then to get down
after he attempted to assault me. My use of physical force to subdue
Bealer after he displayed combative conduct was solely to regain control
of him and to secure my safety, that of other correctional staff and
inmates, and that of Bealer himself. I never had any malicious intent to
harm Bealer during the escort.”

(Decl. of S. Rios, ECF No. 48-5 ¶¶4-20, 23.)

3. Plaintiff’s Position

Plaintiff argues that unnecessary and excessive force was used against him by
Defendants while he was being escorted to the program office to await placement in the ASU.
Plaintiff’s evidence consists of his allegations in the verified Fourth Amended Complaint.⁹
(ECF No. 21.) Plaintiff’s factual allegations in the Fourth Amended Complaint consist of the
following, in their entirety:

“On November 1st, 2010, Officers Rios and Brannum were escorting me
to the Program Office for refusing a cell mate. Officer Brannum said to
me repeatedly, ‘You’re running the yard now?!’ I asked him what he

⁹ Plaintiff’s opposition to Defendants’ motion for summary judgment is not verified and
therefore has no evidentiary value. Moran v. Selig, 447 F.3d 748, 759-60 (9th Cir. 2006).

1 was talking about. Shortly after, I was pushed/thrown to the ground and
2 Officer Brannum said, ‘Sometimes we think that we are being tough,
3 then we find out that we are not so tough,’ while my arms were being
4 bent in awkward positions and knees were being placed in my back and
5 on my legs. After, I was placed in the cage inside the Program Office. I
6 asked Officer Epperson if he could remove the handcuffs from my wrists
7 and legs. He replied, ‘I don’t give a f--- about you.’ I stated that he
8 would not say that on the report. He then said, ‘You can tell them that I
9 told you to suck my sweaty salty s---.’ I responded that I would. While
10 the nurse was examining me, I noticed that she was not marking down
11 my injuries or recording that they were bleeding. I questioned her as to
12 why, and she replied that she did not see anything. After I had been in
13 ASU (Administrative Segregation Unit) for approximately 7 months,
14 Associate Warden P. Denny placed me on behavior modification for
15 again refusing a cell mate, and all of my property was taken, including
16 eating utensils, hygiene products, sheets, blankets, and t-shirts.”

17 (Fourth Amd Cmp, ECF No. 21 at 3-4 ¶IV.)

18 **4. Discussion**

19 Defendants Rios and Brannum declare that while they were escorting Plaintiff across
20 the prison yard on November 1, 2010, Plaintiff suddenly attempted to strike Officer Rios on the
21 head with his head and right shoulder. (Decl. of R. Brannum, ECF No. 48-4 ¶¶4, 14; Decl. of
22 S. Rios, ECF No. 48-5 ¶¶4, 14.) Defendants declare that they reacted to Plaintiff’s attempt to
23 head-butt Officer Rios by lifting Plaintiff’s arms upward, causing Plaintiff to bend at the waist.
24 (Decl. of R. Brannum ¶¶15-16; Decl. of S. Rios ¶¶15-17.) Defendant Rios declares that he
25 ordered Plaintiff to get down, and when Plaintiff refused, defendants Rios and Brannum used
26 their combined body weight and momentum to force Plaintiff to the ground. (Decl. of S. Rios
27 ¶¶18-19.) Defendants declare that the physical force they used against Plaintiff was necessary
28 because he attempted to assault Officer Rios, and after Plaintiff refused to comply with orders
to get down, they used force solely to regain control of Plaintiff and to secure their safety, that
of other correctional staff and inmates, and that of Plaintiff himself. (Decl. of R. Brannum ¶23;
Decl. of S. Rios ¶23.) Defendants also specifically deny having any malicious intent to harm
Plaintiff during the escort. (Id.)

In contrast, Plaintiff’s account of the escort indicates that he and the officers were
walking along and talking, when Plaintiff was suddenly thrown to the ground forcefully enough
to cause injury. (Fourth Amd Cmp, Doc. 21 at 3-4 ¶IV.) Plaintiff declares he was talking to
Officer Brannum as they walked, asking Brannum what he was talking about, and shortly

1 thereafter Plaintiff was thrown to the ground and his arms were bent in awkward positions. (Id.
2 at 3 ¶IV.) In addition, knees were placed in Plaintiff’s back and on his legs. (Id.) Plaintiff also
3 declares that he was bleeding from his injuries when the nurse examined him. (Id. at 4.)

4 The opposing parties’ differing accounts of the escort raise a factual dispute over the
5 circumstances under which Defendants used force against Plaintiff. This factual dispute is
6 material to Plaintiff’s Eighth Amendment claim and therefore, neither of the defendants, Rios
7 or Brannum, is entitled to judgment as a matter of law on the issue of excessive force.

8 **C. Qualified Immunity**

9 The doctrine of qualified immunity protects government officials “from liability for
10 civil damages insofar as their conduct does not violate clearly established statutory or
11 constitutional rights of which a reasonable person would have known.” Pearson v. Callahan,
12 555 U.S. 223, 231 (2009) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). Even where
13 the defendant moves for summary judgment on qualified immunity grounds, the plaintiff bears
14 the burden of proving that the right allegedly violated was clearly established at the time of the
15 alleged misconduct. See LSO, Ltd. v. Stroh, 205 F.3d 1146, 1157 (9th Cir. 2000).

16 Courts generally engage in a two-part analysis in determining whether qualified
17 immunity should apply. Tolan v. Cotton, 134 S.Ct. 1861, 1865 (2014). A court must first
18 determine whether the facts, “[t]aken in the light most favorable to the party asserting the
19 injury, ... show the officer's conduct violated a [federal] right[.]” Id. (quoting Saucier v. Katz,
20 533 U.S. 194, 201, 121 S.Ct. 2151 (2001)).

21 “The second prong of the qualified-immunity analysis asks whether the right in question
22 was ‘clearly established’ at the time of the violation.” Id. at 1866 (citing Hope v. Pelzer, 536
23 U.S. 730, 739, 122 (2002)). State actors are “shielded from liability for civil damages if their
24 actions did not violate clearly established statutory or constitutional rights of which a
25 reasonable person would have known.” Id. (citation and internal quotation marks omitted).
26 “[T]he salient question ... is whether the state of the law at the time of an incident provided fair
27 warning to the defendants that their alleged [conduct] was unconstitutional.” Id. (internal
28 quotation marks and citation omitted). This inquiry must be undertaken in light of the specific

1 context of the case, not as a broad general proposition.” Saucier, 533 U.S. at 201. “This is not
2 to say that an official action is protected by qualified immunity unless the very action in
3 question has previously been held unlawful, but it is to say that in light of the pre-existing law
4 the unlawfulness must be apparent.” Anderson v. Creighton, 483 U.S. 635, 640 (1987).

5 Defendants’ qualified immunity argument rests on their disputed version of events
6 during Plaintiff’s escort and their contention that there was no constitutional violation. As
7 discussed above, material facts are in genuine dispute as to whether there was a constitutional
8 violation. Specifically, there is a dispute as to whether the officers threw Plaintiff to the ground
9 in reaction to Plaintiff’s assault on defendant Rios and his refusal to comply with an order. If
10 there was no constitutional violation, then of course there is no violation of a clearly established
11 constitutional right. But the material factual disputes which preclude summary judgment on
12 that question also preclude summary judgment on Defendants’ assertion of qualified immunity
13 here. See LaLonde v. County of Riverside, 204 F.3d 947, 953 (9th Cir. 2000) (“The
14 determination of whether a reasonable officer could have believed his conduct was lawful is a
15 determination of law that can be decided on summary judgment only if the material facts are
16 undisputed.”). Therefore, the court finds that Defendants cannot succeed on their assertion of
17 qualified immunity.

18 **VIII. CONCLUSION AND RECOMMENDATIONS**

19 Based on the foregoing, the court finds that evidence of Plaintiff’s assault conviction
20 should not be excluded at this stage of the proceedings, that evidence of genuine issues of
21 material fact remaining for trial, and that Plaintiff’s excessive force claim is not barred by the
22 rule in Heck v. Humphrey. Accordingly, **IT IS HEREBY RECOMMENDED** that:

- 23 1. Plaintiff’s motion in limine, filed on May 21, 2015, be **DENIED**; and
- 24 2. Defendants’ motion for summary judgment, filed on April 13, 2015, be
25 **DENIED**.

26 These findings and recommendations are submitted to the United States District Judge
27 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty
28 (30) days after being served with these findings and recommendations, any party may file

1 written objections with the court. Such a document should be captioned "Objections to
2 Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be
3 served and filed within ten days after service of the objections. The parties are advised that
4 failure to file objections within the specified time may result in the waiver of rights on appeal.
5 Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
6 F.2d 1391, 1394 (9th Cir. 1991)).

7
8 IT IS SO ORDERED.

9 Dated: September 15, 2015

/s/ Gary S. Austin
10 UNITED STATES MAGISTRATE JUDGE