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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HOMER EARL HAWKINS,)	1:14-cv-00009-AWI-BAM (PC)
)	
Plaintiff,)	ORDER DISREGARDING FIRST
)	AMENDED COMPLAINT (ECF No. 14)
v.)	
)	FINDINGS AND RECOMMENDATIONS
S. IBARRA, et al.,)	REGARDING DISMISSAL OF CERTAIN
)	CLAIMS AND DEFENDANTS
Defendants.)	(ECF Nos. 1, 12, 13, 16)
)	
)	FOURTEEN-DAY DEADLINE

Findings and Recommendations Following Screening

I. Background

Plaintiff Homer Earl Hawkins (“Plaintiff”) is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The action was removed to this Court on January 2, 2014. On August 15, 2014, the Court screened Plaintiff’s complaint pursuant to 28 U.S.C. § 1915A, and found that it stated a cognizable claim against Defendant S. Ibarra for excessive force in violation of the Eighth Amendment. However, the Court also determined that Plaintiff could not proceed with his retaliation claim or Fourteenth Amendment claim and failed to state a claim against Defendant Sweeney or the Doe Defendants. The Court directed Plaintiff to either file a first amended complaint or notify the Court in writing that he did not wish to file a first amended complaint. (ECF No. 12.)

On September 5, 2014, Plaintiff filed a notice of dismissal of the remaining defendants and Does in this action, but also filed a first amended complaint. (ECF Nos. 13, 14.) On

1 October 2, 2014, the Court directed Plaintiff to clarify his intention. (ECF No. 15.) On October
2 14, 2014, Plaintiff clarified that he wished to dismiss Defendant Sweeney and the Doe
3 Defendants and proceed on the original complaint against Defendant Ibarra. (ECF No. 16.)
4 Based on Plaintiff's notice of clarification, Plaintiff's first amended complaint, filed on
5 September 5, 2014, shall be disregarded and the Court issues the following Findings and
6 Recommendations.

7 The Court is required to screen complaints brought by prisoners seeking relief against a
8 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §
9 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous or
10 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
11 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28
12 U.S.C. § 1915(e)(2)(B)(ii).

13 A complaint must contain "a short and plain statement of the claim showing that the
14 pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
15 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
16 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,
17 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
18 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge
19 unwarranted inferences." Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
20 (internal quotation marks and citation omitted).

21 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
22 liberally construed and to have any doubt resolved in their favor. Hebbe v. Pliler, 627 F.3d 338,
23 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff's claims must be facially
24 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each
25 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949
26 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir.
27 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere
28

1 consistency with liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at
2 678, 129 S.Ct. at 1949 (quotation marks omitted); Moss, 572 F.3d at 969.

3 **II. Allegations**

4 Plaintiff is currently housed at the California Substance Abuse Treatment Facility in
5 Corcoran, California. The events alleged in the complaint occurred while Plaintiff was housed at
6 Pleasant Valley State Prison (“PVSP”). Plaintiff names the following defendants: (1)
7 Correctional Officer S. Ibarra; (2) Correctional Officer D. Sweeney; (3) Two Correctional
8 Sergeant Doe Defendants; and (4) Three Higher Administrative Doe Defendants.

9 Cause of Action 1

10 On June 24, 2012, Plaintiff was on his way to get his I.D. out of his cell so that he could
11 receive his medication. Defendant Ibarra ordered Plaintiff to get out and, because Plaintiff did
12 not move fast enough, Defendant Ibarra pepper sprayed Plaintiff in the face and eyes and started
13 “conbatton” against Plaintiff’s spine and legs. While Plaintiff was on the ground and blind, he
14 felt more hits and he could not move. Plaintiff was dragged to the medical building where a
15 nurse said he was bleeding on the floor where he was dropped. Plaintiff alleges that the use of
16 pepper spray was an unauthorized use of excessive force in violation of the Eighth Amendment.
17 Plaintiff further alleges that higher administrative staff condoned the use of excessive force.
18 Higher administrative staff also did not want the unauthorized use of force to be known because
19 it would require prison staff to conduct a video-taped interview of his injury within 48 hours as
20 required by regulations. Plaintiff alleges that the videotaped interview was never done and
21 suggests that the incident occurred because he had civil litigation against Defendants’ colleagues
22 in Fresno County Superior Court.

23 Cause of Action 2

24 Although not entirely clear, Plaintiff appears to allege that Defendant Sweeney violated
25 his Fourteenth Amendment rights by orchestrating a charge against Plaintiff involving a
26 manufactured weapon on June 24, 2012. (ECF No. 1-2, p. 8.)

27 Relief

28 Plaintiff’s seeks punitive damages.

1 **III. Discussion**

2 **A. Linkage Requirement**

3 The Civil Rights Act under which this action was filed provides:

4 Every person who, under color of [state law] ... subjects, or causes to be
5 subjected, any citizen of the United States ... to the deprivation of any rights,
6 privileges, or immunities secured by the Constitution ... shall be liable to the party
 injured in an action at law, suit in equity, or other proper proceeding for redress.

7 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
8 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See
9 Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); Rizzo v.
10 Goode, 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). The Ninth Circuit has held that “[a]
11 person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of
12 section 1983, if he does an affirmative act, participates in another’s affirmative acts, or omits to
13 perform an act which he is legally required to do that causes the deprivation of which complaint
14 is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

15 Here, Plaintiff fails to link the Two Correctional Sergeant Doe Defendants to any alleged
16 constitutional violation.

17 **B. Eighth Amendment – Excessive Force**

18 The unnecessary and wanton infliction of pain violates the Cruel and Unusual
19 Punishments Clause of the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5, 112 S.Ct.
20 995 (1992) (citations omitted). For claims arising out of the use of excessive physical force, the
21 issue is “whether force was applied in a good-faith effort to maintain or restore discipline, or
22 maliciously and sadistically to cause harm.” Wilkins v. Gaddy, 559 U.S. 34, 37, 130 S.Ct. 1175,
23 1178 (2010) (per curiam) (citing Hudson, 503 U.S. at 7) (internal quotation marks omitted);
24 Furnace v. Sullivan, 705 F.3d 1021, 1028 (9th Cir. 2013). The objective component of an Eighth
25 Amendment claim is contextual and responsive to contemporary standards of decency, Hudson,
26 503 U.S. at 8 (quotation marks and citation omitted), and although de minimis uses of force do
27 not violate the Constitution, the malicious and sadistic use of force to cause harm always violates
28 contemporary standards of decency, regardless of whether or not significant injury is evident,

1 Wilkins, 559 U.S. at 37-8, 130 S.Ct. at 1178 (citing Hudson, 503 U.S. at 9-10) (quotation marks
2 omitted); Oliver v. Keller, 289 F.3d 623, 628 (9th Cir. 2002).

3 At the pleading stage, Plaintiff's allegations state a cognizable claim against Defendant S.
4 Ibarra for excessive force when he sprayed Plaintiff in the face and eyes with pepper spray and
5 hit him with a baton. However, Plaintiff fails to state an excessive force claim against any other
6 defendants.

7 C. Supervisory Liability

8 The exact nature of Plaintiff's claims against "Higher-Ranking prison officials" or
9 "Higher Administrative" staff is unclear. Plaintiff appears to allege that higher administrative
10 staff condoned the use of excessive force and did not want the unauthorized use of force to be
11 known because it would require prison staff to conduct a video-taped interview of Plaintiff's
12 injury within 48 hours as required by regulations.

13 To the extent Plaintiff seeks to impose liability on prison officials based on their
14 supervisory roles, he may not do so. Supervisory personnel may not be held liable under section
15 1983 for the actions of subordinate employees based on respondeat superior or vicarious liability.
16 Crowley v. Bannister, 734 F.3d 967, 977 (9th Cir. 2013); accord Lemire v. California Dep't of
17 Corr. and Rehab., 726 F.3d 1062, 1074-75 (9th Cir. 2013); Lacey v. Maricopa County, 693 F.3d
18 896, 915-16 (9th Cir. 2012) (en banc). "A supervisor may be liable only if (1) he or she is
19 personally involved in the constitutional deprivation, or (2) there is a sufficient causal connection
20 between the supervisor's wrongful conduct and the constitutional violation." Crowley, 734 F.3d
21 at (internal quotation marks omitted); accord Lemire, 726 F.3d at 1074-75; Lacey, 693 F.3d at
22 915-16. "Under the latter theory, supervisory liability exists even without overt personal
23 participation in the offensive act if supervisory officials implement a policy so deficient that the
24 policy itself is a repudiation of constitutional rights and is the moving force of a constitutional
25 violation." Crowley, 734 F.3d at 977 (citing Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989))
26 (internal quotation marks omitted).

27 Plaintiff has not alleged that the Three Higher Administrative Doe Defendants were
28 personally involved the constitutional deprivation or they instituted deficient policies.

1 **D. Retaliation**

2 Plaintiff appears to assert that the alleged excessive force occurred because he had civil
3 litigation against Defendants’ colleagues in Fresno County Superior Court.

4 Within the prison context, a viable claim of First Amendment retaliation consists of five
5 elements: “(1) An assertion that a state actor took some adverse action against an inmate (2)
6 because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s
7 exercise of his First Amendment rights, and (5) the action did not reasonably advance a
8 legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567 (9th Cir. 2005); accord
9 Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012); Brodheim v. Cry, 584 F.3d 1262, 1269
10 (9th Cir. 2009).

11 A plaintiff suing for retaliation under section 1983 must allege that “he was retaliated
12 against for exercising his constitutional rights and that the retaliatory action does not advance
13 legitimate penological goals, such as preserving institutional order and discipline.” Barnett v.
14 Centoni, 31 F.3d 813, 816 (9th Cir.1994). The plaintiff does not need to show actual inhibited or
15 suppressed speech, but that there was a chilling effect upon his speech. Rhodes, 408 F.3d at 569.
16 The burden is on the plaintiff to plead and prove the absence of any legitimate correctional goals
17 for the alleged conduct. Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir.1995).

18 Plaintiff’s allegations are conclusory and fail to identify the persons responsible for the
19 alleged retaliation. Plaintiff also fails to plead facts sufficient to state a retaliation claim. For
20 instance, Plaintiff fails to allege any facts surrounding the pending litigation or how defendants
21 knew of or were aware of such litigation.

22 **E. Fourteenth Amendment – False Disciplinary Charges**

23 Plaintiff appears to allege that Defendant Sweeney violated his rights by preparing a false
24 disciplinary charge. An inmate can state a cognizable claim arising from a false disciplinary
25 report if the false report was done in retaliation for the exercise of his constitutional rights or if
26 the inmate was not afforded procedural due process in connection with the resulting disciplinary
27 proceedings as provided in Wolff v. McDonnell, 418 U.S. 539, 563–70, 94 S.Ct. 2963, 41
28 L.Ed.2d 935 (1874). See Hines v. Gomez, 108 F.3d 265, 267 (9th Cir.1997) (retaliation);

1 Hanrahan v. Lane, 747 F.2d 1137, 1141 (7th Cir.1984) (finding that an allegation that a prison
2 guard planted false evidence which implicated an inmate in a disciplinary infraction failed to
3 state a claim for which relief can be granted where procedural due process protections are
4 provided); Brown v. Leyva, 2009 WL 129879, *3 (E.D. Cal. Jan.20, 2009) (prisoner failed to
5 state cognizable due process or retaliation claim based on allegedly false charges and reports);
6 Rodgers v. Reynaga, 2009 WL 62130, *2 (E.D. Cal. Jan.8, 2009) (inmate's allegations that
7 defendants conspired to fabricate a false criminal offense that resulted in his re-housing in
8 administrative segregation failed to state a cognizable retaliation or due process claim).

9 Here, Plaintiff has not claimed that the allegedly false disciplinary charge was done in
10 retaliation for the exercise of his constitutional rights. Further, Plaintiff does not claim that he
11 was denied any procedural due process protections. Accordingly, Plaintiff has failed to state a
12 cognizable claim based on the allegedly false disciplinary charge.

13 **IV. Conclusion and Recommendation**

14 The Court finds that Plaintiff's complaint states a cognizable claim for excessive force in
15 violation of the Eighth Amendment against Defendant S. Ibarra, but fails to state any other
16 cognizable claims. The Court therefore recommends that Plaintiff's retaliation and Fourteenth
17 Amendment claims be dismissed, along with Defendant Sweeney and the Doe Defendants.

18 Plaintiff was provided with an opportunity to file a first amended complaint, but has
19 opted to proceed on the cognizable claim for excessive force against Defendant S. Ibarra. As
20 such, the Court does not recommend granting further leave to amend. Plaintiff's first amended
21 complaint is HEREBY DISREGARDED.

22 Based on the foregoing, it is HEREBY RECOMMENDED as follows:

- 23 1. This action proceed on Plaintiff's complaint, originally filed on December 14, 2012,
24 against Defendant S. Ibarra for excessive force in violation of the Eighth
25 Amendment;
- 26 2. Plaintiff's retaliation and Fourteenth Amendment claims be dismissed from this
27 action; and
- 28 3. Defendant Sweeney and the Doe Defendants be dismissed from this action.

