

EASTERN DISTRICT OF CALIFORNIA

Defendants.

THIRTY-DAY DEADLINE

1 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,
2 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
3 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
4 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
5 (internal quotation marks and citation omitted).

6 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
7 liberally construed and to have any doubt resolved in their favor. Hebbe v. Pliler, 627 F.3d 338,
8 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff’s claims must be facially
9 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each
10 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949
11 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir.
12 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere
13 consistency with liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at
14 678, 129 S.Ct. at 1949 (quotation marks omitted); Moss, 572 F.3d at 969.

15 **II. Plaintiff’s Allegations**

16 Plaintiff is currently housed at the California Substance Abuse Treatment Facility. The
17 events in the complaint are alleged to have occurred at Pleasant Valley State Prison (“PVSP”).
18 Plaintiff names Sergeant A. Gonzales and Corrections Officer C. Laita as defendants in their
19 individual and official capacities.

20 Plaintiff alleges: On October 21, 2013, Plaintiff was admitted to the C.T.C. area of
21 PVSP’s medical facility with trouble breathing and chest pain. After returning to the building,
22 Officer Martinez told Plaintiff that he had a cell mate. Plaintiff then observed an inmate seated
23 at the table. The inmate introduced himself as a Sacramento Blood. Plaintiff told him, “I don’t
24 gang bang and . . . [you] have to find another cell to move to.” Officer Martinez told Plaintiff,
25 “I am tired of you turning down these cellies.” Plaintiff told him, “Then put a non-affiliated in
26 there.” (ECF No. 1, p. 4.) Plaintiff then walked up to his cell door and motioned for Officer
27 Martinez to open the door. Plaintiff said, “I just want to lie down, I am very sick.” Officer
28 Martinez said, “Fuck no! I have something special for you.” (Id.)

1 Plaintiff then sat at a table for approximately ten minutes. Plaintiff then made his way to
2 the urinal and, after washing his hands, turned around to find three officers standing there:
3 Defendant Gonzales, Defendant Laita and another officer. Defendant Laita told Plaintiff to turn
4 around. Defendant Laita then handcuffed Plaintiff, escorted him outside, uncuffed him and
5 turned him around. Defendant Gonzales asked, "What[]s the problem?" Plaintiff said, "There
6 is no problem, I just don't cell-up with gang members." Defendant Laita then said, "You are
7 fucking going in there!" (ECF No. 1, p. 5.) Defendant Laita grabbed Plaintiff, turned him
8 around and cuffed him with so much force that Plaintiff felt a snap. Defendant Laita then
9 dragged Plaintiff to his cell, uncuffed him and pushed him inside. Plaintiff alleges that he
10 suffered a fractured wrist and ligament damage from the brutal handcuffing. He did not receive
11 surgery on his wrist until December 19, 2013.

12 The other inmate in Plaintiff's cell said, "You know this is my cell now." I said, "Look I
13 don't want any trouble. I just want to lie down. I am very sick." The inmate said, "No stay right
14 there by the door." Plaintiff responded, "You want to do what these officers want you to do
15 me?" The inmate said, "What's that?" Plaintiff said, "Beat my ass up in here." Plaintiff then
16 said, "Let me move[] my T.V." (ECF No. 1, p. 5.) At that point, the inmate proceeded to beat
17 Plaintiff. The inmate suffered injuries to his knuckles, but Plaintiff received stitches to his leg
18 and face. Plaintiff asserts that he was written up for fighting, but not for refusing a cell mate or
19 cell move.

20 Plaintiff further alleges that the sickness he was feeling turned out to be Valley Fever
21 (coccidioidomycosis). He also alleges that he endured years of pain and suffering because PVSP
22 delayed his complaint and he did not receive surgery on his wrist until December 19, 2013.

23 **III. Discussion**

24 **A. Eleventh Amendment and Official Capacity**

25 Plaintiff brings suit against Defendants in their individual and official capacities. To the
26 extent that Plaintiff seeks to bring a damages claim against Defendants in their official capacities
27 for money damages, he may not do so. The Eleventh Amendment prohibits suits for monetary
28 damages against a State, its agencies, and state officials acting in their official capacities.

1 Aholelei v. Dep't of Public Safety, 488 F.3d 1144, 1147 (9th Cir. 2007). As such, the Eleventh
2 Amendment bars any claim for monetary damages against defendants in their official capacities.

3 However, the Eleventh Amendment does not bar claims for prospective injunctive relief
4 against state officials acting in their official capacities. Los Angeles County Bar Ass'n v. Eu, 979
5 F.2d 697, 704 (9th Cir. 1992). Here, Plaintiff seeks injunctive relief, including a stoppage in the
6 use of force to house Plaintiff with incompatible cellmates. (ECF No. 1, p. 3.) Nonetheless,
7 Plaintiff's request for injunctive relief directed at PVSP prison officials is moot. Plaintiff has
8 been transferred to the California Substance Abuse Treatment Facility. A request for injunctive
9 relief becomes moot if a prisoner is transferred. Andrews v. Cervantes, 493 F.3d 1047, 1053 n. 5
10 (9th Cir.2007) (citing Johnson v. Moore, 948 F.2d 517, 510 (9th Cir.1991) (per curiam). There is
11 no indication that Plaintiff expects to be transferred back to PVSP. Darring v. Kincheloe, 783
12 F.2d 874, 876 (9th Cir.1996).

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

14 “[W]henever prison officials stand accused of using excessive physical force in violation
15 of the Cruel and Unusual Punishments Clause, the core judicial inquiry is ... whether force was
16 applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically to
17 cause harm.” Hudson v. McMillian, 503 U.S. 1, 6–7, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992). “In
18 determining whether the use of force was wanton and unnecessary, it may also be proper to
19 evaluate the need for application of force, the relationship between that need and the amount of
20 force used, the threat reasonably perceived by the responsible officials, and any efforts made to
21 temper the severity of a forceful response.” Id. at 7 (internal quotation marks and citations
22 omitted).

23 At the pleading stage, Plaintiff appears to state a cognizable excessive force claim against
24 Defendant Laita. However, Plaintiff's allegations are contradicted by his exhibits in which
25 Plaintiff alleged that Defendant Gonzales, not Defendant Laita, forced Plaintiff into his cell.
26 (ECF No. 1, p. 9, Ex. A.) Plaintiff will be given leave to cure this discrepancy.

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1 **C. Eighth Amendment – Failure to Intervene**

2 Prison officials are required “to take reasonable steps to protect inmates from physical
3 abuse.” Hoptowit v. Ray, 682 F.2d 1237, 1250 (9th Cir.1982) (abrogated on other grounds by
4 Sandin v. O’Connor, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995)). “[A] prison
5 official can violate a prisoner’s Eight Amendment rights by failing to intervene.” Robins v.
6 Meecham, 60 F.3d 1436, 1442 (9th Cir.1995).

7 Although it appears that Plaintiff has stated a cognizable claim against Defendant
8 Gonzales for failure to intervene in the use of excessive force by Defendant Laita, Plaintiff’s
9 allegations are contradicted by his exhibits. As noted above, Plaintiff’s exhibits suggest that
10 Defendant Gonzales, not Defendant Laita, used excessive force. Plaintiff will be given leave to
11 cure this deficiency and clarify his allegations.

12 Plaintiff has not stated a cognizable claim against either Defendant Gonzales or
13 Defendant Laita for failure to intervene or for failure protect Plaintiff from harm by his cellmate.
14 There are no factual allegations demonstrating that Defendants knew of a risk of harm to
15 Plaintiff from his cellmate or that they were present during the alleged attack. Plaintiff will be
16 given leave to cure these deficiencies.

17 **D. Eighth Amendment – Deliberate Indifference to Serious Medical Needs**

18 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
19 inmate must show “deliberate indifference to serious medical needs.” Jett v. Penner, 439 F.3d
20 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50
21 L.Ed.2d 251 (1976)). The two part test for deliberate indifference requires the plaintiff to show
22 (1) “a ‘serious medical need’ by demonstrating that failure to treat a prisoner's condition could
23 result in further significant injury or the ‘unnecessary and wanton infliction of pain,’” and (2)
24 “the defendant's response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096;
25 Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012).

26 Deliberate indifference is shown where the official is aware of a serious medical need and
27 fails to adequately respond. Simmons v. Navajo County, Arizona, 609 F.3d 1011, 1018 (9th Cir.
28 2010). “Deliberate indifference is a high legal standard.” Simmons, 609 F.3d at 1019; Toguchi v.

1 Chung, 391 F.3d 1051, 1060 (9th Cir. 2004). The prison official must be aware of facts from
2 which he could make an inference that “a substantial risk of serious harm exists” and he must
3 make the inference. Farmer, 511 U.S. at 837.

4 It is unclear whether Plaintiff intends to pursue a claim for deliberate indifference to
5 serious medical needs related to his wrist or related to his contraction of Valley Fever. In an
6 abundance of caution, the Court has provided the relevant pleading standard in the event that
7 Plaintiff elects to file an amended complaint. Plaintiff is cautioned, however, that any amended
8 complaint may not violate Federal Rule of Civil Procedure 18 regarding joinder of claims.

9 Pursuant to Rule 18, Plaintiff may not bring unrelated claims against unrelated parties in
10 a single action. Fed. R. Civ. P. 18(a), 20(a)(2); Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir.
11 2011); George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff may bring a claim against
12 multiple defendants so long as (1) the claim arises out of the same transaction or occurrence, or
13 series of transactions and occurrences, and (2) there are common questions of law or fact. Fed.
14 R. Civ. P. 20(a)(2); Coughlin v. Rogers, 130 F.3d 1348, 1351 (9th Cir. 1997); Desert Empire
15 Bank v. Insurance Co. of North America, 623 F.2d 1371, 1375 (9th Cir. 1980). Only if the
16 defendants are properly joined under Rule 20(a) will the Court review the other claims to
17 determine if they may be joined under Rule 18(a), which permits the joinder of multiple claims
18 against the same party.

19 **E. Rules Violation Report (115)**

20 Plaintiff appears to allege that his CDCR 115 Rules Violation Report for fighting is
21 incorrect. Plaintiff requests that the 115 be dismissed.

22 An inmate can state a cognizable claim arising from a false disciplinary report if the false
23 report was done in retaliation for the exercise of his constitutional rights or if the inmate was not
24 afforded procedural due process in connection with the resulting disciplinary proceedings as
25 provided in Wolff v. McDonnell, 418 U.S. 539, 563–70, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).
26 See Hines v. Gomez, 108 F.3d 265, 267 (9th Cir.1997) (retaliation); Hanrahan v. Lane, 747 F.2d
27 1137, 1141 (7th Cir.1984) (finding that an allegation that a prison guard planted false evidence
28 which implicated an inmate in a disciplinary infraction failed to state a claim for which relief can

1 be granted where procedural due process protections are provided); Brown v. Leyva, 2009 WL
2 129879, *3 (E.D. Cal. Jan.20, 2009) (prisoner failed to state cognizable due process or retaliation
3 claim based on allegedly false charges and reports); Rodgers v. Reynaga, 2009 WL 62130, *2
4 (E.D. Cal. Jan.8, 2009) (inmate's allegations that defendants conspired to fabricate a false
5 criminal offense that resulted in his re-housing in administrative segregation failed to state a
6 cognizable retaliation or due process claim).

7 Here, Plaintiff has failed to assert sufficient allegations to support a cognizable claim
8 arising from an allegedly false disciplinary report. Plaintiff has not alleged that the report was
9 done in retaliation for protected conduct. He also has not alleged that he was denied any
10 procedural due process protections in connection with the disciplinary hearing. Plaintiff will be
11 given leave to cure this deficiency to the extent that he is able to do so in good faith.

12 **IV. Conclusion and Order**

13 Plaintiff has failed to state a properly cognizable claim. As noted above, the Court will
14 provide Plaintiff with the opportunity to file an amended complaint to cure the identified
15 deficiencies. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

16 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
17 each named defendant did that led to the deprivation of Plaintiff's constitutional rights, Iqbal,
18 556 U.S. at 678-79, 129 S.Ct. at 1948-49. Although accepted as true, the "[f]actual allegations
19 must be [sufficient] to raise a right to relief above the speculative level" Twombly, 550 U.S.
20 at 555 (citations omitted). Additionally, Plaintiff may not change the nature of this suit by
21 adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607
22 (7th Cir. 2007) (no "buckshot" complaints).

23 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.
24 Lacey v. Maricopa County, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff's amended
25 complaint must be "complete in itself without reference to the prior or superseded pleading."
26 Local Rule 220.

27 Based on the foregoing, it is HEREBY ORDERED that:

- 28 1. The Clerk's Office shall send Plaintiff a complaint form;

2. Plaintiff's complaint is dismissed for failure to state a cognizable claim;

3. Within thirty (30) days from the date of service of this order, Plaintiff shall file a first amended complaint; and

4. If Plaintiff fails to file a first amended complaint in compliance with this order,
this action will be dismissed for failure to obey a court order.

IT IS SO ORDERED.

Dated: **December 16, 2014**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE