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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ANTHONY TYRONE CAMPBELL, SR.)	Case No.:1:14-cv-00801-LJO-SAB (PC)
Plaintiff,)	
v.)	FINDINGS AND RECOMMENDATION
JEFFREY BEARD, et al.,)	RECOMMENDING ACTION PROCEED ON
Defendants.)	EXCESSIVE FORCE CLAIM ONLY AND ALL
)	OTHER CLAIMS BE DISMISSED FROM THE
)	ACTION FOR FAILURE TO STATE A
)	COGNIZABLE CLAIM FOR RELIEF
)	[ECF No. 12]

Plaintiff Anthony Tyrone Campbell Sr. is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Now pending before the Court is Plaintiff’s first amended complaint, filed September 11, 2014.

**I.
SCREENING REQUIREMENT**

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 “fails to state a claim on which relief may be granted,” or that “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but

1 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
2 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
3 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally
4 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,
5 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

6 Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings
7 liberally construed and to have any doubt resolved in their favor, but the pleading standard is now
8 higher, Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive
9 screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow
10 the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal,
11 556 U.S. at 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer
12 possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely
13 consistent with’ a defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556
14 U.S. at 678; Moss, 572 F.3d at 969.

15 II.

16 COMPLAINT ALLEGATIONS

17 Plaintiff names D. Aguinaga, D. Cardenas, T. Ramos, M. Barajas, J. Mendez, and C. Nevarez,
18 as Defendants in this action.

19 On July 3, 2013, while imprisoned at Pleasant Valley State Prison (PVSP), Plaintiff refused an
20 incompatible housing assignment with an inmate returned to the facility from administrative
21 segregation. Upon refusal of the direct order by correctional officers D. Cardenas and M. Barajas, D.
22 Cardenas stated: “I don’t have time for this shit...” M. Barajas subsequently stated: “Campbell, if you
23 don’t accept that individual to be your cellie I’m going to take all your personal property and make
24 matters even wors[e] for you...” Plaintiff remained persistent in refusing the unreasonably suggested
25 housing assignment, and requested to be placed in administrative segregation where he could discuss
26 the housing assignment issue with a classification committee. Moments later Defendant D. Cardenas
27 returned to the building, accompanied with Defendants T. Ramos, D. Aguinaga, and Sergeant J.
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1 Mendez. These officers met with Defendant M. Barajas at the officer's podium for approximately two
2 minutes.

3 Upon conclusion of their discussion, the Defendants impulsively broke huddle and each of
4 them headed up the stairs toward the shower where Plaintiff was confined. Their approach was
5 aggressive and intimidating but Plaintiff remained humble and requested again to be placed in
6 administrative segregation.

7 Sergeant Mendez unlocked the shower and ordered Plaintiff to step out backward. Plaintiff
8 complied and Defendant T. Ramos and D. Aguinaga moved forward and proceeded to escort Plaintiff
9 along the tier as D. Cardenas and M. Barajas trailed behind.

10 As they approached the stairs which were adjacent to cells 202 and 203, where Plaintiff had
11 been housed in cell 202 and eyewitness Matthews housed in 203, Plaintiff veered to the left toward the
12 stairs anticipating to be escorted down but Defendants T. Ramos and D. Aguinaga grabbed Plaintiff
13 and without warning pushed Plaintiff toward cell 202 attempting to physically force the housing
14 assignment on him.

15 However, Plaintiff was able to plant his feet firm enough to keep from being forced inside the
16 cell, and simultaneously managed to prone out on the tier in response to the defendants' aggressive
17 action. Suddenly Sergeant J. Mendez became enraged and maliciously commenced pressing
18 Plaintiff's face to the floor.

19 In an instant D. Aguinaga impulsively began punching his fist repeatedly into the back of
20 Plaintiff's head and T. Ramos reserved no mercy as he began thrusting his knee into the left side of
21 Plaintiff's ribs. The use of force in terms of a good faith effort to restore or maintain discipline was
22 not necessary because Plaintiff was not hostile and had requested on his own to be placed into
23 administrative segregation until the issue regarding the incompatible housing assignment could be
24 pleaded to a classification committee.

25 D. Cardenas also acted with malicious intent to hurt Plaintiff as she aggressively plunged her
26 baton several times into the back of Plaintiff's thigh and M. Barajas intentionally and with the purpose
27 of causing harm stomped on Plaintiff's lower right left with her boot.

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1 curiam) (citing Hudson, 503 U.S. at 7) (internal quotation marks omitted); Furnace v. Sullivan, 705
2 F.3d 1021, 1028 (9th Cir. 2013). The objective component of an Eighth Amendment claim is
3 contextual and responsive to contemporary standards of decency, Hudson, 503 U.S. at 8 (quotation
4 marks and citation omitted), and although *de minimis* uses of force do not violate the Constitution, the
5 malicious and sadistic use of force to cause harm always violates contemporary standards of decency,
6 regardless of whether or not significant injury is evident, Wilkins, 559 U.S. at 37-8, 130 S.Ct. at 1178
7 (citing Hudson, 503 U.S. at 9-10) (quotation marks omitted); Oliver v. Keller, 289 F.3d 623, 628 (9th
8 Cir. 2002).

9 Assuming the truth of Plaintiff's allegations, as this Court must at the pleading stage of the
10 action, Plaintiff contends he was not resisting and was in a prone position on the floor when
11 Defendants J. Mendez, D. Aguinaga, T. Ramos, D. Cardenas, and M. Barajas allegedly used
12 unreasonable force on him. Assuming the truth of the circumstances as alleged, Plaintiff allegations
13 state a cognizable claim against Defendants J. Mendez, D. Aguinaga, T. Ramos, D. Cardenas, and M.
14 Barajas.

15 **B. Due Process**

16 The exhibits attached to Plaintiff's amended complaint clearly indicate that Plaintiff lost time
17 credits as a result of being found guilty in the prison disciplinary proceeding against him, and that
18 credit loss affects the length of his sentence. Where, as here, "success in a . . . [section] 1983 damages
19 action would implicitly question the validity of conviction or duration of sentence, the litigant must
20 first achieve favorable termination of his available state, or federal habeas, opportunities to challenge
21 the underlying conviction or sentence." Muhammad v. Close, 540 U.S. 749, 751 (2004) (citing to
22 Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994)); Edwards v. Balisok, 520 U.S. 641, 648
23 (1997) (applying Heck to a prison disciplinary hearing where good-time credits were affected).
24 Because the punishment imposed at the disciplinary hearing affects the duration of Plaintiff's
25 sentence, Plaintiff's due process claim is barred until such time as Plaintiff invalidates the result of the
26 disciplinary hearing. Accordingly, Plaintiff fails to state a cognizable due process violation, and the
27 Court previously provided Plaintiff with an opportunity to amend and based on the nature of the
28

1 deficiencies at issue, further leave to amend would be futile. Akhtar v. Mesa, 698 F.3d 1202, 1212-13
2 (9th Cir. 2012); Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

3 **IV.**

4 **RECOMMENDATION**

5 Based on the foregoing,

6 IT IS HEREBY RECOMMENDED that:

- 7 1. This action shall proceed on Plaintiff's claim of excessive force against Defendants J.
8 Mendez, D. Aguinaga, T. Ramos, and D. Cardenas; and
9 2. Plaintiff's due process claim against C. Nevarez be dismissed for failure to state a
10 cognizable claim for relief.

11 This Findings and Recommendation will be submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20)**
13 **days** after being served with this Findings and Recommendation, Plaintiff may file written objections
14 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and
15 Recommendation." Plaintiff is advised that failure to file objections within the specified time may
16 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17
18 IT IS SO ORDERED.

19 Dated: September 18, 2014



20 UNITED STATES MAGISTRATE JUDGE