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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
5

6 JOSEPH PEREZ,

7 Plaintiff,

8 v.

9 R. PADILLA,

10 Defendant.
11

Case No. 1:14-cv-01730-DAD-EPG (PC)

FINDINGS AND RECOMMENDATIONS
TO DISMISS CLAIMS CONSISTENT
WITH MAGISTRATE JUDGE'S PRIOR
ORDER IN LIGHT OF WILLIAMS
DECISION

(ECF NOS. 12 & 25)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS
12

13 Joseph Perez ("Plaintiff") is a former state prisoner proceeding *pro se* and *in forma*
14 *pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff consented to
15 magistrate judge jurisdiction. (ECF No. 3). Defendant declined to consent to magistrate judge
16 jurisdiction. (ECF No. 37).

17 The Court previously screened Plaintiff's complaint before Defendant appeared. (ECF
18 No. 25). The Court found that Plaintiff stated a cognizable claim against defendant R. Padilla
19 for violation of the Eighth Amendment and dismissed all other claims and defendants. (*Id.*).

20 As described below, in light of Ninth Circuit authority, this Court is recommending that
21 the assigned district judge dismiss claims and defendants consistent with the order by the
22 magistrate judge at the screening stage.

23 **I. WILLIAMS V. KING**

24 On November 9, 2017, the United States Court of Appeals for the Ninth Circuit held
25 that a magistrate judge lacked jurisdiction to dismiss a prisoner's case for failure to state a
26 claim at the screening stage where the Plaintiff had consented to magistrate judge jurisdiction
27 and defendants had not yet been served. Williams v. King, 875 F.3d 500 (9th Cir. 2017).
28 Specifically, the Ninth Circuit held that "28 U.S.C. § 636(c)(1) requires the consent of all

1 plaintiffs and defendants named in the complaint—irrespective of service of process—before
2 jurisdiction may vest in a magistrate judge to hear and decide a civil case that a district court
3 would otherwise hear.” Id. at 501.

4 Here, the defendants were not served at the time the Court issued its order dismissing
5 claims and defendants, and therefore had not appeared or consented to magistrate judge
6 jurisdiction. Accordingly, the magistrate judge lacked jurisdiction to dismiss claims and
7 defendants based solely on Plaintiff’s consent.

8 In light of the holding in Williams, this Court will recommend to the assigned district
9 judge that he dismiss the claims and defendants previously dismissed by this Court, for the
10 reasons provided in the Court’s screening order.

11 **II. SCREENING REQUIREMENT**

12 The Court is required to screen complaints brought by prisoners seeking relief against a
13 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
14 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
15 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
16 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
17 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
18 paid, the court shall dismiss the case at any time if the court determines that the action or
19 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

20 A complaint is required to contain “a short and plain statement of the claim showing
21 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
22 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
23 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,
24 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955
25 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
26 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
27 (internal quotation marks and citation omitted). Plaintiff must set forth “sufficient factual
28 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Iqbal, 556 U.S.

1 at 678. While factual allegations are accepted as true, legal conclusions are not. Id.

2 To state a viable claim for relief, Plaintiff must set forth sufficient factual allegations to
3 state a plausible claim for relief. Id. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969
4 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting this plausibility
5 standard. Id.

6 **III. ALLEGATIONS IN PLAINTIFF’S AMENDED COMPLAINT**

7 Plaintiff alleges that, on October 24, 2013, while leaving the Dining Hall after the
8 evening meal, Correctional Officer Andrade ordered Plaintiff to empty his cup of potatoes.
9 After Plaintiff complied, his legs were kicked out to the sides and Plaintiff was slammed to the
10 ground. Andrade stated “next time I’ll spray you.” Plaintiff was then escorted to the Program
11 Office by Correctional Officer Medina, taken to the security cage area, and again slammed
12 against a wall.

13 At this point, defendant R. Padilla entered the area and slammed Plaintiff’s head with
14 sufficient force into the window of an office to break the glass and cause multiple head
15 lacerations. Defendant Padilla then slammed Plaintiff to the ground as he was bleeding.
16 Plaintiff was taken to the hospital and received stitches.

17 Plaintiff was charged with a rules violation report for resisting/obstructing a police
18 officer. A staff assistant was assigned to Plaintiff. Plaintiff requested an investigative
19 employee to interview witnesses, but the person refused. Plaintiff was found guilty. Plaintiff
20 was not permitted to have a staff assistant in the hearing. The acting associate warden ordered
21 the rules violation report to be reissued and reheard. When confronted by the staff assistant and
22 the new investigative employee, Plaintiff declined to participate because he deemed it to be a
23 farce. The assistant and employee were assigned to the same facility as the correctional officer
24 who assaulted Plaintiff. Plaintiff was again found guilty.

25 **IV. EXCESSIVE FORCE**

26 1. Legal Standards

27 In order to state a claim under § 1983, a plaintiff must allege: (1) the violation of a
28 federal constitutional or statutory right; and (2) that the violation was committed by a person

1 acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Jones v.
2 Williams, 297 F.3d 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil
3 rights claim unless the facts establish the defendant's personal involvement in the constitutional
4 deprivation or a causal connection between the defendant's wrongful conduct and the alleged
5 constitutional deprivation. See Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); Johnson v.
6 Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978). That is, plaintiff may not sue any official on the
7 theory that the official is liable for the unconstitutional conduct of his or her subordinates.
8 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1948 (2009). Because respondeat superior liability is
9 inapplicable to § 1983 suits, “a plaintiff must plead that each Government-official defendant,
10 through the official's own individual actions, has violated the Constitution.” Id. It is plaintiff's
11 responsibility to allege facts to state a plausible claim for relief. Iqbal, 129 S. Ct. at 1949; Moss
12 v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009).

13 “When prison officials use excessive force against prisoners, they violate the inmates’
14 Eighth Amendment right to be free from cruel and unusual punishment.” Clement v. Gomez,
15 298 F.3d 898, 903 (9th Cir. 2002). In order to establish a claim for the use of excessive force in
16 violation of the Eighth Amendment, a plaintiff must establish that prison officials applied force
17 maliciously and sadistically to cause harm, rather than in a good-faith effort to maintain or
18 restore discipline. Hudson v. McMillan, 503 U.S. 1, 6-7 (1992). In making this determination,
19 the court may evaluate (1) the need for application of force, (2) the relationship between that
20 need and the amount of force used, (3) the threat reasonably perceived by the responsible
21 officials, and (4) any efforts made to temper the severity of a forceful response. Id. at 7; see
22 also id. at 9-10 (“The Eighth Amendment's prohibition of cruel and unusual punishment
23 necessarily excludes from constitutional recognition *de minimis* uses of physical force,
24 provided that the use of force is not of a sort repugnant to the conscience of mankind.” (internal
25 quotation marks and citations omitted)).

26 2. Analysis of Plaintiff’s Claims

27 Plaintiff has stated a claim against R. Padilla for violation of the Eighth Amendment
28 based on excessive force. Construing all of Plaintiff’s allegations in favor of Plaintiff, Plaintiff

1 describes a use of force that was applied maliciously or sadistically to cause harm, rather than
2 in a good-faith effort to maintain discipline.

3 **V. DUE PROCESS**

4 1. Legal Standards

5 The Due Process Clause protects Plaintiff against the deprivation of liberty without the
6 procedural protections to which he is entitled under the law. Wilkinson v. Austin, 545 U.S.
7 209, 221 (2005). To state a claim, Plaintiff must first identify the interest at stake. Wilkinson,
8 545 U.S. at 221. Liberty interests created by prison regulations are generally limited to
9 freedom from restraint which imposes atypical and significant hardship on the inmate in
10 relation to the ordinary incidents of prison life. Wilkinson, 545 U.S. at 221; Myron v. Terhune,
11 476 F.3d 716, 718 (9th Cir. 2007).

12 If there is a protected liberty interest at stake, the inquiry becomes what process is due.
13 Wilkinson, 545 U.S. at 221. “Prison disciplinary proceedings are not part of a criminal
14 prosecution, and the full panoply of rights due a defendant in such proceedings does not apply.”
15 Wolff v. McDonnell, 418 U.S. 539, 556 (1974). With respect to prison disciplinary
16 proceedings, the minimum procedural requirements that must be met are: (1) written notice of
17 the charges; (2) at least 24 hours between the time the prisoner receives written notice and the
18 time of the hearing, so that the prisoner may prepare his defense; (3) a written statement by the
19 fact finders of the evidence they rely on and reasons for taking disciplinary action; (4) the right
20 of the prisoner to call witnesses in his defense, when permitting him to do so would not be
21 unduly hazardous to institutional safety or correctional goals; and (5) legal assistance to the
22 prisoner where the prisoner is illiterate or the issues presented are legally complex. *Id.* at 563–
23 71. As long as the five minimum Wolff requirements are met, due process has been satisfied.
24 Walker v. Sumner, 14 F.3d 1415, 1420 (9th Cir.1994), abrogated on other grounds by Sandin,
25 515 U.S. 472, 115.

26 2. Analysis of Plaintiff’s Claims

27 Plaintiff has failed to state a claim for violation of due process. As an initial matter,
28 Plaintiff does not allege that a protected liberty interest is at stake. He merely alleges he was

1 found guilty of a rules violation, but not what the consequences of that finding were.

2 Moreover, Plaintiff has not alleged a lack of due process in light of the law discussed
3 above. Plaintiff is not entitled in these circumstances to an independent assistant and
4 investigative employee. Plaintiff has not alleged that the other aspects of due process were
5 violated. Moreover, Plaintiff states that he declined to participate "in their farce." These
6 events do not describe a constitutional violation for lack of due process.

7 **VI. CONCLUSION AND RECOMMENDATIONS**

8 For the foregoing reasons, IT IS HEREBY RECOMMENDED that all claims and
9 defendants, except for Plaintiff's claim against defendant R. Padilla for violation of the Eighth
10 Amendment based on excessive force, be DISMISSED.

11 These findings and recommendations are 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 fourteen
13 (14) days after being served with these findings and recommendations, any party may file
14 written objections with the court. Such a document should be captioned "Objections to
15 Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be
16 served and filed within seven (7) days after service of the objections. The parties are advised
17 that failure to file objections within the specified time may result in the waiver of rights on
18 appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan,
19 923 F.2d 1391, 1394 (9th Cir. 1991)).

20
21 IT IS SO ORDERED.

22 Dated: December 6, 2017

23 /s/ Eric P. Gray
24 UNITED STATES MAGISTRATE JUDGE
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