

1 defendants. On July 25, 2016, the Court screened the amended complaint and found that Plaintiff
2 stated a cognizable claim for excessive force against Defendants Docanto and Jordan for
3 allegedly attacking him on September 20, 2014, and for the failure to protect him from the attack
4 against Defendant Castaneda, in violation of the Eighth Amendment, but did not state any other
5 cognizable claims. Fed. R. Civ. P. 8(a); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell
6 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). Plaintiff was ordered to either file a
7 second amended complaint, or notify the Court that he did not wish to file any second amended
8 complaint and was willing to proceed on the cognizable claims. (ECF No. 12.)

9 On August 3, 2016, Plaintiff notified the Court that he did not intend to file a second
10 amended complaint and wished to proceed only with the cognizable claims against Defendants
11 Docanto, Jordan and Castaneda. (ECF No. 13.) Accordingly, the Court issues the following
12 findings and recommendations.

13 **II. Discussion**

14 **A. Screening Requirement and Standard**

15 The Court is required to screen complaints brought by prisoners seeking relief against a
16 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §
17 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous or
18 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
19 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.
20 § 1915(e)(2)(B)(ii).

21 A complaint must contain "a short and plain statement of the claim showing that the
22 pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
23 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
24 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,
25 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
26 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge
27 unwarranted inferences." Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
28 (internal quotation marks and citation omitted).

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

10 **B. Plaintiff's Allegations**

11 Plaintiff is currently incarcerated at the Salinas Valley State Prison ("SVSP") in Soledad,
12 California. The events in the amended complaint are alleged to have occurred at Corcoran State
13 Prison. Plaintiff names the following defendants: (1) Correctional Officer Castaneda; (2)
14 Correctional Officer Docanto; and (3) Correctional Officer T.J. Jordan. Plaintiff alleges as
15 follows:

16 On September 20, 2014, at approximately 12:25 hours, while conducting yard release,
17 Defendants Docanto and Jordan were performing an unclothed body search of Inmate Zaisa,
18 CDCR No. G-23-177, cell 4B2L-37, without incident. Defendant Castaneda was working in the
19 control booth while yard release was being conducted. This put him in charge of the cell doors
20 opening and closing. At all times relevant to this matter, Plaintiff and Inmate Zaisa shared a cell.

21 After searching Inmate Zaisa, Defendant Jordan placed Inmate Zaisa in waist restraints.
22 Plaintiff informed Defendants Docanto and Jordan that he did not wish to go to the yard, and
23 Defendants Docanto and Jordan said that was okay. Defendant Jordan then placed Plaintiff into
24 handcuffs to allow Inmate Zaisa to exit the cell.

25 After Plaintiff was secured in handcuffs, Defendant Jordan signaled to Defendant
26 Castaneda, who was working the control booth, to open cell 37. Inmate Zaisa then backed out of
27 the cell and was escorted by Officers C. Guthrie and Officer B. Resa. With Inmate Zaisa outside
28 of the cell, and under escort to the yard, the cell door was activated to close by Defendant

1 Castaneda. At this point, with the cell door partially closed and moving, Defendant Docanto,
2 without warning or giving any order, reached into the cell and grabbed Plaintiff roughly, yanking
3 Plaintiff backward into the steel cell door. Defendant Castaneda observed Plaintiff being
4 attacked from behind, and failed to protect Plaintiff from said physical attacks. Instead,
5 Defendant Castaneda activated the cell door to begin reopening. Defendant Docanto persisted in
6 his attack by punching and kicking Plaintiff in the back and legs. With the cell door now fully
7 reopened, Defendant Jordan joined in the attack by punching and kicking Plaintiff in the back
8 and legs, pummeling Plaintiff to the ground. When Defendants Docanto and Jordan executed
9 their attack, Defendant Castaneda was in power to close the door where Plaintiff was at, and in
10 doing so stop the attack by denying Defendants Castaneda and Docanto access to Plaintiff.
11 Instead, Defendant Castaneda further opened the cell door, giving Defendants Docanto and
12 Jordan even greater access to perpetuate their attack.

13 As a result of this “gratuitous attack” by Defendants Docanto and Jordan, Plaintiff
14 suffered swelling and bruising to his lower back and legs, lasting several days, and continuing
15 nerve damage to his lower back. (ECF No. 11, p. 6.) To carry out this attack, Defendants
16 Docanto, Jordan and Castaneda deliberately disregarded CDCR use of force policy, which calls
17 for a first or second level supervisor to be present prior to using force in a controlled area, such
18 as a cell. Plaintiff has been permanently injured by Defendants Docanto, Jordan, and Castaneda’s
19 use of excessive force on September 20, 2014, “administering cruel and unusual punishment on
20 the Plaintiff.” (*Id.*) Plaintiff is suffering from serious lower back pain as a result of the use of
21 excessive force. The “unjustified and penologically unnecessary use of excessive force” upon
22 Plaintiff by Defendants Docanto, Jordan, and Castaneda on September 20, 2014 violated his
23 rights under the Eighth Amendment to the U.S. Constitution in that it constituted cruel and
24 unusual punishment. Defendant Castaneda’s failure to intervene while in a capacity to do so
25 constituted violating Plaintiff’s Eight Amendment rights.

26 Plaintiff alleges a claim against Defendants Docanto, Jordan, and Castaneda for violation
27 of his Eighth Amendment right to be free from excessive force in an unprovoked and unjustified
28 attack, and against Defendant Castaneda for failing to intervene in an attack on Plaintiff by

1 Defendants Docanto and Jordan. Plaintiff seeks a judgment against Defendants, jointly and
2 severally, for \$250,000 in actual damages to be proved at trial, costs, reasonable attorney’s fees,
3 punitive damages, and any other relief to which Plaintiff may be entitled.

4 **C. Deficiencies of Complaint**

5 **1. Excessive Force**

6 The Eighth Amendment protects prisoners from inhumane methods of punishment and
7 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.
8 2006). The unnecessary and wanton infliction of pain violates the Cruel and Unusual
9 Punishments Clause of the Eighth Amendment. Hudson v McMillian, 503 U.S. 1, 5
10 (1992)(citations omitted). Although prison conditions may be restrictive and harsh, prison
11 officials must provide prisoners with food, clothing, shelter, sanitation, medical care, and
12 personal safety. Farmer v. Brennan, 511 U.S. 825, 832-33 (1994) (quotations omitted). For
13 claims of excessive physical force, the issue is “whether force was applied in a good-faith effort
14 to maintain or restore discipline, or maliciously and sadistically to cause harm.” Hudson, 503
15 U.S. at 7. Although de minimis uses of force do not violate the Constitution, the malicious and
16 sadistic use of force to cause harm always violates the Eighth Amendment, regardless of whether
17 or not significant injury is evident. Hudson, 503 U.S. at 9-10; Oliver v. Keller, 289 F.3d 623, 628
18 (9th Cir. 2002).

19 Plaintiff has stated a cognizable claim for excessive force in violation of the Eighth
20 Amendment against Defendants Docanto and Jordan for allegedly attacking him on September
21 20, 2014. However, Plaintiff has not stated a claim against any other defendant for excessive
22 force in violation of the Eighth Amendment. Specifically, Plaintiff has not alleged that
23 Defendant Castaneda applied any force to Plaintiff, through physical contact or otherwise. “If
24 there has been no physical contact or any physical impact, there is no claim for excessive force.”
25 Jacobs v. Woodford, No. 1:08-CV-00369AWIJLT, 2010 WL 3957498, at *4 (E.D. Cal. Oct. 8,
26 2010).

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1 Gardner v. Howard, 109 F.3d 427, 430 (8th Cir. 1997)). Thus, the violation of any CDCR use of
2 force policy does not amount to a cognizable claim under federal law, nor does it amount to any
3 independent cause of action under section 1983.

4 **4. Defendants Weaver, Nora, and Juarez**

5 As noted above, Plaintiff's original complaint named the following defendants: (1) Lt. B.
6 Weaver; (2) Correctional Officer Castaneda; (3) Correctional Officer Docanto; (4) Correctional
7 Officer T.J. Jordan; (5) Correctional Officer D.D. Nora; and (6) Correctional Officer V. Juarez.
8 (ECF No. 1.) Plaintiff's amended complaint only named Correctional Officers Docanto,
9 Castaneda, and T.J. Jordan as defendants. There were no allegations against Lt. B. Weaver,
10 Correctional Officer D.D. Nora, or Correctional Officer V. Juarez.

11 An amended complaint supersedes the original complaint, Forsyth v. Humana, Inc., 114
12 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be
13 "complete in and of itself without reference to the prior or superseded pleading," Local Rule 220.
14 "All causes of action alleged in an original complaint which are not alleged in an amended
15 complaint are waived." King, 814 F.2d at 567 (citing London v. Coopers Lybrand, 644 F.2d 811,
16 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at 1474. Here, as Plaintiff has made no allegations
17 against Defendants Weaver, Nora, and Juarez in his first amended complaint, his claims against
18 those parties are waived. Thus, those defendants should be dismissed from this action for failure
19 to state a cognizable claim against them.

20 **III. Conclusion and Recommendations**

21 Plaintiff's first amended complaint states a cognizable claim for excessive force in
22 violation of the Eighth Amendment against Defendants Docanto and Jordan for allegedly
23 attacking him on September 20, 2014, and for the failure to protect him from the attack against
24 Defendant Castaneda, in violation of the Eighth Amendment. However, Plaintiff has failed to
25 state any other cognizable claim against any other defendant. The Court therefore recommends
26 that Plaintiff's (1) claim for excessive force against Defendant Castaneda; (2) claims against
27 Defendants Docanto, Jordan, and Castaneda for violating the CDCR use of force policy; and (3)
28 Defendants Weaver, Nora and Juarez, be dismissed from this action. Plaintiff was provided with

1 an opportunity to file a second amended complaint, but opted to proceed on the cognizable
2 claims. As such, the Court does not recommend granting further leave to amend.

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

- 4 1. This action proceed on Plaintiff's first amended complaint, filed on June 17,
5 2016, for excessive force against Defendants Docanto and Jordan for allegedly
6 attacking him on September 20, 2014, and for the failure to protect him from the
7 attack against Defendant Castaneda, in violation of the Eighth Amendment;
- 8 2. Plaintiff's claim for excessive force against Defendant Castaneda, and claims
9 against Defendants Docanto, Jordan, and Castaneda for violating the CDCR use
10 of force policy, be dismissed; and
- 11 3. Defendants B. Weaver, D. D. Nora, and V. Juarez be dismissed from this action.

12 These Findings and Recommendations will be submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
14 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
15 file written objections with the Court. The document should be captioned "Objections to Magistrate
16 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the
17 specified time may result in the waiver of the "right to challenge the magistrate's factual findings" on
18 appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d
19 1391, 1394 (9th Cir. 1991)).

20
21 IT IS SO ORDERED.

22 Dated: August 8, 2016

/s/ Barbara A. McAuliffe
23 UNITED STATES MAGISTRATE JUDGE