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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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10 BRIAN CAPUTO,

11 Plaintiff,

12 v.

13 GONZALES, et al.,

14 Defendants.

Case No. 1:15-cv-01008-EPG (PC)

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

(ECF NOS. 43 & 44)

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

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16 Brian Caputo ("Plaintiff") is a prisoner¹ proceeding *pro se* and *in forma pauperis* in this
17 civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff consented to magistrate judge
18 jurisdiction. (ECF No. 5).

19 The Court previously screened Plaintiff's complaint before any defendants appeared.
20 (ECF No. 44). The Court found that Plaintiff stated a cognizable claim for violation of his
21 Fourteenth Amendment due process rights against Doe Defendant(s),² for retaliation in
22 violation of the First Amendment against defendant Gonzalez, and for excessive force in
23 violation of the Fourteenth Amendment against defendant Gonzalez. The Court dismissed all
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26 ¹ At the time of the incidents alleged in the original complaint, Plaintiff was detained at Kern County Jail.
27 He is now incarcerated at Federal Correctional Institution - Adelanto. It appears that Plaintiff was a pretrial
28 detainee as the time of the incidents alleged in the complaint, so the Court is utilizing the standards for pretrial
detainees at this time. However, the Court is not making a finding regarding whether Plaintiff was a pretrial
detainee at the time of the alleged incidents.

² One of the Doe Defendant(s) was later identified as Sergeant Black. (ECF Nos. 72 & 75).

1 other claims and defendants

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

5 **I. WILLIAMS V. KING**

6 On November 9, 2017, the United States Court of Appeals for the Ninth Circuit held
7 that a magistrate judge lacked jurisdiction to dismiss a prisoner’s case for failure to state a
8 claim at the screening stage where the Plaintiff had consented to magistrate judge jurisdiction
9 and defendants had not yet been served. Williams v. King, 875 F.3d 500 (9th Cir. 2017).
10 Specifically, the Ninth Circuit held that “28 U.S.C. § 636(c)(1) requires the consent of all
11 plaintiffs and defendants named in the complaint—irrespective of service of process—before
12 jurisdiction may vest in a magistrate judge to hear and decide a civil case that a district court
13 would otherwise hear.” Id. at 501.

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

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

21 **II. SCREENING REQUIREMENT**

22 The Court is required to screen complaints brought by prisoners seeking relief against a
23 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
24 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
25 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
26 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
27 § 1915A(b)(1), (2). As Plaintiff is proceeding *in forma pauperis* (ECF No. 4), the Court may
28 also screen the complaint under 28 U.S.C. § 1915. “Notwithstanding any filing fee, or any

1 portion thereof, that may have been paid, the court shall dismiss the case at any time if the court
2 determines that the action or appeal fails to state a claim upon which relief may be granted.”
3 28 U.S.C. § 1915(e)(2)(B)(ii).

4 A complaint is required to contain “a short and plain statement of the claim showing
5 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
6 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
7 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
8 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient
9 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id.
10 (quoting Twombly, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting
11 this plausibility standard. Id. at 679. While a plaintiff’s allegations are taken as true, courts
12 “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d
13 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). Additionally, a
14 plaintiff’s legal conclusions are not accepted as true. Iqbal, 556 U.S. at 678.

15 Pleadings of *pro se* plaintiffs “must be held to less stringent standards than formal
16 pleadings drafted by lawyers.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (holding that
17 *pro se* complaints should continue to be liberally construed after Iqbal).

18 **III. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

19 Plaintiff states that on May 4, 2016, at around 9:30 p.m., Plaintiff had taken his evening
20 medication when defendant Gonzalez pulled him out of pill line. Plaintiff then choked on
21 water, and was yelled at by defendant Gonzalez, who accused Plaintiff of putting his pills in his
22 locker. Plaintiff invited defendant Gonzalez to search his locker. Defendant Gonzalez
23 declined. Defendant Gonzalez then stated “I am not turning on the T.V. and phones because
24 Plaintiff (self) for the night.”

25 Plaintiff asked for a grievance form, and defendant Gonzalez said “‘you want a
26 grievance? There it is’ (or I got your grievance form right here).” Defendant Gonzalez then
27 pulled Plaintiff by his arm and shirt collar into the wall four times, before throwing Plaintiff to
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1 the floor and driving his knee into Plaintiff's lower back. Plaintiff was never given a grievance
2 form.

3 After that incident Plaintiff had trouble sleeping or being around any officers.

4 As a result of the incident, Plaintiff was put in disciplinary isolation from May 4, 2016,
5 through November 22, 2016.

6 Plaintiff alleges that defendant Kern County Sheriff's Office violated Plaintiff's rights
7 because of its lack of training and background checks.

8 **IV. SECTION 1983**

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

10 Every person who, under color of any statute, ordinance, regulation, custom,
11 or usage, of any State or Territory or the District of Columbia, subjects, or
12 causes to be subjected, any citizen of the United States or other person
13 within the jurisdiction thereof to the deprivation of any rights, privileges, or
14 immunities secured by the Constitution and laws, shall be liable to the party
injured in an action at law, suit in equity, or other proper proceeding for
redress....

15 42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely
16 provides ‘a method for vindicating federal rights elsewhere conferred.’” Graham v. Connor,
17 490 U.S. 386, 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see
18 also Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los
19 Angeles, 697 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir.
20 2012); Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006).

21 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted
22 under color of state law, and (2) the defendant deprived him of rights secured by the
23 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
24 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing
25 “under color of state law”). A person deprives another of a constitutional right, “within the
26 meaning of § 1983, ‘if he does an affirmative act, participates in another's affirmative act, or
27 omits to perform an act which he is legally required to do that causes the deprivation of which
28 complaint is made.’” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th

1 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite
2 causal connection may be established when an official sets in motion a ‘series of acts by others
3 which the actor knows or reasonably should know would cause others to inflict’ constitutional
4 harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of
5 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”
6 Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City
7 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

8 Additionally, a plaintiff must demonstrate that each named defendant personally
9 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-77. In other words, there
10 must be an actual connection or link between the actions of the defendants and the deprivation
11 alleged to have been suffered by Plaintiff. See Monell v. Dep’t of Soc. Servs., 436 U.S. 658,
12 691, 695 (1978).

13 Supervisory personnel are generally not liable under section 1983 for the actions of
14 their employees under a theory of *respondeat superior* and, therefore, when a named defendant
15 holds a supervisory position, the causal link between him and the claimed constitutional
16 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir.
17 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941
18 (1979). To state a claim for relief under section 1983 based on a theory of supervisory liability,
19 Plaintiff must allege some facts that would support a claim that the supervisory defendants
20 either: personally participated in the alleged deprivation of constitutional rights; knew of the
21 violations and failed to act to prevent them; or promulgated or “implemented a policy so
22 deficient that the policy ‘itself is a repudiation of constitutional rights’ and is ‘the moving force
23 of the constitutional violation.’” Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal
24 citations omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). For instance, a
25 supervisor may be liable for his “own culpable action or inaction in the training, supervision, or
26 control of his subordinates,” “his acquiescence in the constitutional deprivations of which the
27 complaint is made,” or “conduct that showed a reckless or callous indifference to the rights of
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1 others.” Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991) (internal citations,
2 quotation marks, and alterations omitted).

3 “[P]retrial detainees... possess greater constitutional rights than prisoners.” Stone v.
4 City of San Francisco, 968 F.2d 850, 857 n.10 (9th Cir. 1992); see also Gary H. v. Hegstrom,
5 831 F.2d 1430, 1432 (9th Cir. 1987).

6 **V. ANALYSIS OF PLAINTIFF’S CLAIMS**

7 **A. Plaintiff’s Claim 4**

8 The Court notes out the outset that claim 4 in Plaintiff’s complaint will be dismissed for
9 failure to state a claim. Plaintiff has failed to sufficiently allege that the deprivation of his
10 constitutional rights was caused by an official policy of defendant Kern County Sheriff’s
11 Office.

12 “Local governing bodies... can be sued directly under § 1983 for monetary, declaratory,
13 or injunctive relief where... the action that is alleged to be unconstitutional implements or
14 executes a policy statement, ordinance, regulation, or decision officially adopted and
15 promulgated by that body's officers.” Monell, 436 U.S. at 690 (footnote omitted).

16 “Plaintiffs who seek to impose liability on local governments under § 1983 must prove
17 that action pursuant to official municipal policy caused their injury. Official municipal policy
18 includes the decisions of a government's lawmakers, the acts of its policymaking officials, and
19 practices so persistent and widespread as to practically have the force of law. These are
20 action[s] for which the municipality is actually responsible.” Connick v. Thompson, 563 U.S.
21 51, 60–61 (2011) (internal citations and quotations omitted) (alteration in original).

22 Plaintiff alleges that defendant Kern County Sheriff’s Office violated his equal
23 protection rights, his right to be free from cruel and unusual punishment, and his due process
24 rights, because of its lack of training and background checks. However, Plaintiff provides only
25 these conclusory allegations. There is no description of what training defendant Kern County
26 Sheriff’s Office provided its staff, what training Plaintiff believes it should have provided its
27 staff, or how a deficiency in training led to the alleged constitutional violations. Additionally,
28 there is no description of the background checks that defendant Kern County Sheriff’s Office

1 conducts, no description of what kind of background checks Plaintiff believes it should have
2 conducted, and no description of how a deficiency in the background check process led to the
3 alleged constitutional violations. Accordingly, Claim 4 does not state a claim upon which relief
4 may be granted.

5 **B. Fourteenth Amendment/Due Process**

6 A pretrial detainee “may not be punished without a due process hearing.” Mitchell v.
7 Dupnik, 75 F.3d 517, 524 (9th Cir. 1996). “[P]retrial detainees may be subjected to
8 disciplinary segregation only with a due process hearing to determine whether they have in fact
9 violated any rule.” Id.

10 Plaintiff has alleged that he was placed in disciplinary isolation from May 4, 2016,
11 through November 22, 2016. While this complaint is silent as to whether Plaintiff received a
12 due process hearing prior to being placed into disciplinary isolation, the Court will allow this
13 claim to proceed. The more difficult question is who is responsible for this violation. Plaintiff
14 has not alleged that defendant Gonzalez was responsible for placing him in administrative
15 segregation, and it does not appear that a deputy would have that authority. Additionally,
16 Plaintiff has failed to sufficiently allege that an official policy of defendant Kern County
17 Sherriff’s Office led to the alleged deprivation of Plaintiff’s Fourteenth Amendment due
18 process rights. Therefore, the Court will allow this claim to proceed only against Doe
19 Defendant(s). When the Court opens discovery, Plaintiff will be permitted to ask the Court for
20 permission to serve third party subpoenas so that he can gather the information necessary to
21 identify the parties responsible for this alleged constitutional deprivation. The Court notes that
22 one of the Doe Defendant(s) has been identified as Sergeant Black. (ECF Nos. 72 & 75).

23 **C. First Amendment/Retaliation**

24 Allegations of retaliation against a prisoner's First Amendment rights may support a
25 section 1983 claim. Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985); see also
26 Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v. Rowland, 65 F.3d 802,
27 807 (9th Cir. 1995). A retaliation claim requires “five basic elements: (1) an assertion that a
28 state actor took some adverse action against an inmate (2) because of (3) that prisoner’s

1 protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment
2 rights, and (5) the action did not reasonably advance a legitimate correctional goal.” Rhodes v.
3 Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted); accord Watson v. Carter,
4 668 F.3d 1108, 1114-15 (9th Cir. 2012); Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir.
5 2009). This standard also applies to pretrial detainees. See, e.g., Edmundson v. Flathead Cty.
6 Sheriff Dep't, 654 F. App'x 264 (9th Cir. 2016); Williams v. Madrid, 609 F. App'x 421 (9th Cir.
7 2015).

8 Plaintiff alleges that he was assaulted for asking for a grievance form. Given what
9 deputy Gonzalez allegedly said, as well as the allegation that Plaintiff was attacked right after
10 he asked for a grievance form, the Court finds that Plaintiff has stated a cognizable retaliation
11 claim against defendant Gonzalez.

12 **D. Fourteenth Amendment/Excessive Force**

13 A pretrial detainee’s right to be free from punishment is grounded in the Due Process
14 Clause, but courts borrow from Eighth Amendment jurisprudence when analyzing the rights of
15 pre-trial detainees. See, e.g., Lolli v. Cnty. of Orange, 351 F.3d 410, 418-19 (9th Cir. 2003);
16 Or. Advocacy Ctr. v. Mink, 322 F.3d 1101, 1120 (9th Cir. 2003).

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

1 F.3d 623, 628 (9th Cir. 2002).

2 However, “a pretrial detainee must show only that the force purposely or knowingly
3 used against him was objectively unreasonable.” Kingsley v. Hendrickson, 135 S. Ct. 2466,
4 2473 (2015).

5 Plaintiff has alleged that, because he requested a grievance form, deputy Gonzalez
6 slammed Plaintiff into a wall four times, threw Plaintiff on the ground, and then slammed his
7 knee into Plaintiff’s lower back. The Court finds that Plaintiff has stated a cognizable claim
8 for excessive force in violation of the Fourteenth Amendment against defendant Gonzalez.

9 **VI. CONCLUSION AND RECOMMENDATIONS**

10 For the foregoing reasons, IT IS HEREBY RECOMMENDED that all claims and
11 defendants be DISMISSED, except for Plaintiff’s claims for violation of his Fourteenth
12 Amendment due process rights against defendant Black and Doe Defendant(s), for retaliation in
13 violation of the First Amendment against defendant Gonzalez, and for excessive force in
14 violation of the Fourteenth Amendment against defendant Gonzalez.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
17 (14) days after being served with these findings and recommendations, any party may file
18 written objections with the court. Such a document should be captioned "Objections to
19 Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be
20 served and filed within seven (7) days after service of the objections. The parties are advised
21 that failure to file objections within the specified time may result in the waiver of rights on
22 appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan,
23 923 F.2d 1391, 1394 (9th Cir. 1991)).

24
25 IT IS SO ORDERED.

26 Dated: March 22, 2018

27 /s/ Eric P. Gray
28 UNITED STATES MAGISTRATE JUDGE