

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF CALIFORNIA  
3

4 HECTOR ALEMAN,  
5 Plaintiff,  
6 v.  
7 C/O K. ACOSTA, *et al.*,  
8 Defendants.

Case No. 1:15-cv-01293-LJO-EPG

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

(ECF Nos. 1 & 13)

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

11 Hector Aleman ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis*  
12 in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff consented to magistrate  
13 judge jurisdiction. (ECF No. 6-7). Defendants have not yet consented to magistrate judge  
14 jurisdiction or declined to consent to magistrate judge jurisdiction.

15 The Court previously screened Plaintiff's complaint before Defendants appeared. (ECF  
16 No. 13). The Court found that Plaintiff stated cognizable claims against Plaintiff's complaint  
17 states a claim for excessive force in violation of the Eighth Amendment as to Defendants  
18 Rentieria, Ledesma, Nuno, Fierros, Montalvo, Acosta, and Garcia. (*Id.* at 5-6.) However, the  
19 Court also found that Plaintiff failed to state an Eighth Amendment claim against North Kern  
20 State Prison ("NKSP"), and the warden of NKSP, S. Alfaro. (*Id.*) Additionally, the Court  
21 found that Plaintiff failed to state a claim for a constitutional violation related to the prison  
22 grievance process. (*Id.*) Plaintiff's state law claims were dismissed without prejudice. (*Id.* at 6-  
23 7.) Prior to the Court dismissing claims and defendants, Plaintiff agreed to proceed only on  
24 the claims found cognizable by the Court. (ECF No. 14).

25 As described below, in light of Ninth Circuit authority, this Court is recommending that  
26 the assigned district judge dismiss claims and defendants consistent with the order by the  
27 magistrate judge at the screening stage.  
28

1           **I. WILLIAMS v. KING**

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

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

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

17           **II. SCREENING REQUIREMENT**

18           The Court is required to screen complaints brought by prisoners seeking relief against a  
19 governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
20 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
21 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or  
22 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
23 § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion thereof, that may have  
24 been paid, the court shall dismiss the case at any time if the court determines that the action or  
25 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

26           A complaint is required to contain “a short and plain statement of the claim showing  
27 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are  
28 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere

1 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
2 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient  
3 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id.  
4 (quoting Twombly, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting  
5 this plausibility standard. Id. at 679. While a plaintiff’s allegations are taken as true, courts  
6 “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d  
7 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). Additionally, a  
8 plaintiff’s legal conclusions are not accepted as true. Iqbal, 556 U.S. at 678.

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

### 12 **III. SUMMARY OF PLAINTIFF’S COMPLAINT**

13 Plaintiff primarily alleges that he was beaten while in constraints, constituting a  
14 violation of the Eighth Amendment’s right to be free from cruel and unusual punishment.

15 Specifically, Plaintiff alleges that on August 31, 2014, he was housed at North Kern  
16 State Prison (NKSP). That day, he had an altercation with building floor officers, defendants  
17 Renteria and Ledesma. After the incident, Plaintiff was handcuffed with both hands behind his  
18 back. He was completely restrained and not a threat to the safety of the officers. After Plaintiff  
19 had been restrained, Defendants Benteria and Ledesma started punching and kicking Plaintiff’s  
20 entire body, including Plaintiff’s face and head. Responding officers, defendants Nuno,  
21 Fierros, Montalvo, Acosta and Garcia applied leg chains and joined in the assault on Plaintiff  
22 by taking turns punching and kicking him and using their expandable batons. They also  
23 slammed Plaintiff’s head into the door.

24 Plaintiff slipped in and out of consciousness for about an hour. Finally, Plaintiff was  
25 examined by a medical person and was told Plaintiff needed to go to the hospital immediately.  
26 Plaintiff suffered a broken rib. Plaintiff was then transferred to Wasco State Prison.

27 Plaintiff also claims that Wasco State Prison attempted to invalidate Plaintiff’s appeals  
28 by falsely claiming that Plaintiff missed his deadlines.

1           **IV. ANALYSIS OF PLAINTIFF’S CLAIMS**

2           **A. Section 1983 Legal Standards**

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

4                     Every person who, under color of any statute, ordinance,  
5                     regulation, custom, or usage, of any State or Territory or the  
6                     District of Columbia, subjects, or causes to be subjected, any  
7                     citizen of the United States or other person within the jurisdiction  
8                     thereof to the deprivation of any rights, privileges, or immunities  
9                     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....

10           42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely  
11           provides ‘a method for vindicating federal rights elsewhere conferred.’” Graham v. Connor,  
12           490 U.S. 386, 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see  
13           also Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los  
14           Angeles, 697 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir.  
15           2012); Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006).

16           To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted  
17           under color of state law, and (2) the defendant deprived him of rights secured by the  
18           Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.  
19           2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing  
20           “under color of state law”). A person deprives another of a constitutional right, “within the  
21           meaning of § 1983, ‘if he does an affirmative act, participates in another's affirmative act, or  
22           omits to perform an act which he is legally required to do that causes the deprivation of which  
23           complaint is made.’” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th  
24           Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite  
25           causal connection may be established when an official sets in motion a ‘series of acts by others  
26           which the actor knows or reasonably should know would cause others to inflict’ constitutional  
27           harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of  
28           causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”

1 Arnold v. Int'l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City  
2 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

3 Supervisory personnel are generally not liable under section 1983 for the actions of  
4 their employees under a theory of *respondeat superior* and, therefore, when a named defendant  
5 holds a supervisory position, the causal link between him and the claimed constitutional  
6 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir.  
7 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941  
8 (1979). To state a claim for relief under section 1983 based on a theory of supervisory liability,  
9 Plaintiff must allege some facts that would support a claim that the supervisory defendants  
10 either: personally participated in the alleged deprivation of constitutional rights; knew of the  
11 violations and failed to act to prevent them; or promulgated or “implemented a policy so  
12 deficient that the policy ‘itself is a repudiation of constitutional rights’ and is ‘the moving force  
13 of the constitutional violation.’” Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal  
14 citations omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). For instance, a  
15 supervisor may be liable for his “own culpable action or inaction in the training, supervision, or  
16 control of his subordinates,” “his acquiescence in the constitutional deprivations of which the  
17 complaint is made,” or “conduct that showed a reckless or callous indifference to the rights of  
18 others.” Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991) (internal citations,  
19 quotation marks, and alterations omitted).

## 20 **B. Improper Section 1983 Defendants**

21 In his Complaint, Plaintiff lists NKSP Warden S. Alfaro as a Defendant. However,  
22 Plaintiff makes no specific allegation concerning this Defendant. Thus, the claim against S.  
23 Alfaro appears to be based upon his supervisory role at NKSP.

24 To the extent Plaintiff names NKSP Warden S. Alfaro as a Defendant based upon a  
25 supervisory liability theory, he does not state a claim against him. Ashcroft v. Iqbal, 556 U.S.  
26 662, 676 (2009) (“Government officials may not be held liable for the unconstitutional conduct  
27 of their subordinates under a theory of *respondeat superior*.”).

1           Additionally, to the extent that Plaintiff also attempted to name NKSP as a Defendant,  
2 this was improper under § 1983. NKSP is a state prison under the control of the California  
3 Department of Corrections and Rehabilitation (“CDCR”), a state agency of the state of  
4 California. State agencies are not “persons” within the meaning of § 1983, and are therefore  
5 not amenable to suit under that statute. Maldonado v. Harris, 370 F.3d 945, 951 (9th Cir. 2004)  
6 (citing Will v. Mich. Dep't of State Police, 491 U.S. 58, 70, 109 S.Ct. 2304, 105 L.Ed.2d 45  
7 (1989)).

### 8           **C.       Claims Concerning Grievance Process**

9           Prisoners have no stand-alone due process rights related to the administrative grievance  
10 process. See Mann v. Adams, 855 F.2d 639, 640 (9th Cir.1988); see also Ramirez v. Galaza,  
11 334 F.3d 850, 860 (9th Cir. 2003) (holding that there is no liberty interest entitling inmates to a  
12 specific grievance process). Because there is no right to any particular grievance process, it is  
13 impossible for due process to have been violated by ignoring or failing to properly process  
14 grievances.

15           Prisoners have a First Amendment right of access to the courts. See Lewis v. Casey, 518  
16 U.S. 343, 346 (1996); Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995) (discussing the right  
17 in the context of prison grievance procedures). This right includes petitioning the government  
18 through the prison grievance process. See id. The right of access to the courts, however, only  
19 requires that prisoners have the capability of bringing challenges to sentences or conditions of  
20 confinement. See Lewis, 518 U.S. at 356–57.

21           As a jurisdictional requirement flowing from the standing doctrine, the prisoner must  
22 allege an actual injury. See id. at 349. “Actual injury” is prejudice with respect to  
23 contemplated or existing litigation, such as the inability to meet a filing deadline or present a  
24 non-frivolous claim. See id.; see also Phillips v. Hust, 477 F.3d 1070, 1075 (9th Cir. 2007).

25           Plaintiff fails to state a constitutional violation related to the prison grievance process.  
26 It may be that the prison’s wrongful denial of Plaintiff’s claims will allow him to proceed in  
27 this case despite not completing the prison grievance process. But as Plaintiff is filing his case  
28 in court now, Plaintiff cannot show injury from the failure to properly process his grievance.

