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

OUSSANA SAHIBI,

Case No. 1:15-cv-01581 DLB

Plaintiff,

ORDER FINDING COGNIZABLE  
CLAIMS AND DISMISSING  
REMAINING CLAIM

v.

GONZALES, et al.,

Defendants.

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Plaintiff Oussama Sahibi (“Plaintiff”), a state inmate in the custody of the California Department of Corrections and Rehabilitation (“CDCR”), is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on October 16, 2015.

On February 10, 2016, the Court screened the complaint and found that it stated (1) an Eighth Amendment excessive force claim against Defendants Kern Valley State Prison (“KVSP”) Correctional Officers Borjas Gonzales, Howard Smith, Brandon Cope, Mario Lozano and Stan; and (2) a due process claim against California Correctional Institution (“CCI”) Correctional Lt. Crouse.<sup>1</sup> The Court ordered Plaintiff to file an amended complaint to cure deficiencies, or notify the Court of his willingness to proceed only on these cognizable claims.

On March 7, 2016, Plaintiff notified the Court that he wished to proceed only on the cognizable claims. The Court now issues this order.

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<sup>1</sup> Plaintiff consented to the jurisdiction of the United States Magistrate Judge on November 4, 2015.

1 **A. SCREENING STANDARD**

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

10 A complaint must contain “a short and plain statement of the claim showing that the  
11 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
12 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
13 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing  
14 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual  
15 matter, accepted as true, to ‘state a claim that is plausible on its face.’” Id. (quoting Twombly, 550  
16 U.S. at 555). While factual allegations are accepted as true, legal conclusions are not. Id.

17 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or  
18 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d  
19 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);  
20 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the actions  
21 or omissions of each named defendant to a violation of his rights; there is no respondeat superior  
22 liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609  
23 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir.  
24 2009); Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to state a  
25 plausible claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,  
26 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting this plausibility  
27 standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.  
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1 **B. ALLEGATIONS IN COMPLAINT**

2 Plaintiff is currently incarcerated at CCI.

3 Plaintiff is a practicing Muslim and was observing Ramadan in July 2013.

4 On July 9, 2013, Defendant Gonzales stopped at Plaintiff's cell and asked if he would be  
5 eating dinner. Plaintiff said that he was fasting for Ramadan. Defendant Gonzales asked him if he  
6 was serious, and if he was "some kind of towelhead or something." ECF No. 1, at 6. Plaintiff  
7 ignored the comment.

8 On July 12, 2013, Defendant Gonzales stopped at Plaintiff's cell again and asked if he was  
9 still fasting. Plaintiff said that he was, and Defendant Gonzales laughed and repeated his  
10 'towelhead' comment. Plaintiff asked him to keep his racist comments to himself, or he'd file a  
11 staff complaint. Defendant Gonzales became angry and said, "You're not going to do shit you  
12 fucking terrorist. Nobody cares about a staff complaint." ECF No. 1, at 6.

13 On July 13, 2013, Plaintiff's cell was skipped when inmates were being released for  
14 Ramadan services. Plaintiff yelled out to the control booth officer that he had been skipped.  
15 Plaintiff saw that Defendant Gonzales was in the control booth, laughing with the control booth  
16 officer. The control booth officer implied that Defendant Gonzales was responsible for not  
17 releasing Plaintiff.

18 Plaintiff was released ten minutes later. Defendant Gonzales opened the control booth  
19 window and yelled, "Why you crying for towelhead?" ECF No. 1, at 6. Plaintiff said that he  
20 would be filing a staff complaint and exited the building.

21 As he exited and headed towards the chapel, Defendant Gonzales and his partner, Officer  
22 Perez, came down from the control booth. Defendant Gonzales ordered Plaintiff to stop and get  
23 his "terrorist ass" back and say that to his face. ECF No. 1, at 7.

24 Plaintiff placed his hands on the wall in an attempt to diffuse the situation, as Defendant  
25 Gonzales was becoming aggressive. Defendant Gonzales ordered Plaintiff to put his arms behind  
26 his back. When Plaintiff did so, Defendant Gonzales yanked it up and forcefully shoved  
27 Plaintiff's face into the wall. Plaintiff turned around and began to physically defend himself.

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1 Plaintiff was immediately subdued by Officers Dewery, Gonzales and Perez. He was  
2 repeatedly hit in the face, pepper-sprayed, tackled to the ground and placed in handcuffs.

3 While Plaintiff was face down on the ground and in handcuffs, Defendant Gonzales and  
4 other officers held Plaintiff down while Defendant Smith began striking Plaintiff with his baton,  
5 ultimately breaking his left leg.

6 Plaintiff was then placed in leg restraints, turned onto his back and held down while  
7 Defendant Gonzales beat and punched Plaintiff into “momentary unconsciousness.” ECF No. 1,  
8 at 7.

9 Plaintiff was forced up onto his feet while he screamed that he leg was broken and that he  
10 could not walk. Officer Diaz said, “well, we’ll drag your ass, then.” ECF No. 1, at 8. Plaintiff  
11 was ultimately dragged one hundred yards and denied immediate medical treatment. He was told  
12 he had to be cleared by the IGI unit first.

13 Defendants Stan, Lozano and Cope arrived with a wheelchair, and restrained Plaintiff and  
14 placed him in it. They took Plaintiff to a back room, and as soon as the door closed, Defendant  
15 Stan began striking Plaintiff in the back of his head and ear while Defendants Lozano and Cope  
16 punched him in the face. Plaintiff was knocked unconscious and needed stiches. Defendant Stan  
17 told Plaintiff, “you bleed like a bitch.” ECF No. 1, at 8.

18 After the beating, Defendant Cope told Plaintiff that they were going to do a video  
19 interview. He threatened Plaintiff not to say “shit” or they’d come find him, validate him, and  
20 make his life a living hell. ECF No. 1, at 8.

21 Sometime later, Plaintiff received medical treatment and was taken by ambulance to the  
22 Delano Regional Medical Center. He received stitches on his face and had an x-ray that revealed a  
23 broken left fibula that was protruding through his skin.

24 On July 15, 2013, Plaintiff underwent surgery to repair his leg at San Joaquin Community  
25 Hospital.

26 On July 22, 2013, upon returning from the hospital, Plaintiff was placed in Ad-Seg. He  
27 was served with a Rules Violation Report for assaulting staff.

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1 On August 27, 2013, Plaintiff was transferred to CCI Ad-Seg without a disciplinary  
2 hearing.

3 On November 14, 2013, Plaintiff appeared before Defendant Crouse for his disciplinary  
4 hearing. He asked Defendant Crouse to call Defendants Gonzales, Smith, Stan, Cope and  
5 Lozano. Defendant Crouse told Plaintiff that he would not be calling anyone, “as staff reports  
6 gave a full account of the incident.” ECF No. 1, at 9. Plaintiff pointed out that Defendant  
7 Gonzales’ report was missing, which was critical as he was the primary officer. Plaintiff was  
8 ignored and subsequently found guilty without being afforded a meaningful hearing.

9 Based on these facts, Plaintiff alleges a violation of the Eighth and Fourteenth  
10 Amendments, as well as assault and battery under California law.

11 **C. DISCUSSION**

12 1. Eighth Amendment- Excessive Force

13 The unnecessary and wanton infliction of pain violates the Cruel and Unusual Punishments  
14 Clause of the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5, 112 S.Ct. 995 (1992)  
15 (citations omitted). For claims arising out of the use of excessive physical force, the issue is  
16 “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously  
17 and sadistically to cause harm.” Wilkins v. Gaddy, 559 U.S. 34, 37, 130 S.Ct. 1175, 1178 (2010)  
18 (per curiam) (citing Hudson, 503 U.S. at 7) (internal quotation marks omitted); Furnace v.  
19 Sullivan, 705 F.3d 1021, 1028 (9th Cir. 2013). The objective component of an Eighth  
20 Amendment claim is contextual and responsive to contemporary standards of decency, Hudson,  
21 503 U.S. at 8 (quotation marks and citation omitted), and although de minimis uses of force do not  
22 violate the Constitution, the malicious and sadistic use of force to cause harm always violates  
23 contemporary standards of decency, regardless of whether or not significant injury is evident,  
24 Wilkins, 559 U.S. at 37-8, 130 S.Ct. at 1178 (citing Hudson, 503 U.S. at 9-10) (quotation marks  
25 omitted); Oliver v. Keller, 289 F.3d 623, 628 (9th Cir. 2002).

26 Plaintiff states an Eighth Amendment claim against Defendants Gonzales, Smith, Cope,  
27 Lozano and Stan based on events occurring after Plaintiff was placed in handcuffs.<sup>2</sup>

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<sup>2</sup> Plaintiff will be instructed on service by separate order.

1           2.       Fourteenth Amendment- Due Process

2           “Prison disciplinary proceedings are not part of a criminal prosecution, and the full  
3 panoply of rights due a defendant in such proceedings does not apply.” Wolff v. McDonnell, 418  
4 U.S. 539, 556, 94 S.Ct. 2963 (1974). With respect to prison disciplinary proceedings, the  
5 minimum procedural requirements that must be met are: (1) written notice of the charges; (2) at  
6 least 24 hours between the time the prisoner receives written notice and the time of the hearing, so  
7 that the prisoner may prepare his defense; (3) a written statement by the fact finders of the  
8 evidence they rely on and reasons for taking disciplinary action; (4) the right of the prisoner to call  
9 witnesses in his defense, when permitting him to do so would not be unduly hazardous to  
10 institutional safety or correctional goals; and (5) legal assistance to the prisoner where the prisoner  
11 is illiterate or the issues presented are legally complex. Id. at 563-71. As long as the five  
12 minimum Wolff requirements are met, due process has been satisfied. Walker v. Sumner, 14 F.3d  
13 1415, 1420 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472  
14 (1995).

15           Plaintiff states a due process claim against Defendant Crouse based on the denial of his  
16 right to call witnesses at his disciplinary hearing.

17           3.       State Law Claim- Assault and Battery

18           The Government Claims Act (“Act”) requires that a party seeking to recover money  
19 damages from a public entity or its employees submit a claim to the entity before filing suit in  
20 court, generally no later than six months after the cause of action accrues. Cal. Gov’t Code §§ 905,  
21 911.2, 945, 950.2 (emphasis added). Timely claim presentation is not merely a procedural  
22 requirement of the Act, but is an element of a plaintiff’s cause of action. Shirk v. Vista Unified  
23 Sch. Dist., 42 Cal. 4th 201, 209 (2007). Thus, when a plaintiff asserts a claim subject to the Act,  
24 he must affirmatively allege compliance with the claim presentation procedure, or circumstances  
25 excusing such compliance, in his complaint. Id.

26           Here, although Plaintiff alleges that he filed staff complaints and an appeal related to his  
27 disciplinary hearing, he does not allege compliance with the Act. While he may ultimately be able

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1 to state an assault and battery claim, he must affirmatively allege compliance with the Act before  
2 he can proceed.

3 Plaintiff therefore fails to state a claim for assault and battery.

4 **D. CONCLUSION AND ORDER**

5 Pursuant to Plaintiff's March 7, 2016, notice, this action SHALL PROCEED on the  
6 following claims: (1) violation of the Eighth Amendment against Defendants Gonzales, Smith,  
7 Cope, Lozano and Stan; and (2) violation of the Fourteenth Amendment against Defendant  
8 Crouse.

9 All other claims are DISMISSED for failure to state a claim.

10 IT IS SO ORDERED.

11 Dated: March 8, 2016

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE

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