

1 complaint, (ECF No. 10), on June 16, 2017, the Court dismissed all other claims and defendants
2 for the failure to state a cognizable claim for relief, (ECF No. 12.) The Court indicated that
3 jurisdiction existed under 28 U.S.C. § 636(c), based on the fact that Plaintiff had consented to
4 Magistrate Judge jurisdiction and no other parties had yet appeared. (See id. at 1.)

5 **I. Williams v. King**

6 On November 9, 2017, the Ninth Circuit Court of Appeals ruled that 28 U.S.C. §
7 636(c)(1) requires the consent of all named plaintiffs and defendants, even those not served with
8 process, before jurisdiction may vest in a Magistrate Judge to dispose of a civil case. Williams v.
9 King, 875 F.3d 500 (9th Cir. 2017). Here, no defendant was yet served at the time that the Court
10 screened the complaint, and therefore none had appeared or consented to Magistrate Judge
11 jurisdiction. Because all defendants had not consented, the undersigned’s dismissal of Plaintiff’s
12 claims is invalid under Williams. Accordingly, the Court did not have jurisdiction to dismiss the
13 claims an defendants described in its June 16, 2017 order.

14 Because the undersigned nevertheless stands by the analysis in the previous screening
15 order, she will below recommend to a District Judge that the non-cognizable claims be
16 dismissed.

17 **II. Screening Requirement**

18 The Court is required to screen complaints brought by prisoners seeking relief against a
19 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §
20 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or
21 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
22 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.
23 § 1915(e)(2)(B)(ii).

24 A complaint must contain “a short and plain statement of the claim showing that the
25 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
26 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
27 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937,
28 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-

1 65 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge
2 unwarranted inferences." Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
3 (internal quotation marks and citation omitted).

4 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
5 liberally construed and to have any doubt resolved in their favor. Hebbe v. Pliler, 627 F.3d 338,
6 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff's claims must be facially
7 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each
8 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678, 129 S. Ct. at 1949
9 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir.
10 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere
11 consistency with liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678,
12 129 S. Ct. at 1949 (quotation marks omitted); Moss, 572 F.3d at 969.

13 **III. Allegations**

14 Plaintiff is currently incarcerated at Pelican Bay State Prison, in Crescent City,
15 California. The events in the complaint are alleged to have occurred while Plaintiff was housed
16 at Kern Valley State Prison. Plaintiff named the following defendants: (1) Correctional Officer
17 R. Hernandez; (2) Correctional Officer M. Stane; (3) Correctional Officer R. Stinson; (4)
18 Correctional Officer M. Chambers; (5) Lieutenant P. Chanelo; and (6) Sergeant J. Denney.
19 Plaintiff alleges as follows:

20 On September 9, 2014, Defendants Stane and Hernandez pulled Plaintiff and another
21 Inmate out of the A-yard Law Library for a body search. After Plaintiff was searched and
22 wanded, and as he was walking back to the law library, Defendant Hernandez pushed his head
23 into the wall. When Plaintiff asked why Hernandez did that, Defendants Hernandez and Stane
24 rushed Plaintiff, dragged him, pushed him into a wall, and slammed him onto the ground.
25 Defendant Stane sprayed Plaintiff in his face with O.C. pepper spray. Then they began punching,
26 kicking, and hitting Plaintiff with their batons.

27 Defendants Denney and Chambers came and joined the assault. Defendant Chambers was
28 hitting Plaintiff with his baton, and Defendant Denney sat on Plaintiff's legs. Defendant Stinson

1 came and started hitting Plaintiff in the head with an O.C. pepper spray can, and smashed
2 Plaintiff's right hand into the ground with his left foot.

3 Defendant Chanelo then came and put his knee in Plaintiff's back, twisted his arms
4 "chicken winging" him, and handcuffed him.

5 Plaintiff allegedly suffered two gashes to his head (which required stitches and
6 bandaging), a gash to his right middle finger (which required stitches), and multiple scratches,
7 bumps, and bruises.

8 Plaintiff alleges that the Defendants' actions constituted an unlawful use of unnecessary
9 excessive force in violation of his Eighth Amendment right to be free from cruel and unusual
10 punishment. Plaintiff is requesting \$100,000 in compensatory, nominal, and punitive damages
11 for his pain and suffering, and any other relief that the court deems just and proper.

12 **IV. Discussion**

13 **A. Excessive Force**

14 The Eighth Amendment protects prisoners from inhumane methods of punishment and
15 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.
16 2006). The unnecessary and wanton infliction of pain violates the Cruel and Unusual
17 Punishments Clause of the Eighth Amendment. Hudson v McMillian, 503 U.S. 1, 5
18 (1992)(citations omitted). Although prison conditions may be restrictive and harsh, prison
19 officials must provide prisoners with food, clothing, shelter, sanitation, medical care, and
20 personal safety. Farmer v. Brennan, 511 U.S. 825, 832-33 (1994) (quotations omitted).

21 For claims of excessive physical force, the issue is "whether force was applied in a good-
22 faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm."
23 Hudson, 503 U.S. at 7. Relevant factors for this consideration include "the extent of injury . . . [,]
24 the need for application of force, the relationship between that need and the amount of force
25 used, the threat 'reasonably perceived by the responsible officials,' and 'any efforts made to
26 temper the severity of a forceful response.'" Id. (quoting Whitley v. Albers, 475 U.S. 1078, 1085
27 (1986)). Although de minimis uses of force do not violate the Constitution, the malicious and
28 sadistic use of force to cause harm always violates the Eighth Amendment, regardless of whether

1 or not significant injury is evident. Hudson, 503 U.S. at 9-10; Oliver v. Keller, 289 F.3d 623, 628
2 (9th Cir. 2002).

3 Plaintiff has stated a cognizable claim for excessive force in violation of the Eighth
4 Amendment against Defendants Hernandez and Stane for allegedly attacking him on September
5 9, 2014. Plaintiff has alleged that in response to his verbal inquiry, Defendants Hernandez and
6 Stane rushed Plaintiff, dragged him, pushed him into a wall, and slammed him onto the ground.
7 Defendant Stane also sprayed Plaintiff in his face with O.C. pepper spray, and they both began
8 punching, kicking, and hitting Plaintiff with their batons. Plaintiff further alleges that the attack
9 resulted in physical injuries. These facts are sufficient to state a claim for excessive force against
10 both Defendants Hernandez and Stane.

11 Plaintiff has also stated a cognizable claim for excessive force against Defendants
12 Denney, Chambers, and Stinson for joining the alleged assault. Liberally construed, Plaintiff has
13 alleged that Defendants Denny and Chambers arrived during the assault by Defendants
14 Hernandez and Stane, and aided them by sitting on Plaintiff's legs and hitting Plaintiff with a
15 baton, respectively. Then, Defendant Stinson allegedly came and joined in the assault by hitting
16 Plaintiff with a can of O.C. pepper spray and smashing Plaintiff's hand with his foot. Plaintiff
17 alleges that these acts caused physical injuries. These allegations are sufficient to state a claim
18 for excessive force in light of the circumstances.

19 However, Plaintiff has not stated sufficient allegations to show a cognizable claim for
20 excessive use of force against Defendant Chanelo. As currently alleged, Plaintiff's allegations
21 against Defendant Chanelo are insufficient to describe any use of excessive force under the
22 circumstances. Generally, handcuffing an inmate involves some *de minimus* use of force, and the
23 complaint does not specify any injuries in the handcuffing, or allege facts showing that there was
24 a more than *de minimus* use of force, or that any use of force continued after Plaintiff was
25 restrained.

26 **B. Supervisory Liability**

27 Generally, supervisors cannot be held liable for the actions of their subordinates based on
28 a theory of respondeat superior. Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). However, “[a]

1 supervisor can be liable in his individual capacity ‘for his own culpable action or inaction in the
2 training, supervision, or control of his subordinates; for his acquiescence in the constitutional
3 deprivation . . .; or for conduct that showed a reckless or callous indifference to the rights of
4 others.’” Watkins v. City of Oakland, 145 F.3d 1087, 1093 (9th Cir. 1998) (internal quotations
5 and citations omitted). Supervisory liability requires facts showing that “the supervisor
6 participated in or directed the violations, or knew of the violations and failed to act to prevent
7 them.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

8 Plaintiff has specified that Defendant Chanelo was a Lieutenant and the other defendants
9 were a Sergeant and Correctional Officers. To the extent he is attempting to do so, Plaintiff has
10 not stated a claim against Defendant Chanelo based on any theory of supervisory liability. As
11 alleged, Defendant Chanelo came and handcuffed Plaintiff after the other Defendants assaulted
12 Plaintiff. There are no facts stating that Defendant Chanelo participated in, knew of, or directed
13 the other Defendants’ use of excessive force. Nor are there any allegations that after arriving at
14 the scene, Defendant Chanelo failed to prevent any use of excessive force. For these additional
15 reasons, Plaintiff has failed to state a claim against Defendant Chanelo.

16 **V. Conclusion and Recommendation**

17 Plaintiff’s complaint stated a cognizable claim for excessive force in violation of the
18 Eighth Amendment against Defendants Hernandez, Stane, Stinson, Chambers, and Denney.
19 However, Plaintiff failed to state any other cognizable claim.

20 As noted above, Plaintiff was provided an opportunity to attempt to amend his complaint
21 to cure the identified deficiencies. Plaintiff declined to do so and notified the Court in writing
22 that he only wished to proceed on the claims identified as cognizable. Thus, no further leave to
23 amend is warranted here.

24 For these reasons, IT IS HEREBY RECOMMENDED that Defendant Chanelo be
25 dismissed from this action for Plaintiff’s failure to state a claim against him for which relief may
26 be granted.

27 These Findings and Recommendations will be submitted to the United States District
28 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen**

1 (14) days after being served with these Findings and Recommendations, the parties may file
2 written objections with the Court. The document should be captioned “Objections to Magistrate
3 Judge’s Findings and Recommendations.” The parties are advised that failure to file objections
4 within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772
5 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir.
6 1991)).

7
8 IT IS SO ORDERED.

9 Dated: December 15, 2017

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