

1 protection violation. (ECF No. 15.) The Court granted Plaintiff the option of either filing a second
2 amended complaint or notifying the Court of his intent to proceed only on the claim of excessive
3 force. On April 24, 2017, Plaintiff filed the second amended complaint that is now before the Court.
4 (ECF No. 18.)

5 II.

6 SCREENING REQUIREMENT

7 The Court is required to screen Plaintiff's complaint and dismiss the case, in whole or in part,
8 if the Court determines it fails to state a claim upon which relief may be granted. 28 U.S.C. §
9 1915(e)(2)(B)(ii). A complaint must contain "a short and plain statement of the claim showing that
10 the pleader is entitled to relief..." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
11 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
12 statements, do not suffice," Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v.
13 Twombly, 550 U.S. 544, 555 (2007)), and courts "are not required to indulge unwarranted inferences,"
14 Doe I v. Walmart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation
15 omitted). While factual allegations are accepted as true, legal conclusions are not. Iqbal, 556 U.S. at
16 678.

17 Pro se litigants are entitled to have their pleadings liberally construed and to have any doubt
18 resolved in their favor, Wilhelm v. Rotman, 680 F.3d 1113, 1121-23 (9th Cir. 2012); Hebbe v. Pliler,
19 627 F.3d 338, 342 (9th Cir. 2010), but Plaintiff's claims must be facially plausible to survive
20 screening, which requires sufficient factual detail to allow the Court to reasonably infer that each
21 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678; Moss v. U.S. Secret
22 Service, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is
23 not sufficient, and mere consistency with liability falls short of satisfying the plausibility standard.
24 Iqbal, 556 U.S. at 678.

25 III.

26 COMPLAINT ALLEGATIONS

27 On April 23, 2011, at 9:00 a.m., Plaintiff was inside his assigned cell at Corcoran State Prison.
28 Officers Humberto German and Phillip Holguin approached Plaintiff's cell and ordered him to be

1 “handcuffed” and escorted Plaintiff to the building holding cage. Plaintiff underwent an unclothed
2 body search and was then handcuffed and escorted to the holding case. After being uncuffed, Plaintiff
3 exchanged words with Defendants German and Holguin. Defendant Humberto German removed his
4 state issued pepper spray canister and began spraying Plaintiff in the face and torso. Plaintiff went
5 into shock and was not able to see and breathe. Plaintiff then heard Defendant Humberto German
6 order Phillip Holguin to pepper spray the Plaintiff. Both Defendants pepper sprayed Plaintiff until the
7 canisters were empty. Plaintiff did not talk with the prison arresting agency, no photographs were
8 taken, nor was he advised of his Miranda rights.

9 Plaintiff contends that the State is responsible for his illegal arrest and wrongful imprisonment.
10 Both Defendants should have known that the arrest of Plaintiff was illegal and he was deprived of due
11 process of the law.

12 IV. 13 DISCUSSION

14 A. Excessive Force

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

27 Assuming the validity of Plaintiff’s allegations set forth in the second amended complaint, as
28 this Court must at the pleading stage, Plaintiff states a cognizable claim for excessive force against

1 Defendants Humberto German and Phillip Holguin for use of pepper spray when none was allegedly
2 necessary and in excess of what, if any, was required.

3 **B. False Imprisonment**

4 The elements “of false imprisonment are: (1) the nonconsensual, intentional confinement of a
5 person, (2) without lawful privilege, and (3) for an appreciable period of time, however brief.”
6 Young v. County of Los Angeles, 655 F.3d 1156, 1169 (9th Cir. 2011) (quoting Easton v. Sutter Coast
7 Hospital, 80 Cal.App.4th 485, 496 (Ct. App. 2000)).

8 Plaintiff’s second amended complaint omits a large majority of the factual allegations and
9 claims for relief set forth in the first amended complaint. However, Plaintiff cannot omit prior factual
10 allegations in an attempt to state a claim. In the first amended complaint, Plaintiff declared, under
11 penalty of perjury, that months after the incident, he was taken to Kings County Superior Court and
12 charged with a violation of California Penal Code section 4501.5 (battery by a prisoner on non-
13 confined person). Plaintiff was ultimately found guilty of battery and sentenced to a consecutive term
14 of 27 years-to-life. (First Am. Compl. at 5; ECF No. 11.)

15 Thus, Plaintiff’s claim for false imprisonment would require a showing that his conviction of
16 battery on a prison guard under California Penal Code section 4501.5 is invalid. Because Plaintiff’s
17 false imprisonment claim will necessarily affect the validity of his conviction, the claim must be
18 dismissed. See Heck v. Humphrey, 512 U.S. 477, 489 (1994) (unless and until the favorable
19 termination of the conviction or sentence occurs, no cause of action under § 1983 exists); Jaa v. City
20 of Dublin, No. 14-cv-03260-WHO, 2015 WL 1967344, *3 (N.D. Cal. Apr. 30, 2015).

21 **IV.**

22 **CONCLUSION AND RECOMMENDATIONS**

23 Plaintiff states a cognizable claim against Defendants Humberto German and Phillip Holguin
24 for excessive force in violation of the Eighth Amendment on April 23, 2011. However, Plaintiff fails
25 to state a cognizable claim for relief for false imprisonment, and Plaintiff was previously notified of
26 the applicable legal standard and the deficiencies in his pleading. The second amended complaint has
27 raised no new facts that give rise to a claim for relief. Therefore, based upon the allegations in
28 Plaintiff’s first and second amended complaints, the Court is persuaded that Plaintiff is unable to

1 allege any additional facts that would support a claim for false imprisonment. See Hartmann v.
2 CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) (“A district court may deny leave to amend when
3 amendment would be futile.”) Based on the nature of the deficiencies at issue, the Court finds that
4 further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v.
5 Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).

6 Accordingly, it is HEREBY RECOMMENDED that:

7 1. This action proceed on the April 24, 2017, second amended complaint against
8 Defendants Humberto German and Phillip Holguin for excessive force in violation of the Eighth
9 Amendment on April 23, 2011; and

10 2. Plaintiff’s false imprisonment claim be dismissed, without prejudice, for failure to state
11 a cognizable claim for relief.

12 These Findings and Recommendations will be submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days**
14 after being served with these Findings and Recommendations, Plaintiff may file written objections
15 with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
16 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may
17 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
18 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

19
20 IT IS SO ORDERED.

21 Dated: April 28, 2017


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23 UNITED STATES MAGISTRATE JUDGE
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