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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8
9 MONICO J. QUIROGA, III,
10 Plaintiff,
11 v.
12 C. COOPER et al,
13 Defendants.

1:17-cv-00004-DAD-EPG

FINDINGS AND RECOMMENDATIONS
FINDING COGNIZABLE CLAIM FOR
EXCESSIVE FORCE AND
RECOMMENDING DISMISSAL OF ALL
OTHER CLAIMS

(Doc. Nos. 1, 13, 16.)

14 OBJECTIONS, IF ANY, DUE WITHIN 14
15 DAYS

16 Monico J. Quiroga, III (“Plaintiff”) was a pretrial detainee at the time of the relevant
17 events in his complaint. He is proceeding *pro se* and *in forma pauperis* in this civil rights
18 action pursuant to 42 U.S.C. § 1983. On January 1, 2017, Plaintiff filed his complaint, which is
19 now before this Court for screening. (ECF No. 1). Plaintiff alleges that Defendants Cooper
20 and Moreno assaulted him while he was in the central receiving facility. Plaintiff also attempts
21 to bring an Eighth Amendment claim against Defendant Kern County Sherriff.

22 On March 9, 2017, the Court entered an order finding that Plaintiff stated a cognizable
23 claim for excessive force against Defendants Cooper and Moreno, but failed to state a
24 cognizable claim against Defendant Kern County Sherriff. (ECF No. 13.) That order gave
25 Plaintiff options to: (1) notify the Court that he is willing to proceed only on the claim against
26 Defendants Cooper and Moreno; (2) file a First Amended Complaint; or (3) notify the Court
27 that he wishes to stand on his original complaint, subject to recommendations to the District
28

1 Judge. (*Id.*) On March 24, 2017, Plaintiff filed a notice informing the Court that he is choosing
2 to stand on complaint, subject to recommendations to District Judge. (ECF No. 16.)

3 Accordingly, the Court will now enter Findings and Recommendations to the District
4 Judge consistent with its March 9, 2017 screening order.

5 **I. SCREENING REQUIREMENT**

6 When a party seeks permission to pursue a civil case *in forma papueris*, courts will
7 screen the complaint pursuant to 28 U.S.C. § 1915(e)(2). In particular, 28 U.S.C. § 1915(e)(2)
8 provides that courts shall dismiss a case at any time if it determines that, *inter alia*, it is
9 frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary
10 relief against a defendant who is immune from such relief. A central function of this screening
11 process is to “discourage the filing of, and waste of judicial and private resources upon,
12 baseless lawsuits that paying litigants generally do not initiate because of the cost of bringing
13 suit.” Neitzke v. Williams, 490 U.S. 319, 327 (1989).

14 **II. SUMMARY OF PLAINTIFF’S COMPLANT**

15 Plaintiff alleges that on September 25, 2015, he was assaulted while being locked into
16 Central Receiving facility in Bakersfield as a pretrial detainee. Defendant J. Moreno struck and
17 punched Plaintiff several times while Plaintiff was in restraints, resulting in substantial bodily
18 harm. Defendant C. Cooper also participated in the assault. Defendants’ force was excessive
19 and unjustified.¹

20 **III. LEGAL STANDARDS**

21 **A. Section 1983 Claims**

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

23 Every person who, under color of any statute, ordinance, regulation, custom,
24 or usage, of any State or Territory or the District of Columbia, subjects, or
25 causes to be subjected, any citizen of the United States or other person
26 within the jurisdiction thereof to the deprivation of any rights, privileges, or
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

27 ¹ Plaintiff attaches a state court complaint for assault and battery. It is unclear if the attachment is a
28 pending case.

1 42 U.S.C. § 1983.

2 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a
3 method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490 U.S. 386,
4 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman
5 v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697
6 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);
7 Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006).

8 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted
9 under color of state law and (2) the defendant deprived him or her of rights secured by the
10 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
11 2006). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
12 meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts,
13 or omits to perform an act which he is legally required to do that causes the deprivation of
14 which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). “The
15 requisite causal connection can be established not only by some kind of direct, personal
16 participation in the deprivation, but also by setting in motion a series of acts by others which
17 the actor knows or reasonably should know would cause others to inflict the constitutional
18 injury.” Id. at 743-44.

19 **B. Standards for Excessive Force regarding Pretrial Detainees**

20 The Eighth Amendment protects prisoners from inhumane methods of punishment and
21 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th
22 Cir. 2006).

23 Excessive force claims brought by pretrial detainees are analyzed under the Due Process
24 Clause of the Fourteenth Amendment rather than under the Cruel and Unusual Punishments
25 Clause of the Eighth Amendment. Oregon Advocacy Center v. Mink, 322 F.3d 1101, 1120 (9th
26 Cir. 2003). However, the same Eighth Amendment standards apply in setting the minimum
27 standard of care due pretrial detainees. Id. at 1120.

1 For Eighth Amendment claims arising out of the use of excessive physical force, courts
2 look to see if the use of force was subjectively reasonable, i.e. “whether force was applied in a
3 good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause
4 harm.” Wilkins v. Gaddy, 559 U.S. 34, 37 (2010) (per curiam) (citing Hudson v. McMillian,
5 503 U.S. 1, 9 (1992)) (internal quotation marks omitted); Furnace v. Sullivan, 705 F.3d 1021,
6 1028 (9th Cir. 2013). The objective component of an Eighth Amendment claim is contextual
7 and responsive to contemporary standards of decency, Hudson, 503 U.S. at 8 (quotation marks
8 and citation omitted), and although *de minimis* uses of force do not violate the Constitution, the
9 malicious and sadistic use of force to cause harm always violates contemporary standards of
10 decency, regardless of whether or not significant injury is evident, Wilkins, 559 U.S. at 37-8
11 (citing Hudson, 503 U.S. at 9-10) (quotation marks omitted); Oliver v. Keller, 289 F.3d 623,
12 628 (9th Cir. 2002).

13 Excessive force claims brought by pretrial detainees under the Fourteenth Amendment,
14 by contrast, are evaluated under the “objectively unreasonable” standard. Kingsley v.
15 Hendrickson, 135 S. Ct. 2466, 2473 (2015). Courts apply a more rigid standard in these cases
16 because pretrial detainees, unlike prisoners, must not be punished at all, much less sadistically
17 and maliciously. Id. at 2475 (citing Ingraham v. Wright, 430 U.S. 651, 671-71 (1977)). Courts
18 may look at a variety of factors to determine whether the force used was objectively
19 unreasonable, including but not limited to: the relationship between the need for the use of
20 force and the amount of force used, the extent of the detainee's injury, the threat reasonably
21 perceived by the officer, and whether the detainee was actively resisting. Kingsley, 135 S. Ct.
22 at 2473.

23 **IV. ANALYSIS OF PLAINTIFF’S COMPLAINT**

24 Plaintiff’s complaint states a cause of action for excessive force in violation of the
25 Fourteenth Amendment based on allegations that Plaintiff was assaulted without cause by
26 Defendants Cooper and Moreno while being a pretrial detainee.

27 Plaintiff’s complaint fails to state a claim against Defendant Kern County Sheriff’s
28 Department. “[S]ection 1983 imposes liability only on ‘persons’ who, under color of law,

1 deprive others of their constitutional rights, [and] the Supreme Court has construed the term
2 'persons' to include municipalities such as the County.” Castro v. Cty. of Los Angeles, 797 F.3d
3 654, 670 (9th Cir. 2015) (citing Monell v. Dep't of Social Services, 436 U.S. 658, 690-91
4 (1978)). Counties may not be held liable for the actions of their employees under a theory of
5 *respondeat superior*, but they may be held liable for a constitutional violation if an action taken
6 pursuant to a policy, be it a formal or informal policy, caused the underlying violation. Castro,
7 797 F.3d at 670 (citing City of St. Louis v. Praprotnik, 485 U.S. 112, 131 (1989) and Monell,
8 436 U.S. at 691) (quotation marks omitted); see also Simmons v. Navajo Cty., Ariz., 609 F.3d
9 1011, 1021 (9th Cir. 2010) (municipal liability claim cannot be maintained unless there is an
10 underlying constitutional violation).

11 Municipal liability may also be imposed where the local government unit's omission led
12 to the constitutional violation by its employee. Gibson v. Cty. Of Washoe, Nev., 290 F.3d
13 1175, 1186 (9th Cir. 2002). Under this route to municipal liability, the “plaintiff must show that
14 the municipality's deliberate indifference led to its omission and that the omission caused the
15 employee to commit the constitutional violation.” Id. This kind of deliberate indifference is
16 found when the need to remedy the omission is so obvious, and the failure to act so likely to
17 result in the violation of rights, that the municipality reasonably can be said to have been
18 deliberately indifferent when it failed to act. Id. at 1195.

19 In this case, Plaintiff has not linked any underlying violation of his rights to a policy or
20 practice attributable to the Kern County Sheriff’s office, nor has he provided any facts showing
21 that the county knew of, and blatantly ignored, the constitutional violations committed by its
22 employees. Therefore, all claims against Defendant “Kern County Sherriff” should be
23 dismissed.

24 V. CONCLUSION

25 Based on the foregoing, it is **HEREBY RECOMMENDED** that:

- 26 1. This case proceed only on the excessive force claim under the Fourteenth
27 Amendment against Defendants Cooper and Moreno;
- 28 2. All other claims be dismissed; and

