



1 On November 9, 2017, the Ninth Circuit Court of Appeals ruled that 28 U.S.C. § 636(c)(1)  
2 requires the consent of all named plaintiffs and defendants, even those not served with process, before  
3 jurisdiction may vest in a Magistrate Judge to dispose of a civil case. Williams v. King, \_\_ F.3d \_\_,  
4 Case No. 15-15259, 2017 WL 5180205, \*3 (9th Cir. Nov. 9, 2017). Accordingly, the Court did not  
5 have jurisdiction to dismiss the claims and Defendants in its July 12, 2017 order.

6 Based upon the foregoing, the undersigned will now recommend to the District Judge that this  
7 case continue to proceed only on Plaintiff’s cognizable claims, and that the claims and Defendants  
8 described below be dismissed, for the reasons explained herein.

9 **I.**

10 **SCREENING REQUIREMENT**

11 The Court is required to screen complaints brought by prisoners seeking relief against a  
12 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
13 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
14 “frivolous or malicious,” that “fails to state a claim on which relief may be granted,” or that “seeks  
15 monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

16 A complaint must contain “a short and plain statement of the claim showing that the pleader is  
17 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
18 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
19 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,  
20 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally  
21 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,  
22 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

23 Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings  
24 liberally construed and to have any doubt resolved in their favor, but the pleading standard is now  
25 higher, Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive  
26 screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow  
27 the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal,  
28 556 U.S. at 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer

1 possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely  
2 consistent with’ a defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556  
3 U.S. at 678; Moss, 572 F.3d at 969.

4 **II.**

5 **COMPLAINT ALLEGATIONS**

6 Plaintiff claims his Eighth Amendment rights were violated when prison official used  
7 excessive force against him and acted with deliberate indifference to his safety. On December 5,  
8 2016, while detained in North Kern State Prison, (“North Kern”) Plaintiff claims three correctional  
9 officers and one sergeant used excessive force causing injuries to Plaintiff. Throughout the day and on  
10 a couple of instances, Plaintiff spoke with Officer Coelho and requested a cell move. Plaintiff reasons  
11 that his request for a cell move was warranted as Plaintiff sustained a broken arm by falling off the top  
12 bunk. Upon denying Plaintiff’s request, Plaintiff then asked to speak with a sergeant, to which Officer  
13 Coelho replied, “hell no.” As such, Officer Coelho denied both requests. Later, during meal time in  
14 the dayroom, Plaintiff asked Officer Coelho if he could speak with a sergeant, where Officer Coelho  
15 began to pepper spray Plaintiff without provocation. Immediately after, Officer Coelho and his co-  
16 workers then proceeded to kick and punch Plaintiff while he was on the ground. Defendants picked  
17 Plaintiff up off the ground and proceeded in handcuffing him. While being escorted out of the  
18 building, Plaintiff was body slammed to the ground and was beat again. Defendant proceeded to pick  
19 Plaintiff up off the ground and continued to escort Plaintiff to the program office where he was placed  
20 in a cell. Plaintiff named the following Defendants and claims they were also involved in this  
21 incident, Officer P. Ward, Officer Garcia-Fernandez, and Sergeant Hanson.

22 Plaintiff further claims, while detained at the program office he was treated with deliberate  
23 indifference by being denied medical care by nurse Negre. Nurse Negre was on duty at the D yard  
24 facility and did not properly treated Plaintiff’s injuries, which consisted of: bleeding, bruises,  
25 scratches, and a previous injury of a broken arm. Nurse Negre looked at Plaintiff and said, “he was  
26 not hurt too bad”, and proceeded to walk away.

27 Plaintiff is requesting a trial and monetary damages.

28 **III.**

1 **DISCUSSION**

2 **A. Excessive Force**

3 The unnecessary and wanton infliction of pain violates the Cruel and Unusual Punishments  
4 Clause of the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5 (1992) (citations omitted). For  
5 claims arising out of the use of excessive physical force, the issue is “whether force was applied in a  
6 good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”  
7 Wilkins v. Gaddy, 559 U.S. 34, 37 (per curiam) (citing Hudson, 503 U.S. at 7) (internal quotation  
8 marks omitted); Furnace v. Sullivan, 705 F.3d 1021, 1028 (9th Cir. 2013). The objective component  
9 of an Eighth Amendment claim is contextual and responsive to contemporary standards of decency,  
10 Hudson, 503 U.S. at 8 (quotation marks and citation omitted), and although *de minimis* uses of force  
11 do not violate the Constitution, the malicious and sadistic use of force to cause harm always violates  
12 contemporary standards of decency, regardless of whether or not significant injury is evident, Wilkins,  
13 559 U.S. at 37-8 (citing Hudson, 503 U.S. at 9-10) (quotation marks omitted); Oliver v. Keller, 289  
14 F.3d 623, 628 (9th Cir. 2002). In determining whether the use of force was wanton and unnecessary,  
15 courts may evaluate the extent of the prisoner’s injury, the need for application of force, the  
16 relationship between that need and the amount of force used, the threat reasonably perceived by the  
17 responsible officials, and any efforts made to temper the severity of a forceful response. Hudson, 503  
18 U.S. at 7 (quotation marks and citations omitted).

19 The Eighth Amendment protects prisoners from inhumane methods of punishment and from  
20 inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006).  
21 Although prison conditions may be restrictive and harsh, prison officials must provide prisoners with  
22 food, clothing, shelter, sanitation, medical care, and personal safety.

23 In the amended complaint, the Court finds that Plaintiff has alleged sufficient facts to state a  
24 plausible claim for excessive force against Defendants Coelho, Garcia-Fernandez, Ward, and Hanson.  
25 Plaintiff maintains the injuries he sustained were wholly and without provocation. Plaintiff contends  
26 that he requested a cell move which was denied, and when he requested to speak to a sergeant,  
27 Defendant Coelho began to pepper spray Plaintiff, and then Defendants Coelho, Garcia-Fernandez,  
28 Ward and Hanson punched and kicked him. Then, after Plaintiff was handcuffed, Defendants body

1 slammed him to the ground. Plaintiff's allegations are sufficient to state a cognizable claim for  
2 excessive force.

3 **B. Deliberate Indifference to Serious Medical Need**

4 While the Eighth Amendment of the United States Constitution entitles Plaintiff to medical  
5 care, the Eighth Amendment is violated only when a prison official acts with deliberate indifference to  
6 an inmate's serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), overruled  
7 in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014); Wilhelm, 680  
8 F.3d at 1122; Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). Plaintiff "must show (1) a serious  
9 medical need by demonstrating that failure to treat [his] condition could result in further significant  
10 injury or the unnecessary and wanton infliction of pain," and (2) that "the defendant's response to the  
11 need was deliberately indifferent." Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096).  
12 Deliberate indifference is shown by "(a) a purposeful act or failure to respond to a prisoner's pain or  
13 possible medical need, and (b) harm caused by the indifference." Wilhelm, 680 F.3d at 1122 (citing  
14 Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective recklessness, which entails  
15 more than ordinary lack of due care. Snow, 681 F.3d at 985 (citation and quotation marks omitted);  
16 Wilhelm, 680 F.3d at 1122.

17 Plaintiff's allegations in the first amended complaint fail to give rise to a constitutional  
18 violation under the Eighth Amendment. First, Plaintiff fails to demonstrate that he was suffering from  
19 a serious medical need. Hudson, 503 U.S. at 9. Plaintiff only alleges he has "injuries" to his body,  
20 consisting of: bleeding, bruises, scratches, and a previous injury of a broken arm. Subsequently,  
21 Plaintiff does not mention any discomfort, pain, or how these injuries would result in further  
22 significant injuries. Wilhelm, 680 F.3d at 1122. Such conclusory and vague allegations fail to meet  
23 the objective prong for an Eighth Amendment violation. Second, Plaintiff fails to state how nurse  
24 Negre's assessment demonstrates a failure to treat his injuries. By Plaintiff's own admission, Negre  
25 assessed the situation and determined the injuries Plaintiff sustained were not serious. An inmate has  
26 a right to medical care, but in this instance, there are insufficient factual details to support a reasonable  
27 inference that Negre knew of and disregarded an excessive risk to serious medical needs.

