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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUSTIN BRACKEN,
Plaintiff,
v.
DURAN, et al.,
Defendants.

Case No. 1:17-cv-00306-AWI-JLT (PC)
**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**
(Doc. 4)
21-DAY DEADLINE

In this action, Plaintiff alleges that he was subjected to three incidents of excessive force at the hands of correctional officers at the California Correctional Institute (“CCI”) in Tehachapi, California. As discussed below, the complaint violates Federal Rules of Civil Procedure 18 and 20 because Plaintiff’s allegations against the officers do not appear to be related. Thus, the complaint is dismissed with leave to file a first amended complaint.

A. Screening Requirement

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C.

1 § 1915(e)(2)(B)(i)-(iii).

2 **B. Summary of Plaintiff's Complaint**

3 Plaintiff seeks monetary damages for of three incidents: (1) on September 9/25/2015,
4 Plaintiff alleges he was assaulted by correctional officers after Officer Duran discovered Plaintiff
5 masturbating during 5:00 p.m. counts; (2) on January 8, 2016, around 8:00 p.m. Officer
6 Hernandez came into Plaintiff cell and kicked Plaintiff five times in the back while he slept; and
7 (3) on February 25, 2016, Officer Lima rushed into Plaintiff's cell and removed the papers
8 Plaintiff had used to cover his door and left; Officer Lima returned to escort Plaintiff to the
9 sergeant regarding Plaintiff having "boarded-up," but during the escort, Officer Lima had
10 Plaintiff in a choke hold and kept shoving Plaintiff's head against the wall while the other
11 escorting officer hit Plaintiff a few times in the back. Plaintiff delineates claims for "excessive
12 force" and "threat to safety" and seeks monetary damages.

13 Though Plaintiff has stated two cognizable claims for excessive force, the Court is unable
14 to discern any relation between his claims to allow them to proceed in a single action. Thus,
15 Plaintiff is given the pleading requirements, the standards for his stated claims, and leave to file a
16 first amended complaint.

17 **C. Pleading Requirements**

18 **1. Federal Rule of Civil Procedure 18(a) & 20(a)(2)**

19 Federal Rule of Civil Procedure 18(a) allows a party asserting a claim for relief as an
20 original claim, counterclaim, cross-claim, or third-party claim to join, either as independent or as
21 alternate claims, numerous claims against an opposing party. However, Plaintiff may not bring
22 unrelated claims against unrelated parties in a single action. Fed. R. Civ. P. 18(a), 20(a)(2);
23 *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v. Smith*, 507 F.3d 605, 607 (7th
24 Cir. 2007). Plaintiff may bring a claim against multiple defendants so long as (1) the claims arise
25 out of the same transaction or occurrence, or series of transactions and occurrences, and (2) there
26 are commons questions of law or fact. Fed. R. Civ. P. 20(a)(2); *Coughlin v. Rogers*, 130 F.3d
27 1348, 1351 (9th Cir. 1997); *Desert Empire Bank v. Insurance Co. of North America*, 623 F.3d
28 1371, 1375 (9th Cir. 1980). Only if the defendants are properly joined under Rule 20(a) will the

1 Court review the additional claims to determine if they may be joined under Rule 18(a), which
2 permits the joinder of multiple claims against the same party.

3 The Court must be able to discern a relationship between Plaintiff’s claims or there must
4 be a similarity of parties. The fact that all of Plaintiff’s allegations are based on the same type of
5 constitutional violation (i.e. excessive force by different actors on different dates, under different
6 factual events) does not make claims related for purposes of Rule 18(a). Plaintiff’s allegations
7 against each of the three correctional officers he named as Defendants do not appear related. All
8 claims that do not comply with Rules 18(a) and 20(a)(2) are subject to dismissal. Plaintiff is
9 cautioned that if he fails to elect which category of claims to pursue and his amended complaint
10 sets forth improperly joined claims, the Court will determine which claims should proceed and
11 which claims will be dismissed. *Visendi v. Bank of America, N.A.*, 733 F.3d 863, 870-71 (9th Cir.
12 2013). Whether any claims will be subject to severance by future order will depend on the
13 viability of claims pled in the amended complaint.

14 2. Federal Rule of Civil Procedure 8(a)

15 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
16 exceptions,” none of which applies to section 1983 actions. *Swierkiewicz v. Sorema N. A.*, 534
17 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). A complaint must contain “a short and plain
18 statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. Pro. 8(a).
19 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and
20 the grounds upon which it rests.” *Swierkiewicz*, 534 U.S. at 512.

21 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
22 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556
23 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
24 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is
25 plausible on its face.’” *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual
26 allegations are accepted as true, but legal conclusions are not. *Iqbal*. at 678; *see also Moss v. U.S.*
27 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

28 While “plaintiffs [now] face a higher burden of pleadings facts . . . ,” *Al-Kidd v. Ashcroft*,

1 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of *pro se* prisoners are still construed liberally
2 and are afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).
3 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations,”
4 *Neitze v. Williams*, 490 U.S. 319, 330 n.9 (1989), “a liberal interpretation of a civil rights
5 complaint may not supply essential elements of the claim that were not initially pled,” *Bruns v.*
6 *Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*,
7 673 F.2d 266, 268 (9th Cir. 1982), and courts are not required to indulge unwarranted inferences,
8 *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and
9 citation omitted). The “sheer possibility that a defendant has acted unlawfully” is not sufficient,
10 and “facts that are ‘merely consistent with’ a defendant’s liability” fall short of satisfying the
11 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

12 If he chooses to file a first amended complaint, Plaintiff should endeavor to make it as
13 concise as possible. He should simply state which of his constitutional rights he feels were
14 violated by each Defendant and its factual basis. Where the allegations against two or more
15 Defendants are factually intertwined, Plaintiff need not repeat the factual allegations separately
16 against each Defendant. Rather, Plaintiff should present his factual allegations and identify the
17 Defendants he feels are thereby implicated. Plaintiff need not cite legal authority for his claims in
18 a first amended complaint as his factual allegations are accepted as true. The amended complaint
19 should be clearly legible (*see* Local Rule 130(b)), and double-spaced pursuant to Local Rule
20 130(c).

21 3. Linkage Requirement

22 The Civil Rights Act (42 U.S.C. § 1983) requires that there be an actual connection or link
23 between the actions of the defendants and the deprivation alleged to have been suffered by
24 Plaintiff. *See Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423
25 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation
26 of a constitutional right, within the meaning of section 1983, if he does an affirmative act,
27 participates in another’s affirmative acts or omits to perform an act which he is legally required to
28 do that causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743

1 (9th Cir. 1978). In order to state a claim for relief under section 1983, Plaintiff must link each
2 named defendant with some affirmative act or omission that demonstrates a violation of
3 Plaintiff's federal rights.

4 Plaintiff must clearly identify which Defendant(s) he feels are responsible for each
5 violation of his constitutional rights and their factual basis as his Complaint must put each
6 Defendant on notice of Plaintiff's claims against him or her. *See Austin v. Terhune*, 367 F.3d
7 1167, 1171 (9th Cir. 2004). Plaintiff is cautioned that he must use surnames whenever possible as
8 allegations such as "the officers" or "two officers" or "others" are insufficient to link an
9 individual defendant to factual allegations.

10 **D. Claim for Relief**

11 **1. Excessive Force**

12 The Eighth Amendment prohibits those who operate our prisons from using "excessive
13 physical force against inmates." *Farmer v. Brennan*, 511 U.S. 825 (1994); *Hoptowit v. Ray*, 682
14 F.2d 1237, 1246, 1250 (9th Cir.1982) (prison officials have "a duty to take reasonable steps to
15 protect inmates from physical abuse"); *see also Vaughan v. Ricketts*, 859 F.2d 736, 741 (9th
16 Cir.1988), *cert. denied*, 490 U.S. 1012 (1989) ("prison administrators' indifference to brutal
17 behavior by guards toward inmates [is] sufficient to state an Eighth Amendment claim"). As
18 courts have succinctly observed, "[p]ersons are sent to prison as punishment, not for
19 punishment." *Gordon v. Faber*, 800 F.Supp. 797, 800 (N.D. Iowa 1992) (citation omitted), *aff'd*,
20 973 F.2d 686 (8th Cir.1992). "Being violently assaulted in prison is simply not 'part of the
21 penalty that criminal offenders pay for their offenses against society.'" *Farmer*, 511 U.S. at 834,
22 (*quoting Rhodes*, 452 U.S. at 347).

23 When a prison official stands accused of using excessive physical force in violation of the
24 cruel and unusual punishment clause of the Eighth Amendment, the question turns on "whether
25 force was applied in a good-faith effort to maintain or restore discipline, or maliciously and
26 sadistically for the purpose of causing harm." *Hudson v. McMillian*, 503 U.S. 1, 7 (1992) (citing
27 *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986)). In determining whether the use of force was
28 wanton and unnecessary, it is proper to consider factors such as the need for application of force,

1 the relationship between the need and the amount of force used, the threat reasonably perceived
2 by the responsible officials, and any efforts made to temper the severity of the forceful response.
3 *Hudson*, 503 U.S. at 7. The extent of a prisoner’s injury is also a factor that may suggest whether
4 the use of force could plausibly have been thought necessary in a particular situation. *Id.*
5 Although the absence of serious injury is relevant to the Eighth Amendment inquiry, it is not
6 determinative. *Id.* That is, use of excessive physical force against a prisoner may constitute cruel
7 and unusual punishment even though the prisoner does not suffer serious injury. *Id.* at 9.

8 Although the Eighth Amendment protects against cruel and unusual punishment, this does
9 not mean that federal courts can or should interfere whenever prisoners are inconvenienced or
10 suffer *de minimis* injuries. *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992) (8th Amendment
11 excludes from constitutional recognition *de minimis* uses of force). The malicious and sadistic
12 use of force to cause harm always violates contemporary standards of decency, regardless of
13 whether significant injury is evident. *Id.* at 9; *see also Oliver v. Keller*, 289 F.3d 623, 628 (9th
14 Cir.2002) (Eighth Amendment excessive force standard examines *de minimis* uses of force, not *de*
15 *minimis* injuries). “Injury and force, . . . , are only imperfectly correlated, and it is the latter that
16 ultimately counts. An inmate who is gratuitously beaten by guards does not lose his ability to
17 pursue an excessive force claim merely because he has the good fortune to escape without serious
18 injury.” *Wilkins v. Gaddy*, -- S.Ct. --, 2010 WL 596153, *3 (Feb. 22, 2010). However, not
19 “every malevolent touch by a prison guard gives rise to a federal cause of action.” *Hudson*, 503
20 U.S. at 9. “The Eighth Amendment’s prohibition of cruel and unusual punishments necessarily
21 excludes from constitutional recognition *de minimis* uses of physical force, provided that the use
22 of force is not of a sort ‘repugnant to the conscience of mankind.’” *Id.* at 9-10 (internal
23 quotations marks and citations omitted).

24 Plaintiff’s allegations against Officer Duran are not cognizable since the only allegation
25 that Plaintiff links Officer Duran to them is that Officer Duran discovered Plaintiff masturbating
26 during 5:00 pm counts. This does not amount to a cognizable excessive force claim.

27 Plaintiff’s allegations against Officer Hernandez, for kicking him five times in the back
28 while he slept, on January 8, 2016, state a cognizable excessive force claim.

1 Plaintiff's allegations against Officer Lima, for escorting him in a chokehold and
2 repeatedly shoving Plaintiff's head into the wall while the other escorting officer hit Plaintiff in
3 the back also states a cognizable excessive force claim. However, there is no relation between
4 Plaintiff's allegations against Officer Hernandez and Officer Lima to allow them to proceed in the
5 same lawsuit without violating Rules 18 and 20. Further, Plaintiff may be able to identify the
6 officer who hit him in the back while being escorted with Officer Lima and may do so in an
7 amended complaint if desired.

8 **E. Conclusion**

9 For the reasons set forth above, Plaintiff's Complaint is defective. Thus, he may proceed
10 in one of two ways. He may file an amended complaint naming only officer Lima or officer
11 Hernandez and file a second action naming the remaining officer. Alternatively, he may alert the
12 Court which of these officers he wishes to pursue in this action and still file the separate action
13 against the second officer if he chooses. He must take either action within 21 days and his failure
14 to do so will result in the Court dismissing this action

15 Finally, if Plaintiff no longer desires to pursue this action, he may file a notice of
16 voluntary dismissal.

17 Plaintiff must demonstrate in any first amended complaint how the conditions complained
18 of have resulted in a deprivation of Plaintiff's constitutional rights. *See Ellis v. Cassidy*, 625 F.2d
19 227 (9th Cir. 1980). The first amended complaint must allege in specific terms how each named
20 defendant is involved. There can be no liability under section 1983 unless there is some
21 affirmative link or connection between a defendant's actions and the claimed deprivation. *Rizzo*
22 *v. Goode*, 423 U.S. 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir. 1980); *Johnson v.*
23 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

24 Plaintiff's first amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short and
25 plain statement must "give the defendant fair notice of what the . . . claim is and the grounds upon
26 which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) quoting *Conley v.*
27 *Gibson*, 355 U.S. 41, 47 (1957). Although accepted as true, the "[f]actual allegations must be
28

1 [sufficient] to raise a right to relief above the speculative level” *Twombly*, 550 U.S. 127, 555
2 (2007) (citations omitted).

3 Plaintiff is further advised that an amended complaint supercedes the original, *Lacey v.*
4 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1 (9th Cir. Aug. 29,
5 2012) (en banc), and must be “complete in itself without reference to the prior or superceded
6 pleading,” Local Rule 220.

7 The Court provides Plaintiff with opportunity to amend to cure the deficiencies identified
8 by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff
9 may not change the nature of this suit by adding new, unrelated claims in his first amended
10 complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

11 Based on the foregoing, the Court **ORDERS**:

12 1. Plaintiff may proceed in one of three ways:

13 a. If the plaintiff wishes to proceed on the claims against officers Lima
14 and Hernandez, he can file an amended complaint in this action naming only one
15 of the officers (either Lima or Hernandez) and file a separate action against the
16 officer he does not name in this action;

17 b. Alternatively, he can alert the Court that he wishes to proceed in
18 this action against only one of the officers (either Lima or Hernandez) and notify
19 which officer he wishes to pursue here. If he chooses this course of action, he can
20 still file the separate action against the officer he does not name in this action;

21 c. He may choose to abandon the action and voluntarily dismiss the
22 action;

23 c. He must take one of these actions **within 21 days**;

24 3. The Clerk’s Office shall send Plaintiff two civil rights complaint forms.

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If Plaintiff fails to comply with this order, this action will be dismissed for failure to obey a court order and for failure to state a claim.

IT IS SO ORDERED.

Dated: June 19, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE