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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL MATHEW ROE,

Plaintiff,

v.

DAVEY, et al.,

Defendants.

Case No. 1:17-cv-01221-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE TO
ACTION

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF CERTAIN
CLAIMS AND DEFENDANTS

(ECF Nos. 12, 13)

FOURTEEN (14) DAY DEADLINE

I. Background

Plaintiff Jose Lopez Hernandez (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983.

On May 2, 2018, the Court screened Plaintiff’s complaint and found that Plaintiff stated cognizable claims against Defendant Gutierrez for excessive force and deliberate indifference to serious medical needs in violation of the Eighth Amendment, but failed to state any other cognizable claims against any other defendants. The Court ordered Plaintiff to either file a first amended complaint or notify the Court of his willingness to proceed only on the cognizable claims. (ECF No. 12.) On May 11, 2018, Plaintiff notified the Court that he wished to proceed only on the cognizable claims against Defendant Gutierrez and did not wish to file a first amended complaint. (ECF No. 13.)

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1 **II. Screening Requirement and Standard**

2 The Court is required to screen complaints brought by prisoners seeking relief against a
3 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous
5 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
6 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b);
7 1915(e)(2)(B)(ii).

8 A complaint must contain “a short and plain statement of the claim showing that the
9 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
10 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
11 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
12 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken
13 as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores,
14 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

15 To survive screening, Plaintiff’s claims must be facially plausible, which requires
16 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
17 for the misconduct alleged. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. U.S.
18 Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted
19 unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the
20 plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572 F.3d at 969.

21 **III. Plaintiff’s Allegations**

22 Plaintiff is currently housed at R. J. Donovan Correctional Facility in San Diego,
23 California. The events in the complaint are alleged to have occurred while Plaintiff was housed at
24 Corcoran State Prison in Corcoran, California. Plaintiff names the following defendants:

- 25 (1) Warden Dave Davey; (2) Officer Gutierrez; (3) Officer E. Moreno; (4) Sgt. Williamson; and
26 (5) Officer J. Cano.

27 Plaintiff’s complaint is disjointed and difficult to understand. As best as the Court can
28 determine, Plaintiff alleges that he was on the yard on September 9, 2016, waiting to see the

1 doctor. Officer Cano walked over to Plaintiff and started yelling at him in front of other
2 correctional officers. Officer Gutierrez used excessive force and broke Plaintiff's hand. Plaintiff
3 was tightly cuffed and the skin on his left wrist was cut. Officer Gutierrez told Plaintiff to get
4 down and prone out. He hit his alarm and Plaintiff heard him say that it was not a serious
5 problem. It reportedly took 72 hours to take Plaintiff out to the hospital and his hand was broken
6 all the way to the bone by the handcuff. Plaintiff further alleges that Officer Gutierrez pressed on
7 the handcuff and pushed Plaintiff's left hand up in the air with both of his hands. Plaintiff had the
8 cuff on his wrist and it was hanging out of the food port. Officer Gutierrez knew he broke
9 Plaintiff's hand by pressing on the wrist. Plaintiff also alleges that he was left in the holding cell
10 without anyone checking on his swollen left wrist. The handcuff was left on for four hours.
11 When they came back, Plaintiff's hand was swollen with blood around the cuff. Plaintiff was in
12 pain and his wrist was swollen, but they took him back to his building and put him in his cell.
13 They told him that they would send a nurse, but that never happened. Plaintiff was yelling from
14 the pain. His hand needed to be repaired by a doctor because of the injury.

15 **IV. Discussion**

16 **A. Federal Rule of Civil Procedure 8**

17 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain "a short and plain
18 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).
19 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause
20 of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678
21 (citation omitted). Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a
22 claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S.
23 at 570, 127 S.Ct. at 1974). While factual allegations are accepted as true, legal conclusions are
24 not. Id.; see also Twombly, 550 U.S. at 556–557.

25 Plaintiff's complaint is short, but is difficult to understand. As discussed below, Plaintiff
26 appears to state cognizable claims against Defendant Gutierrez, but the remainder of Plaintiff's
27 complaint is disjointed and unclear.

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1 **B. Linkage Requirement**

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

3 Every person who, under color of [state law] ... subjects, or causes to be
4 subjected, any citizen of the United States ... to the deprivation of any rights,
5 privileges, or immunities secured by the Constitution ... shall be liable to the party
6 injured in an action at law, suit in equity, or other proper proceeding for redress.

7 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
8 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See
9 Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The
10 Ninth Circuit has held that “[a] person ‘subjects another to the deprivation of a constitutional
11 right, within the meaning of section 1983, if he does an affirmative act, participates in another’s
12 affirmative acts or omits to perform an act which he is legally required to do that causes the
13 deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

14 Plaintiff fails to link Defendants Davey, Cano, Williamson and Moreno to any deprivation
15 of his rights. Plaintiff may not simply refer to “they” or an unidentified “correctional officer.”
16 Instead, Plaintiff’s complaint must link each individually named defendant to an alleged
17 deprivation of his rights.

18 **C. Supervisory Liability**

19 Insofar as Plaintiff is attempting to bring suit against Defendant Davey in his supervisory
20 role as Warden, he may not do so. Liability may not be imposed on supervisory personnel for the
21 actions or omissions of their subordinates under the theory of respondeat superior. Iqbal, 556
22 U.S. at 676–77; Simmons v. Navajo Cty., Ariz., 609 F.3d 1011, 1020–21 (9th Cir. 2010); Ewing
23 v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934
24 (9th Cir. 2002).

25 Supervisors may be held liable only if they “participated in or directed the violations, or
26 knew of the violations and failed to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045
27 (9th Cir. 1989); accord Starr v. Baca, 652 F.3d 1202, 1205–06 (9th Cir. 2011); Corales v.
28 Bennett, 567 F.3d 554, 570 (9th Cir. 2009). Supervisory liability may also exist without any
29 personal participation if the official implemented “a policy so deficient that the policy itself is a

1 repudiation of the constitutional rights and is the moving force of the constitutional violation.”
2 Redman v. Cty. of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations
3 marks omitted), abrogated on other grounds by Farmer v. Brennan, 511 U.S. 825 (1970).

4 Plaintiff must link Defendant Davey either by direct conduct in the constitutional violation
5 or by identifying a policy that was so deficient that the policy itself a repudiation of the Plaintiff’s
6 rights.

7 **D. Excessive Force**

8 The unnecessary and wanton infliction of pain violates the Cruel and Unusual
9 Punishments Clause of the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5 (1992)
10 (citations omitted). For claims arising out of the use of excessive physical force, the issue is
11 “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously
12 and sadistically to cause harm.” Wilkins v. Gaddy, 559 U.S. 34, 37 (2010) (per curiam) (citing
13 Hudson, 503 U.S. at 7) (internal quotation marks omitted); Furnace v. Sullivan, 705 F.3d 1021,
14 1028 (9th Cir. 2013).

15 Not every malevolent touch by a prison guard gives rise to a federal cause of action.
16 Wilkins, 559 U.S. at 562 (quoting Hudson, 503 U.S. at 9) (quotation marks omitted). Necessarily
17 excluded from constitutional recognition is the *de minimis* use of physical force, provided that the
18 use of force is not of a sort repugnant to the conscience of mankind. Id. (quoting Hudson, 503
19 U.S. at 9–10) (quotation marks omitted). In determining whether the use of force was wanton or
20 and unnecessary, courts may evaluate the extent of the prisoner’s injury, the need for application
21 of force, the relationship between that need and the amount of force used, the threat reasonably
22 perceived by the responsible officials, and any efforts made to temper the severity of a forceful
23 response. Hudson, 503 U.S. at 7 (quotation marks and citations omitted).

24 At the pleading stage, Plaintiff has stated a cognizable excessive force claim against
25 Defendant Gutierrez based on allegations that Defendant Gutierrez broke Plaintiff’s left wrist.

26 **E. Deliberate Indifference to Serious Medical Needs**

27 A prisoner’s claim of inadequate medical care does not constitute cruel and unusual
28 punishment in violation of the Eighth Amendment unless the mistreatment rises to the level of

1 “deliberate indifference to serious medical needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir.
2 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two part test for deliberate
3 indifference requires Plaintiff to show (1) “a ‘serious medical need’ by demonstrating that failure
4 to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary and
5 wanton infliction of pain,’ ” and (2) “the defendant’s response to the need was deliberately
6 indifferent.” Jett, 439 F.3d at 1096. A defendant does not act in a deliberately indifferent manner
7 unless the defendant “knows of and disregards an excessive risk to inmate health or safety.”
8 Farmer, 511 U.S. at 837. “Deliberate indifference is a high legal standard,” Simmons, 609 F.3d at
9 1019; Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004), and is shown where there was “a
10 purposeful act or failure to respond to a prisoner’s pain or possible medical need” and the
11 indifference caused harm. Jett, 439 F.3d at 1096.

12 At the pleading stage, Plaintiff has stated a cognizable claim for deliberate indifference to
13 serious medical needs against Defendant Gutierrez based on allegations that Defendant Gutierrez
14 knew that he had broken Plaintiff’s left wrist, but did not get him any medical treatment.
15 However, Plaintiff has failed to link any other named defendant to this cause of action.

16 **V. Conclusion and Recommendation**

17 Plaintiff’s complaint states cognizable claims against Defendant Gutierrez for excessive
18 force and deliberate indifference to serious medical needs in violation of the Eighth Amendment,
19 but fails to state any other cognizable claims.

20 Based on the foregoing, the Clerk of the Court is HEREBY ORDERED to randomly
21 assign a District Judge to this action.

22 Further, the Court HEREBY RECOMMENDS that:

- 23 1. This action proceed on Plaintiff’s complaint, filed September 12, 2017, (ECF No. 1),
24 against Defendant Gutierrez for excessive force and deliberate indifference to serious
25 medical needs in violation of the Eighth Amendment; and
- 26 2. All other claims and Defendants be dismissed based on Plaintiff’s failure to state
27 claims upon which relief may be granted.

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1 These Findings and Recommendation will be submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
3 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
4 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
5 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the
6 specified time may result in the waiver of the “right to challenge the magistrate’s factual
7 findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.
8 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

9
10 IT IS SO ORDERED.

11 Dated: May 16, 2018

12 /s/ Barbara A. McAuliffe
13 UNITED STATES MAGISTRATE JUDGE
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