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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

MAURICIO ARANA,  
  Plaintiff,  
  
  v.  
  
FRAZIER, et al.,  
  Defendants.

Case No. 1:17-cv-01702-DAD-BAM (PC)  
  
FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION, WITH PREJUDICE, FOR  
FAILURE TO STATE A CLAIM, FAILURE  
TO OBEY A COURT ORDER, AND  
FAILURE TO PROSECUTE  
  
(ECF No. 24)  
  
**FOURTEEN (14) DAY DEADLINE**

**I.     Background**

Plaintiff Mauricio Arana (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 30, 2018, the Court issued a screening order granting Plaintiff leave to file a third amended complaint within thirty (30) days. (ECF No. 24.) The Court expressly warned Plaintiff that the failure to file an amended complaint in compliance with the Court’s order would result in a recommendation for dismissal of this action, with prejudice, for failure to obey a court order and for failure to state a claim. (*Id.* at 6.) Plaintiff’s third amended complaint was due on or before January 2, 2019, and Plaintiff has failed to file an amended complaint or otherwise communicate with the Court.

1 **II. Failure to State a Claim**

2 **A. Screening Requirement**

3 The Court is required to screen complaints brought by prisoners seeking relief against a  
4 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.  
5 § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous  
6 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary  
7 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.  
8 § 1915(e)(2)(B)(ii).

9 A complaint must contain “a short and plain statement of the claim showing that the  
10 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  
12 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
13 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as  
14 true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc.,  
15 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

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

22 **B. Plaintiff’s Allegations**

23 Plaintiff is currently housed California State Prison, Corcoran (“Corcoran”). Plaintiff  
24 names the following defendants: (1) B. Frazier, Correctional Officer, Tehachapi State Prison;  
25 (2) K. Nouwels, Lieutenant, Corcoran; (3) M. Hodges, Captain, Corcoran; and (4) P. Hurlbut,  
26 Lieutenant, Corcoran.

27 In Claim 1, Plaintiff alleges that on June 5, 2017, Defendant Frazier used excessive force  
28 by spraying Plaintiff with O.C. pepper spray without cause while Plaintiff was locked in a holding

1 cell. Plaintiff further alleges that Defendant Frazier lied to cover up his misconduct.

2 In Claim 2, Plaintiff alleges that on July 27, 2017, Defendant Hurlbut adjudicated a  
3 hearing for a rules violation against Plaintiff. Plaintiff contends that Defendant Hurlbut violated  
4 Plaintiff's due process rights by finding exigent circumstances to assist in covering up the  
5 excessive force claims against Defendant Frazier. Plaintiff further alleges that all defendants  
6 violated his due process rights by lying about the reasons to uphold the disciplinary hearing.  
7 Plaintiff asserts that he has added to his complaint all overseeing authorities who conducted the  
8 appeals process.

### 9 C. Discussion

#### 10 1. Eighth Amendment – Excessive Force

11 Plaintiff alleges that Defendant Frazier violated his Eighth Amendment rights by using  
12 pepper spray on Plaintiff without cause and while Plaintiff was in a holding cell.

13 The Eighth Amendment protects prisoners from inhumane methods of punishment and  
14 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.  
15 2006). The unnecessary and wanton infliction of pain violates the Cruel and Unusual  
16 Punishments Clause of the Eighth Amendment. Hudson v McMillian, 503 U.S. 1, 5 (1992)  
17 (citations omitted). Although prison conditions may be restrictive and harsh, prison officials must  
18 provide prisoners with food, clothing, shelter, sanitation, medical care, and personal safety.  
19 Farmer v. Brennan, 511 U.S. 825, 832–33 (1994) (quotations omitted).

20 For claims of excessive physical force, the issue is “whether force was applied in a good-  
21 faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”  
22 Hudson, 503 U.S. at 7. Relevant factors for this consideration include “the extent of injury...[,]”  
23 the need for application of force, the relationship between that need and the amount of force used,  
24 the threat ‘reasonably perceived by the responsible officials,’ and ‘any efforts made to temper the  
25 severity of a forceful response.’ ” Id. (quoting Whitley v. Albers, 475 U.S. 1078, 1085 (1986)).  
26 Although de minimis uses of force do not violate the Constitution, the malicious and sadistic use  
27 of force to cause harm always violates the Eighth Amendment, regardless of whether or not  
28 significant injury is evident. Hudson, 503 U.S. at 9–10; Oliver v. Keller, 289 F.3d 623, 628 (9th

1 Cir. 2002).

2 Here, Plaintiff's complaint does not include sufficient factual allegations for the Court to  
3 assess whether he has stated a claim for excessive force. Plaintiff's complaint does not describe  
4 the circumstances involved resulting in the use of pepper spray, nor does it allege any facts  
5 demonstrating any specific injury, significant or otherwise.

## 6 2. Due Process – Fourteenth Amendment

7 The Due Process Clause protects prisoners from being deprived of liberty without due  
8 process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). However, inmates do not have  
9 any due process right to be free from false disciplinary charges. See Freeman v. Rideout, 808  
10 F.2d 949, 951 (2d Cir. 1986) (inmates have “no constitutionally guaranteed immunity from being  
11 falsely or wrongly accused of conduct which may result in the deprivation of a protected liberty  
12 interest,” provided that they are “not...deprived of a protected liberty interest without due process  
13 of law.”); Sprouse v. Babcock, 870 F.2d 450, 452 (8th Cir.1989) (“Sprouse’s claims based on the  
14 falsity of the charges and the impropriety of Babcock’s involvement in the grievance procedure,  
15 standing alone, do not state constitutional claims.”). Accordingly, any assertion by Plaintiff that  
16 the charges against him were false fails to state a cognizable claim.

17 To the extent Plaintiff is challenging the fairness of the disciplinary proceedings, he also  
18 fails to state a claim. “Prison disciplinary proceedings are not part of a criminal prosecution, and  
19 the full panoply of rights due a defendant in such proceedings does not apply.” Wolff, 418 U.S.  
20 at 556. With respect to prison disciplinary proceedings, the minimum procedural requirements  
21 that must be met are: (1) written notice of the charges; (2) at least 24 hours between the time the  
22 prisoner receives written notice and the time of the hearing, so that the prisoner may prepare his  
23 defense; (3) a written statement by the fact finders of the evidence they rely on and reasons for  
24 taking disciplinary action; (4) the right of the prisoner to call witnesses in his defense, when  
25 permitting him to do so would not be unduly hazardous to institutional safety or correctional  
26 goals; and (5) legal assistance to the prisoner where the prisoner is illiterate or the issues  
27 presented are legally complex. Id. at 563–71. If the five minimum Wolff requirements are met,  
28 due process has been satisfied. Walker v. Sumner, 14 F.3d 1415, 1420 (9th Cir.1994), abrogated

1 on other grounds by Sandin v. Connor, 515 U.S. 472, 115. Here, Plaintiff’s complaint fails to  
2 include any factual allegations to suggest that he was denied any of the Wolff procedural  
3 requirements.

### 4 **3. Appeals Process**

5 Plaintiff appears to assert a claim against Defendant Nouwels and Hodges based on their  
6 review of an inmate appeal of Plaintiff’s disciplinary hearing. However, Plaintiff may not pursue  
7 any claims against prison staff relating to the processing or review of his administrative appeals.  
8 The existence of an inmate appeals process does not create a protected liberty interest upon which  
9 Plaintiff may base a claim that he was denied a particular result or that the appeals process was  
10 deficient. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003); Mann v. Adams, 855 F.2d 639,  
11 640 (9th Cir. 1988).

### 12 **III. Failure to Prosecute and Failure to Obey a Court Order**

#### 13 **A. Legal Standard**

14 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with  
15 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .  
16 within the inherent power of the Court.” District courts have the inherent power to control their  
17 dockets and “[i]n the exercise of that power they may impose sanctions including, where  
18 appropriate, . . . dismissal.” Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986). A  
19 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,  
20 failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46  
21 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet,  
22 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
23 amendment of complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987)  
24 (dismissal for failure to comply with court order).

25 In determining whether to dismiss an action, the Court must consider several factors:  
26 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its  
27 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
28 cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779

1 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

2 **B. Discussion**

3 Here, Plaintiff's third amended complaint is overdue, and he has failed to comply with the  
4 Court's order. The Court cannot effectively manage its docket if Plaintiff ceases litigating his  
5 case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

6 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a  
7 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.  
8 Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against  
9 dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza, 291 F.3d  
10 639, 643 (9th Cir. 2002). However, "this factor lends little support to a party whose  
11 responsibility it is to move a case toward disposition on the merits but whose conduct impedes  
12 progress in that direction," which is the case here. In re Phenylpropanolamine (PPA) Products  
13 Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

14 Finally, the Court's warning to a party that failure to obey the court's order will result in  
15 dismissal satisfies the "considerations of the alternatives" requirement. Ferdik, 963 F.2d at 1262;  
16 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's November 30, 2018 screening  
17 order expressly warned Plaintiff that his failure to file an amended complaint would result in a  
18 recommendation of dismissal of this action, with prejudice, for failure to obey a court order and  
19 for failure to state a claim. (ECF No. 24, p. 6.) Thus, Plaintiff had adequate warning that  
20 dismissal could result from his noncompliance.

21 Additionally, at this stage in the proceedings there is little available to the Court that  
22 would constitute a satisfactory lesser sanction while protecting the Court from further  
23 unnecessary expenditure of its scarce resources. Plaintiff is proceeding *in forma pauperis* in this  
24 action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is  
25 likely to have no effect given that Plaintiff has ceased litigating his case.

26 **IV. Conclusion and Recommendation**

27 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY  
28 RECOMMENDS that this action be dismissed, with prejudice, for failure to state a claim, for

1 failure to obey a Court order, and for Plaintiff's failure to prosecute this action.

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

10  
11 IT IS SO ORDERED.

12 Dated: January 15, 2019

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

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