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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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11 DARNEY RAY WHITE,
12 Plaintiff,
13 v.
14 DEPUTY LAO, *et al.*,
15 Defendants.
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Case No. 1:18-cv-00911-DAD-EPG (PC)

**FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT THIS ACTION
PROCEED ONLY ON PLAINTIFF'S
EXCESSIVE FORCE CLAIM AGAINST
DEPUTY LAO AND DEPUTY GONZALEZ**

(ECF No. 17)

TWENTY-ONE (21) DAY DEADLINE

17
18 **I. BACKGROUND**

19 Darney Ray White (“Plaintiff”), a prisoner in the custody of the Fresno County Sheriff’s
20 Office, is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42
21 U.S.C. § 1983. On July 5, 2018, Plaintiff commenced this action by filing a Complaint against
22 Deputy Lao and Deputy Gonzalez, correctional officers at the Fresno County Sheriff’s Office,
23 and the County of Fresno. (ECF No. 1). On August 20, 2018, Plaintiff filed a First Amended
24 Complaint. (ECF No. 12). The Court screened the First Amended Complaint, and finding that it
25 failed to state any cognizable claim under the applicable legal standards, directed Plaintiff to
26 file a Second Amended Complaint. (ECF No. 15).

27 On November 19, 2018, Plaintiff filed his Second Amended Complaint, (ECF No. 17),
28 which is now before the Court for screening. For the reasons described below, the Court

1 recommends dismissing all claims in this action, except Plaintiff’s excessive force claim
2 against Deputy Lao and Deputy Gonzalez.

3 II. SCREENING REQUIREMENT

4 The Court is required to screen complaints brought by prisoners seeking relief against a
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
6 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
7 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
8 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
9 1915A(b)(1), (2). The Court may also screen a complaint brought *in forma pauperis* under 28
10 U.S.C. § 1915. “Notwithstanding any filing fee, or any portion thereof, that may have been
11 paid, the court shall dismiss the case at any time if the court determines that the action or
12 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

13 A complaint must contain “a short and plain statement of the claim showing that the
14 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
15 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
16 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
17 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient
18 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Ashcroft v. Iqbal*,
19 556 U.S. at 663 (quoting *Twombly*, 550 U.S. at 555). While factual allegations are accepted as
20 true, legal conclusions are not. *Id.* at 678.

21 In determining whether a complaint states an actionable claim, the Court must accept
22 the allegations in the complaint as true, *Hosp. Bldg. Co. v. Trs. of Rex Hospital*, 425 U.S. 738,
23 740 (1976), construe *pro se* pleadings liberally in the light most favorable to the Plaintiff,
24 *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s
25 favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of *pro se* plaintiffs “must be
26 held to less stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627
27 F.3d 338, 342 (9th Cir. 2010) (holding that *pro se* complaints should continue to be liberally
28 construed after *Iqbal*).

1 **III. SUMMARY OF PLAINTIFF’S SECOND AMENDED COMPLAINT**

2 Plaintiff names the following defendants in the operative complaint: Deputy Lao,
3 Deputy Gonzalez, Fresno County Sheriff Office, Fresno County, Fresno County Public
4 Defender, and Erin Dacayanan, Deputy Public Defender.

5 Plaintiff alleges the following in his operative complaint. On November 22, 2017,
6 Defendant Lao violently beat Plaintiff in the head and face with his hand. Defendant Lao then
7 slammed Plaintiff’s face on steel bars several times before leaving Plaintiff almost “at a loss of
8 conscience.” Defendant Lao also pulled Plaintiff by the hand and slammed him into a chair.
9 Plaintiff yelled for help, but no one responded. Defendant Lao said to Plaintiff, “No one gives a
10 fuck about you,” and laughed in Plaintiff’s face. Defendant Gonzalez held Plaintiff as
11 Defendant Lao attacked Plaintiff.

12 Plaintiff was not resisting Defendant Lao’s orders, and did not provoke Defendant Lao.
13 Plaintiff sustained head and neck injuries. Plaintiff went through several weeks of medical
14 treatment, still has pain in his neck and head, and has flashbacks of the assault.

15 It has been a practiced policy at the jail that the deputies can do as they please to
16 inmates and inmates are told that they cannot complain. Due to this policy, Defendant Lao
17 made a deliberate choice to violate Plaintiff’s constitutional right. The County’s inaction to stop
18 these types of unlawful actions give officers the belief that they are immune from any legal
19 responsibility. Plaintiff alleges that he has seen staff members assault other inmates. Plaintiff
20 further alleges that medical mental health staff have documented Defendant Lao’s actions, but
21 he is still allowed to work with inmates without regard to their safety.

22 **IV. ANALYSIS OF PLAINTIFF’S SECOND AMENDED COMPLAINT**

23 **A. Section 1983 Claims**

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

25 Every person who, under color of any statute, ordinance,
26 regulation, custom, or usage, of any State or Territory or the
27 District of Columbia, subjects, or causes to be subjected, any
28 citizen of the United States or other person 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

1 injured in an action at law, suit in equity, or other proper
2 proceeding for redress

3 42 U.S.C. § 1983.

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

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

21 Plaintiff does not allege that the Fresno County Public Defender and Erin Dacayanan
22 made or participated in any affirmative act, or that they omitted to do any act that they are
23 legally required to perform. Thus, Plaintiff fails to state any cognizable claim under § 1983
24 against said defendants.

25 **B. Municipal Liability Claim**

26 A county or other local governmental entity may be liable for a constitutional
27 deprivation where the plaintiff can “satisfy the requirements for municipality liability
28 established by *Monell* and its progeny.” *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1247

1 (9th Cir. 2016) (citing *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658
2 (1978)). Under *Monell*, an entity defendant cannot be held liable for a constitutional violation
3 solely because it employs a tortfeasor. 436 U.S. at 691. An entity defendant can only be held
4 liable for injuries caused by the execution of its policy or custom or by those whose edicts or
5 acts may fairly be said to represent official policy. *Id.* at 694. “In addition, a local governmental
6 entity may be liable if it has a ‘policy of inaction and such inaction amounts to a failure to
7 protect constitutional rights.’” *Lee v. City of Los Angeles*, 250 F.3d 668, 681 (9th Cir. 2001)
8 (quoting *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992)).

9 A “policy” is a “deliberate choice to follow a course of action . . . made from among
10 various alternatives by the official or officials responsible for establishing final policy with
11 respect to the subject matter in question.” *Fogel v. Collins*, 531 F.3d 824, 834 (9th Cir. 2008).
12 A “custom” is a “widespread practice that, although not authorized by written law or express
13 municipal policy, is so permanent and well-settled as to constitute a custom or usage with the
14 force of law.” *St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988); *Los Angeles Police Protective*
15 *League v. Gates*, 907 F.2d 879, 890 (9th Cir. 1990). “Since *Iqbal*, courts have repeatedly
16 rejected conclusory *Monell* allegations that lack factual content from which one could plausibly
17 infer *Monell* liability.” *See, e.g., Rodriguez v. City of Modesto*, 535 Fed. App'x 643, 646 (9th
18 Cir. 2013) (affirming district court's dismissal of *Monell* claim based only on conclusory
19 allegations and lacking factual support).

20 Here, Plaintiff fails to allege a cognizable claim against Fresno County and the Fresno
21 County Sheriff Office. Plaintiff does not identify any policy or custom of the entity defendants
22 that led to a deprivation of his constitutional right. Plaintiff alleges only that there is a
23 “practiced policy” of unlawful conduct by deputies and inaction by the County to stop unlawful
24 actions. These conclusory allegations are insufficient to state a *Monell* claim against an entity
25 defendant. Thus, Plaintiff fails to state any cognizable claim under § 1983 against Fresno
26 County and the Fresno County Sheriff Office.

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1 **C. Excessive Force Claim**

2 To prevail on a Fourteenth Amendment excessive force claim, a detainee must show
3 that a defendant purposely or knowing used force against him that was objectively
4 unreasonable. *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015). Whether the force is
5 objectively unreasonable turns on the “facts and circumstances of each particular case.” *Id.* at
6 2473 (quoting *Graham*, 490 U.S. at 396). This determination is to be made “from the
7 perspective of a reasonable officer on the scene, including what the officer knew at the time,
8 not with the 20/20 vision of hindsight.” *Id.* “A court must also account for the ‘legitimate
9 interests that stem from [the government’s] need to manage the facility in which the individual
10 is detained,’ appropriately deferring to ‘policies and practices that in th[e] judgment’ of jail
11 officials ‘are needed to preserve internal order and discipline and to maintain institutional
12 security.’” *Id.* at 2473 (quoting *Bell v. Wolfish*, 441 U.S. 520, 540 (1979).

13 Plaintiff alleges that Defendant Lao physically assaulted him and Defendant Gonzalez
14 held him as Defendant Lao attacked him. Plaintiff did not provoke the assault, and Plaintiff’s
15 injuries required several weeks of medical treatment. Plaintiff has sufficiently stated a
16 cognizable excessive force claim. This finding merely allows this claim to proceed beyond the
17 pleading stage, and does not consider any legitimate reasons defendants may have had for their
18 actions.

19 **V. CONCLUSION AND RECOMMENDATIONS**

20 The Court has screened Plaintiff’s Second Amended Complaint and finds that it states a
21 claim against Defendants Lao and Gonzalez for excessive force, but fails to state any other
22 cognizable claim. The Court does not recommend granting further leave to amend because
23 Plaintiff filed his Second Amended Complaint after receiving ample legal guidance from the
24 Court, and further leave to amend appears to be futile.

25 Accordingly, it is HEREBY RECOMMENDED that:

- 26 1. This case proceed on Plaintiff’s claim against Deputy Lao and Deputy Gonzalez for
27 excessive force; and
28 2. All other claims and defendants be dismissed.

