



1 On April 12, 2021, plaintiff filed a document that was captioned both as an amended  
2 complaint and as objections to findings and recommendations. (Doc. No. 23.) The magistrate  
3 judge construed the filing as a motion by plaintiff for leave to amend his complaint and denied  
4 leave to amend. (Doc. No. 24.) On April 30, 2021, plaintiff filed another motion seeking leave to  
5 amend the complaint, which the assigned magistrate judge denied on May 4, 2021, concluding  
6 that amendment would be futile. (Doc. Nos. 25, 26.) However, the magistrate judge granted  
7 plaintiff an additional fourteen days to file any objections to the March 30, 2021 findings and  
8 recommendations. (Doc. No. 26 at 5.) On May 17, 2021, plaintiff filed such objections. (Doc.  
9 No. 27.)

10 Plaintiff's first objection is that he believes he stated claims against defendants Sullivan  
11 and Barthelmes due to their alleged failure to train their subordinates. (*Id.* at 2.) Plaintiff alleges  
12 that defendant Sullivan is the warden of his institution of confinement and defendant Barthelmes  
13 is the lieutenant who was on duty on the day plaintiff was allegedly beaten by guards. (*Id.* at 2.)

14 “[C]ulpability for a deprivation of rights is at its most tenuous where a claim turns on a  
15 failure to train.” *Connick v. Thompson*, 563 U.S. 51, 61 (2011). “[F]ailure to train . . . employees  
16 in a relevant respect must amount to ‘deliberate indifference to the rights of persons with whom  
17 the [untrained employees] come into contact.’ ” *Id.* (quoting *Canton v. Harris*, 489 U.S. 378, 388  
18 (1989)). “[W]hen [governmental supervisors] are on actual or constructive notice that a particular  
19 omission in their training program causes [subordinates] to violate citizens’ constitutional rights,  
20 [supervisors] may be deemed deliberately indifferent if the [supervisors] choose to retain the  
21 program.” *Id.* “A pattern of similar constitutional violations by untrained employees is ordinarily  
22 necessary to demonstrate deliberate indifference for purposes of failure to train.” *Id.* (internal  
23 quotations and citation omitted).

24 In his operative complaint, plaintiff alleges that as warden, defendant Sullivan is legally  
25 responsible for all operations at the prison and, through his chief deputy, knows about the  
26 excessive force his subordinates use. (Doc. No. 21 at 11.) Although plaintiff alleges that  
27 excessive force has been used at other times, plaintiff does not allege that defendant Sullivan  
28 disregarded a known or obvious risk or had actual or constructive notice of any omissions in any

1 *training programs*. Moreover, plaintiff does not allege a pattern of similar constitutional  
2 violations by untrained employees. Thus, plaintiff has failed to state a cognizable supervisory  
3 liability claim against defendant Sullivan based upon an alleged failure to train.

4 Similar defects apply to plaintiff's allegations against defendant Barthelmes. Although  
5 plaintiff alleges defendant Barthelmes is a supervisor, plaintiff does not allege that defendant  
6 Barthelmes disregarded a known or obvious risk or had actual or constructive notice of any  
7 omissions in any training programs. Reading plaintiff's complaint with the required liberality,  
8 plaintiff alleges that defendant Barthelmes conducts a training program at the prison. (*See id.*)  
9 However, there are no allegations in the complaint indicating that this training program caused  
10 the alleged constitutional violations against plaintiff.

11 Plaintiff's other allegations about defendant Barthelmes do not change this analysis.  
12 Plaintiff alleges defendant Barthelmes has engaged in other violent behavior, but plaintiff's  
13 lawsuit is not about defendant Barthelmes' violent behavior in other circumstances. Plaintiff  
14 further alleges defendant Barthelmes asked plaintiff to drop his lawsuit, but he does not allege  
15 that defendant Barthelmes engaged in any sort of retaliation—nor does plaintiff seem to bring any  
16 retaliation claim against defendant Barthelmes. (*See id.*)

17 Plaintiff's second objection does not address the reasoning adopted in the pending  
18 findings and recommendations. Rather, plaintiff merely states that defendants Sullivan and  
19 Barthelmes failed to take corrective actions and are guilty of misconduct. (Doc. No. 27 at 2.)

20 Plaintiff's remaining objections concern qualified immunity. (*See id.* at 2-4.) However,  
21 the findings and recommendations do not rely on qualified immunity. (*See* Doc. No. 22.)

22 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this court has conducted a  
23 *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff's  
24 objections, the court concludes that the magistrate judge's findings and recommendations are  
25 supported by the record and by proper analysis.

26 Accordingly,

27 1. The findings and recommendations issued by the magistrate judge on March 30,  
28 2021, (Doc. No. 22), are ADOPTED IN FULL;

1           2.       This case shall proceed on plaintiff's second amended complaint (Doc. No. 21),  
2 with respect to plaintiff's claims against defendants Ottzman and Chavez for deliberate  
3 indifference to serious medical needs in violation of the Eighth Amendment, and against  
4 defendants Ottzman, Chavez, Clayton, Gratokoski, and Cardenas for use of excessive force in  
5 violation of the Eighth Amendment;

6           3.       All other claims and defendants are dismissed; and

7           4.       This case is referred back to the assigned magistrate judge for further proceedings,  
8 including initiation of service.

9 IT IS SO ORDERED.

10           Dated: June 4, 2021

  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28