

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)(1), (2).

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

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

20 **III. Allegations in Complaint**

21 Plaintiff is currently housed at Kern Valley State Prison in Delano, California, where the
22 events in the complaint are alleged to have occurred. Plaintiff names the following defendants:
23 (1) Correctional Officer Rodriguez; (2) Correctional Officer Castillo; and (3) Correctional Officer
24 Fernandez. Plaintiff asserts a claim for excessive force in violation of the Eighth Amendment and
25 alleges as follows:

26 On 7-27-19 while sitting in my wheelchair on the concrete sidewalk constructed
27 for wheelchair bound and ADA inmates, near the urinal area, I was told by the
28 yard tower (C/O Rodriguez) to “take it to the grass” but I reminded him that it is
difficult to move my wheelchair on such terrain. Further that this concrete

1 sidewalk was designed for wheelchair inmates however I did have inmate
2 (Devern Clark CDCR #AW4818) push me further down and away from the urinal
3 area fully in the clear (Rodriguez) now upset told me to move down further I
4 showed him I was in the proper wheelchair area then C/O Fernandez rushed up to
5 my wheelchair and started dragging me in my wheelchair sideways until I put my
6 foot down on the ground then C/O Fernandez utilized his state issued radio code
7 one and ordered the yard to get down that's when C/O Castillo responded to the
8 code one handcuff'd me that's when I was dragged again this time by C/O Castillo
9 the rubber on my wheelchair came off the rim was damaged once we made it to
10 the medical holding tank I was snatch out of my wheelchair and slammed to the
11 ground by C/O Castillo my lower back is injury I also reinjury my right knee

12 (ECF No. 1 at 3) (unedited text). Plaintiff further alleges that he was snatched out of his
13 wheelchair and slammed to the ground by C/O Castillo, injuring his lower back and causing him
14 pain and difficulty sleeping. (*Id.*) As relief, Plaintiff seeks compensatory and punitive damages,
15 along with expungement of a rules violation report from his file. (*Id.* at 6.)

16 **IV. Discussion**

17 **A. Excessive Force**

18 The Eighth Amendment protects prisoners from inhumane methods of punishment and
19 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.
20 2006). The unnecessary and wanton infliction of pain violates the Cruel and Unusual
21 Punishments Clause of the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5 (1992)
22 (citations omitted). Although prison conditions may be restrictive and harsh, prison officials must
23 provide prisoners with food, clothing, shelter, sanitation, medical care, and personal safety.
24 Farmer v. Brennan, 511 U.S. 825, 832–33 (1994) (quotations omitted).

25 For claims of excessive physical force, the issue is “whether force was applied in a good-
26 faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”
27 Hudson, 503 U.S. at 7. Relevant factors for this consideration include “the extent of injury . . . [,]
28 the need for application of force, the relationship between that need and the amount of force used,
the threat ‘reasonably perceived by the responsible officials,’ and ‘any efforts made to temper the
severity of a forceful response.’” *Id.* (quoting Whitley v. Albers, 475 U.S. 1078, 1085 (1986)).

As currently pled, Plaintiff’s complaint states a cognizable claim against Defendant
Castillo, but fails to state a cognizable claim against any other named defendant. As to

1 Defendants Rodriguez and Fernandez, Plaintiff's complaint does not allege a use of force that
2 resulted in any harm to Plaintiff's person. At best, Plaintiff alleges that Defendant Rodriguez
3 ordered Plaintiff to move his wheelchair and Defendant Fernandez dragged Plaintiff's wheelchair.
4 This conduct does not rise to the level of an Eighth Amendment violation.

5 **B. Rules Violation Report**

6 Plaintiff seeks to expunge a rules violation report from his prison file. The nature or basis
7 of any such claim is unclear. Insofar as Plaintiff seeks expungement of an allegedly false rules
8 violation report, he does not state a claim. Plaintiff does not have a constitutional right to an
9 accurate prison record. Hernandez v. Johnston, 833 F.2d 1316, 1318 (9th Cir. 1987). Further, the
10 issuance of a false rules violation report does not, in and of itself, support a claim under section
11 1983. See Johnson v. Felker, No. 1:12-cv-02719 GEB KJN (PC), 2013 WL 6243280, at *6
12 (E.D. Cal. Dec. 3, 2013) ("Prisoners have no constitutionally guaranteed right to be free from
13 false accusations of misconduct, so the mere falsification of a report does not give rise to a claim
14 under section 1983.") (citations omitted).

15 **V. Conclusion and Recommendation**

16 Plaintiff's complaint states a cognizable claim for excessive force in violation of the
17 Eighth Amendment against Defendant Castillo, but fails to state any other cognizable claims
18 against any other defendants.

19 Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a
20 District Judge to this action.

21 Furthermore, it is HEREBY RECOMMENDED that:

- 22 1. This action proceed on Plaintiff's complaint, filed September 13, 2019, (ECF No. 1),
23 against Defendant Castillo for excessive force in violation of the Eighth Amendment; and
- 24 2. All other claims and defendants be dismissed based on Plaintiff's failure to state claims
25 upon which relief may be granted.

26 ***

27 These Findings and Recommendations will be submitted to the United States District
28 Judge assigned to the case, as required by 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after

1 being served with these Findings and Recommendations, Plaintiff may file written objections
2 with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings
3 and Recommendations.” Plaintiff is advised that the failure to file objections within the specified
4 time may result in the waiver of the “right to challenge the magistrate’s factual findings” on
5 appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
6 F.2d 1391, 1394 (9th Cir. 1991)).

7
8 IT IS SO ORDERED.

9 Dated: November 26, 2019

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