

1 his motion to amend, Plaintiff states that the Court instructed him to file a motion to amend the
2 complaint concerning Defendant John Doe, but he cannot identify Defendant John Doe with
3 enough clarity for him to be identified by the U.S. Marshal. (ECF No. 15.) Plaintiff only knows
4 that Defendant John Doe was a Hispanic male. Because Plaintiff cannot identify Defendant John
5 Doe, Plaintiff states that he is willing to not sue the Doe defendant but instead file suit against
6 Defendants Atkinson and Cervantes on the cognizable Eighth Amendment claim. (Id.)

7 Taken together with Plaintiff's concurrently filed notice stating that he does not wish to
8 file an amended complaint and he is agreeable to proceeding only on the cognizable claim
9 identified by the Court against Defendants Atkinson and Cervantes, (ECF No. 16), it appears to
10 the Court that Plaintiff is not actually seeking to file an amended complaint. If Plaintiff is
11 requesting to file an amended complaint simply for the purpose of removing John Doe as a
12 defendant, such an amendment is not necessary. Furthermore, Plaintiff is not yet required to
13 identify Defendant John Doe for service of process. At the time the complaint is ordered served,
14 Plaintiff will be granted additional time to acquire more identifying information regarding
15 Defendant John Doe. If he can identify Defendant John Doe, Plaintiff can file a motion to amend
16 the complaint substituting Defendant John Doe at that time. If not, Defendant John Doe will be
17 dismissed for failure to provide such information. Accordingly, at this time the motion to amend
18 is denied, without prejudice.

19 **II. Screening Requirement and Standard**

20 The Court is required to screen complaints brought by prisoners seeking relief against a
21 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.
22 § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous
23 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
24 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

25 A complaint must contain "a short and plain statement of the claim showing that the
26 pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
27 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
28 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell

1 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as
2 true, courts "are not required to indulge unwarranted inferences." Doe I v. Wal-Mart Stores, Inc.,
3 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

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

10 **A. Allegations in Complaint**

11 Plaintiff is currently housed in California State Prison in Sacramento, California. The
12 events in the complaint are alleged to have occurred while Plaintiff was housed at Kern Valley
13 State Prison in Delano, California. Plaintiff names as defendants: (1) Christian Pfeiffer, Warden;
14 (2) M. Cervantes, Correctional Officer escort; (3) R. Atkinson, correctional officer, C7 floor;
15 (4) John Doe, correctional officer C7 floor; (5) J. Carillo, (6) D. Badger, sergeant.

16 Plaintiff alleges that while he was out to court from Sacramento State Prison and housed
17 at Kern Valley, he should not have been housed in the general population and should have been
18 housed in the SHU.

19 On August 31, 2018, at about 11:34 hours, Plaintiff was called out of his cell by J. Carillo
20 by orders of sergeant D. Badger. As Plaintiff was walking to the rotunda, an inmate bumped into
21 Plaintiff. Plaintiff was placed in a holding cell by Defendant Atkinson and Defendant Cervantes.
22 Plaintiff stated that "I'm going to 602 you for making that inmate bump into me." Defendant
23 Atkinson came to the holding cage and pepper sprayed Plaintiff and Defendant Cervantes also
24 sprayed Plaintiff. Cervantes pulled Plaintiff out of the holding cage and slammed Plaintiff to the
25 ground. Defendants Cervantes and John Doe beat plaintiff repeatedly by punching Plaintiff in the
26 head and face while Defendant Atkinson repeatedly punched Plaintiff in the stomach and side.
27 Plaintiff laid still and unresistant. Plaintiff suffered a head injury and concussion, lacerations to
28 his eye and face and back injury.

1 In claim 1, Plaintiff alleges a violation of the Eighth Amendment. In claims II and III,
2 Plaintiff alleges violation of the due process. Plaintiff seeks compensatory and punitive damages
3 and declaratory relief.

4 **B. Discussion**

5 **1. Federal Rule of Civil Procedure 8**

6 Pursuant to Federal Rule of Civil Procedure 8(a), a complaint must contain “a short and
7 plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R. Civ. P.
8 8(a)(2). “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim
9 is and the grounds upon which it rests.” Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002)
10 (citation and internal quotation marks omitted).

11 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
12 cause of action, supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678
13 (citation omitted). This is because, while factual allegations are accepted as true, legal
14 conclusions are not. Id.; see also Twombly, 550 U.S. at 556–57; Moss, 572 F.3d at 969.
15 Therefore, Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to
16 relief that is plausible on its face.’ A claim has facial plausibility when the plaintiff pleads factual
17 content that allows the court to draw the reasonable inference that the defendant is liable for the
18 misconduct alleged.” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570).

19 Aside from the excessive forces allegations, it is unclear from the allegations what are the
20 constitutional violations Plaintiff alleges occurred. Plaintiff must clearly state what happened,
21 when it happened or who was involved.

22 **2. Linkage Requirement**

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

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

28 42 U.S.C. § 1983.

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

8 Here, Plaintiff fails to adequately link Defendant Pfeiffer, Carillo or Badger to any
9 constitutional violation suffered by Plaintiff. While Plaintiff identifies Defendant Badger as the
10 officer who gave orders to Carillo for Plaintiff to be removed from the cell, Plaintiff fails to allege
11 any factual allegations specifically asserting what either Defendant Badger, Carillo or Pfeiffer
12 did, or did not do which violated Plaintiff’s rights. Plaintiff fails to demonstrate a link between
13 Defendant Badger’s, Carillo’s and Pfeiffer’s actions or omissions and the resulting deprivation of
14 Plaintiff’s constitutional rights.

15 **3. Supervisor Liability**

16 Insofar as Plaintiff is attempting to sue Defendants Pfeiffer or Badger, or any other
17 defendant, based solely upon his or her supervisory role, he may not do so. Liability may not be
18 imposed on supervisory personnel for the actions or omissions of their subordinates under the
19 theory of respondeat superior. Iqbal, 556 U.S. at 676–77; Simmons v. Navajo Cty., Ariz., 609
20 F.3d 1011, 1020–21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir.
21 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

22 Supervisors may be held liable only if they “participated in or directed the violations, or
23 knew of the violations and failed to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045
24 (9th Cir. 1989); accord Starr v. Baca, 652 F.3d 1202, 1205–06 (9th Cir. 2011); Corales v.
25 Bennett, 567 F.3d 554, 570 (9th Cir. 2009). Supervisory liability may also exist without any
26 personal participation if the official implemented “a policy so deficient that the policy itself is a
27 repudiation of the constitutional rights and is the moving force of the constitutional violation.”
28 Redman v. Cty. of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations

1 marks omitted), abrogated on other grounds by Farmer v. Brennan, 511 U.S. 825 (1970).

2 **4. Eighth Amendment – Excessive Force**

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

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

16 Liberally construing the allegations, Plaintiff states a cognizable excessive force claim
17 against Defendants Atkinson, Cervantes, and John Doe for the incident on August 31, 2018.

18 **5. Due Process**

19 Plaintiff alleges Fifth Amendment and Fourteenth Amendment Due Process claims.

20 “[T]he Fifth Amendment’s due process clause applies only to the federal government.”
21 Bingue v. Prunchak, 512 F.3d 1169, 1174 (9th Cir. 2008). Since the only defendants named in
22 this action are employees of a department of the state, the Fifth Amendment does not apply. The
23 Fourteenth Amendment applies to actions of the state officials. San Francisco Arts & Athletics,
24 Inc. v. U.S. Olympic Comm., 483 U.S. 522, 543, n.21 (1987). The Court, however, is unsure
25 what claim Plaintiff is attempting to bring under the Fourteenth Amendment. If Plaintiff is
26 attempting to allege that one or more Defendants violated his right to procedural due process or
27 substantive due process, then he needs to allege facts to support each element of those legal
28 claims against particular Defendants.

1 To the extent Plaintiff is complaining about his housing, Plaintiff is informed that an
2 inmate has no constitutional right to a particular security classification or housing. See Meachum
3 v. Fano, 427 U.S. 215, 224–25 (1976) (no liberty interest protected by the Due Process Clause is
4 implicated in a prison’s reclassification and transfer decisions); see also Myron v. Terhune, 476
5 F.3d 716, 718 (9th Cir. 2007). Neither the Eighth nor the Fourteenth Amendment endows
6 prisoners with a right to be housed in a particular part of the prison or with a particular inmate.
7 See Meachum, 427 U.S. at 224–25 (no liberty interest in placement in particular facility); Allen v.
8 Purkett, 5 F.3d 1151, 1153 (8th Cir. 1993) (no Due Process right to be housed with compatible
9 inmate); Bjorlin v. Hubbard, No. CIV S–09–1793 2010 WL 457685, *1 (E.D. Cal. Feb. 4, 2010)
10 (same).

11 To the extent a disciplinary action is at issue, the Court provides the following legal and
12 pleading standards. The Due Process Clause of the Fourteenth Amendment protects prisoners
13 from being deprived of liberty without due process of law. Wolff v. McDonnell, 418 U.S. 539,
14 556 (1974). “Prison disciplinary proceedings are not part of a criminal prosecution, and the full
15 panoply of rights due a defendant in such proceedings does not apply.” Wolff, 418 U.S. at 556.
16 The minimum procedural requirements that must be met in such proceedings are: (1) written
17 notice of the charges; (2) at least 24 hours between the time the prisoner receives written notice
18 and the time of the hearing, so that the prisoner may prepare his defense; (3) a written statement
19 by the fact finders of the evidence they rely on and reasons for taking disciplinary action; (4) the
20 right of the prisoner to call witnesses in his defense, when permitting him to do so would not be
21 unduly hazardous to institutional safety or correctional goals; and (5) legal assistance to the
22 prisoner where the prisoner is illiterate or the issues presented are legally complex. Id. at 563–71.
23 As long as the Wolff requirements are met, due process has been satisfied. Walker v. Sumner, 14
24 F.3d 1415, 1420 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472
25 (1995). In addition, “some evidence” must support the decision of the hearing officer,
26 Superintendent v. Hill, 472 U.S. 445, 455 (1985), and the evidence must have some indicia of
27 reliability, Cato v. Rushen, 824 F.2d 703, 705 (9th Cir. 1987). The “some evidence” standard is
28 not particularly stringent and the relevant inquiry is whether “there is any evidence in the record

1 that could support the conclusion reached” Hill, 472 U.S. at 455–56 (emphasis added).

2 **6. Doe Defendants**

3 The use of John Does in pleading practice is generally disfavored. See Gillespie v.
4 Civiletti, 629 F.2d 637, 642 (9th Cir. 1980); Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th
5 Cir. 1999); Lopes v. Viera, 543 F.Supp.2d 1149, 1152 (E.D. Cal. 2008). Plaintiff is hereby
6 advised that the court cannot order service of a Doe defendant because the United States Marshal
7 cannot serve a Doe defendant. Plaintiff will be required to identify him or her with enough
8 information to locate the defendant for service of process. For service to be successful, the
9 Marshal must be able to identify and locate defendants. Once the identify of a Doe defendant is
10 ascertained, Plaintiff must file a motion to amend his complaint only to identify the identified
11 Doe defendant so that service by the United States Marshal can be attempted.

12 As noted above, when the complaint is ready for service of process, Plaintiff will be
13 provided a deadline by which he must identify Defendant John Doe for service of process.

14 **7. Declaratory Relief**

15 Plaintiff’s complaint seeks a declaratory judgment. “A declaratory judgment, like other
16 forms of equitable relief, should be granted only as a matter of judicial discretion, exercised in the
17 public interest.” Eccles v. Peoples Bank of Lakewood Vill., 333 U.S. 426, 431 (1948).

18 “Declaratory relief should be denied when it will neither serve a useful purpose in clarifying and
19 settling the legal relations in issue nor terminate the proceedings and afford relief from the
20 uncertainty and controversy faced by the parties.” United States v. Washington, 759 F.2d 1353,
21 1357 (9th Cir. 1985).

22 If this action reaches trial and the jury returns a verdict in favor of Plaintiff, then that
23 verdict will be a finding that Plaintiff’s constitutional rights were violated. Accordingly, a
24 declaration that any defendant violated Plaintiff’s rights is unnecessary.

25 **III. Conclusion and Recommendation**

26 Based on the above, the Court finds that Plaintiff’s complaint states a cognizable claim for
27 excessive force in violation of the Eighth Amendment against Defendants Atkinson, Cervantes,
28 and John Doe for the incident on August 31, 2018.

