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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JAKAN CHAMEL MILLS,

12 Plaintiff,

13 v.

14 R. CUELLAR, et al.,

15 Defendants.
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Case No. 1:20-cv-01247-EPG (PC)

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT CERTAIN
CLAIMS AND DEFENDANTS BE
DISMISSED

(ECF No. 1)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS

ORDER DIRECTING CLERK TO ASSIGN
DISTRICT JUDGE

19 Jakan Mills (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in
20 this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint
21 commencing this action on September 3, 2020. (ECF No. 1).

22 The Court reviewed the complaint and found that the following claim should proceed
23 past screening: Plaintiff’s Eighth Amendment excessive force claim against defendants Cuellar
24 and Diaz. (ECF No. 9). The Court also found that no other claims should proceed past
25 screening. (*Id.*).

26 The Court gave Plaintiff thirty days to either: “a. File a First Amended Complaint; b.
27 Notify the Court in writing that he does not want to file an amended complaint and instead
28 wants to proceed only on his Eighth Amendment excessive force claim against defendants

1 Cuellar and Diaz; or c. Notify the Court in writing that he wants to stand on his complaint.”
2 (Id. at 8).

3 On November 12, 2020, Plaintiff filed his response. (ECF No. 12). Plaintiff stated that
4 he wants to proceed only on his Eighth Amendment excessive force claim against defendants
5 Cuellar and Diaz. However, elsewhere, Plaintiff also stated that he wants to stand on his
6 complaint.

7 As it is not clear from Plaintiff’s response whether Plaintiff chose the second or third
8 option, the Court issues these findings and recommendations, recommending that all claims and
9 defendants be dismissed, except for Plaintiff’s Eighth Amendment excessive force claim
10 against defendants Cuellar and Diaz.

11 The Court will also issue a separate order authorizing service of process on defendants
12 Cuellar and Diaz.

13 **I. SCREENING REQUIREMENT**

14 The Court is required to screen complaints brought by prisoners seeking relief against a
15 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
16 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
17 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
18 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
19 § 1915A(b)(1), (2). As Plaintiff is proceeding *in forma pauperis* (ECF No. 7), the Court may
20 also screen the complaint under 28 U.S.C. § 1915. “Notwithstanding any filing fee, or any
21 portion thereof, that may have been paid, the court shall dismiss the case at any time if the court
22 determines that the action or appeal fails to state a claim upon which relief may be granted.”
23 28 U.S.C. § 1915(e)(2)(B)(ii).

24 A complaint is required to contain “a short and plain statement of the claim showing
25 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
26 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
27 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
28 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). A plaintiff must set forth “sufficient

1 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id.
2 (quoting Twombly, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting
3 this plausibility standard. Id. at 679. While a plaintiff’s allegations are taken as true, courts
4 “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d
5 677, 681 (9th Cir. 2009) (citation and internal quotation marks omitted). Additionally, a
6 plaintiff’s legal conclusions are not accepted as true. Iqbal, 556 U.S. at 678.

7 Pleadings of *pro se* plaintiffs “must be held to less stringent standards than formal
8 pleadings drafted by lawyers.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (holding that
9 *pro se* complaints should continue to be liberally construed after Iqbal).

10 **II. SUMMARY OF PLAINTIFF’S COMPLAINT**

11 Plaintiff alleges as follows in his complaint:

12 On April 23, 2017, Plaintiff was brutally beaten by correctional peace officers Cuellar
13 and Diaz. Diaz held Plaintiff in place while Cuellar kneed Plaintiff in the ribs. Plaintiff
14 suffered a mildly displaced right lateral 10th rib fracture.

15 Warden Sullivan was notified about the brutal beating and aided and abetted their
16 actions by refusing to hold them accountable for their violation of Plaintiff’s rights.

17 Cuellar, Diaz, and Sullivan violated their oaths of office, which they swore to under the
18 California Constitution and United States Constitution.

19 **III. ANALYSIS OF PLAINTIFF’S COMPLAINT**

20 **A. Section 1983**

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

22 Every person who, under color of any statute, ordinance, regulation, custom, or
23 usage, of any State or Territory or the District of Columbia, subjects, or causes
24 to be subjected, any citizen of the United States or other person within the
25 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
secured by the Constitution and laws, shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress....

26 42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely
27 provides ‘a method for vindicating federal rights elsewhere conferred.’” Graham v. Connor,
28 490 U.S. 386, 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see

1 also Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los
2 Angeles, 697 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir.
3 2012); Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006).

4 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted
5 under color of state law, and (2) the defendant deprived him of rights secured by the
6 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
7 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing
8 “under color of state law”). A person deprives another of a constitutional right, “within the
9 meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or
10 omits to perform an act which he is legally required to do that causes the deprivation of which
11 complaint is made.’” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th
12 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite
13 causal connection may be established when an official sets in motion a ‘series of acts by others
14 which the actor knows or reasonably should know would cause others to inflict’ constitutional
15 harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of
16 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”
17 Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City
18 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

19 A plaintiff must demonstrate that each named defendant personally participated in the
20 deprivation of his rights. Iqbal, 556 U.S. at 676-77. In other words, there must be an actual
21 connection or link between the actions of the defendants and the deprivation alleged to have
22 been suffered by the plaintiff. See Monell v. Dep’t of Soc. Servs. of City of N.Y., 436 U.S.
23 658, 691, 695 (1978).

24 Supervisory personnel are not liable under section 1983 for the actions of their
25 employees under a theory of *respondeat superior* and, therefore, when a named defendant
26 holds a supervisory position, the causal link between the supervisory defendant and the claimed
27 constitutional violation must be specifically alleged. Iqbal, 556 U.S. at 676-77; Fayle v.
28 Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir.

1 1978). To state a claim for relief under section 1983 based on a theory of supervisory liability,
2 a plaintiff must allege some facts that would support a claim that the supervisory defendants
3 either: were personally involved in the alleged deprivation of constitutional rights, Hansen v.
4 Black, 885 F.2d 642, 646 (9th Cir. 1989); “knew of the violations and failed to act to prevent
5 them,” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); or promulgated or “implement[ed]
6 a policy so deficient that the policy itself is a repudiation of constitutional rights and is the
7 moving force of the constitutional violation,” Hansen, 885 F.2d at 646 (citations and internal
8 quotation marks omitted).

9 For instance, a supervisor may be liable for his or her “own culpable action or inaction
10 in the training, supervision, or control of his [or her] subordinates,” “his [or her] acquiescence
11 in the constitutional deprivations of which the complaint is made,” or “conduct that showed a
12 reckless or callous indifference to the rights of others.” Larez v. City of Los Angeles, 946 F.2d
13 630, 646 (9th Cir. 1991) (citations, internal quotation marks, and brackets omitted).

14 **B. Excessive Force in Violation of the Eighth Amendment**

15 “In its prohibition of ‘cruel and unusual punishments,’ the Eighth Amendment places
16 restraints on prison officials, who may not ... use excessive physical force against prisoners.”
17 Farmer v. Brennan, 511 U.S. 825, 832 (1994). “[W]henver prison officials stand accused of
18 using excessive physical force in violation of the [Eighth Amendment], the core judicial inquiry
19 is ... whether force was applied in a good-faith effort to maintain or restore discipline, or
20 maliciously and sadistically to cause harm.” Hudson v. McMillian, 503 U.S. 1, 6-7 (1992).

21 When determining whether the force was excessive, the Court looks to the “extent of
22 injury suffered by an inmate..., the need for application of force, the relationship between that
23 need and the amount of force used, the threat ‘reasonably perceived by the responsible
24 officials,’ and ‘any efforts made to temper the severity of a forceful response.’” Hudson, 503
25 U.S. at 7 (quoting Whitley v. Albers, 475 U.S. 312, 321 (1986)). While *de minimis* uses of
26 physical force generally do not implicate the Eighth Amendment, significant injury need not be
27 evident in the context of an excessive force claim, because “[w]hen prison officials maliciously
28 and sadistically use force to cause harm, contemporary standards of decency always are

1 violated.” Hudson, 503 U.S. at 9.

2 Plaintiff has alleged that, on April 23, 2017, he was brutally beaten by defendants
3 Cuellar and Diaz. Defendant Diaz held Plaintiff in place while defendant Cuellar kned
4 Plaintiff in the ribs. Plaintiff suffered a mildly displaced right lateral 10th rib fracture. Based
5 on these allegations, the Court finds that Plaintiff’s Eighth Amendment excessive force claim
6 against defendants Cuellar and Diaz should proceed past screening.

7 As to defendant Sullivan, there are no factual allegations suggesting that he personally
8 participated in the alleged deprivation of Plaintiff’s constitutional rights, that he instituted a
9 policy that caused the deprivation, that he knew of the alleged deprivation but failed to prevent
10 it, or that his failure to train or supervise his subordinates led to the alleged deprivation.
11 Plaintiff’s only allegation against defendant Sullivan is that he did not hold defendants Cuellar
12 and Diaz accountable after they had already violated Plaintiff’s rights. Accordingly, the Court
13 finds that Plaintiff has failed to state an Eighth Amendment excessive force claim against
14 defendant Sullivan.

15 To the extent Plaintiff is attempting to bring a separate Eighth Amendment claim based
16 on his allegation that Defendants violated their oaths of office, Plaintiff has failed to state a
17 claim. Plaintiff has not cited to any authority, and the Court is aware of none, allowing a cause
18 of action under the Eighth Amendment for violation of an oath of office.

19 **C. State Law Claims**

20 California’s Government Claims Act¹ requires that a claim against the State² or its
21 employees “relating to a cause of action for death or for injury to person” be presented to the
22 California Victim Compensation and Government Claims Board, formerly known as the State
23 Board of Control, no more than six months after the cause of action accrues. Cal. Gov’t Code
24 §§ 905.2, 910, 911.2, 945.4, 950-950.2. Presentation of a written claim, and action on or

26 ¹ This Act was formerly known as the California Tort Claims Act. City of Stockton v. Superior Court, 42
27 Cal. 4th 730, 741-42 (Cal. 2007) (adopting the practice of using Government Claims Act rather than California
Tort Claims Act).

28 ² “‘State’ means the State and any office, officer, department, division, bureau, board, commission or
agency of the State claims against which are paid by warrants drawn by the Controller.” Cal. Gov’t Code § 900.6.

1 rejection of the claim, are conditions precedent to suit. State v. Superior Court of Kings
2 County (Bodde), 32 Cal.4th 1234, 1245 (Cal. 2004); Mangold v. California Pub. Utils.
3 Comm’n, 67 F.3d 1470, 1477 (9th Cir. 1995). To state a tort claim against a public entity or
4 employee, a plaintiff must allege compliance with the Government Claims Act. Bodde, 32
5 Cal.4th at 1245; Mangold, 67 F.3d at 1477; Karim-Panahi v. Los Angeles Police Dept., 839
6 F.2d 621, 627 (9th Cir. 1988).

7 Plaintiff has failed to state any state law claims because he has not pled compliance
8 with California’s Government Claims Act.

9 **IV. RECOMMENDATIONS AND ORDER**

10 For the reasons set forth above, it is HEREBY RECOMMENDED that all claims and
11 defendants be dismissed, except for Plaintiff’s Eighth Amendment excessive force claim
12 against defendants Cuellar and Diaz.

13 These findings and recommendations will be submitted to the United States district
14 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
15 **fourteen (14) days** after being served with these findings and recommendations, Plaintiff may
16 file written objections with the Court. The document should be captioned “Objections to
17 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
18 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
19 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
20 (9th Cir. 1991)).

21 Additionally, IT IS ORDERED that the Clerk of Court is directed to assign a district
22 judge to this case.
23 IT IS SO ORDERED.

24 Dated: November 16, 2020

25 /s/ Eric P. Gray
26 UNITED STATES MAGISTRATE JUDGE
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