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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUWA R. VINYARD,  
Plaintiff,  
v.  
KONRAD, *et al.*,  
Defendants.

Case No. 2:24-cv-2244-JDP (P)

ORDER

Plaintiff Joshuwa Vinyard, a state inmate proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983, sues Captain Konrad. The complaint alleges a viable excessive force claim that can proceed past screening. However, plaintiff’s retaliation and due process claims are insufficient. Accordingly, plaintiff must decide whether to proceed only with the viable claim, or to delay serving defendant and to file an amended complaint. I will also grant plaintiff’s application to proceed *in forma pauperis*, which makes the required showing.

**Screening and Pleading Requirements**

A federal court must screen a prisoner’s complaint that seeks relief against a governmental entity, officer, or employee. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, that fails to state a

1 claim upon which relief may be granted, or that seeks monetary relief from a defendant who is  
2 immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

3 A complaint must contain a short and plain statement that plaintiff is entitled to relief,  
4 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its  
5 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not  
6 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.  
7 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere  
8 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not  
9 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,  
10 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that  
11 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264  
12 n.2 (9th Cir. 2006) (en banc) (citations omitted).

13 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404  
14 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it  
15 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which  
16 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).  
17 However, ““a liberal interpretation of a civil rights complaint may not supply essential elements  
18 of the claim that were not initially pled.”” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,  
19 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

### 20 **Analysis**

21 The complaint alleges that on January 5, 2024, defendant Captain Konrad issued a false  
22 extraction order for plaintiff to appear in court. ECF No. 1 at 3. During the extraction, defendant  
23 ordered other officers to use unauthorized and unsanctioned restraints on plaintiff, and defendant  
24 attacked plaintiff, choked him, and dislocated his shoulder. *Id.* at 3-7. Defendant also ordered  
25 that plaintiff’s clothes be cut off in front of other officers and bystanders, denied his request for  
26 medical treatment, and ordered plaintiff’s property to be “lost.” *Id.* at 3-4. Plaintiff further  
27 alleges that defendant attempted to report plaintiff for disciplinary charges, but that those charges  
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1 “disappeared” because defendant did not want the video footage to be reviewed during a use of  
2 force interview. *Id.* at 5-6.

3 The complaint, for purposes of screening, states a potentially viable claim for excessive  
4 force. However, plaintiff’s claims for retaliation and due process are not viable. Plaintiff may  
5 elect to pursue only the viable claim of excessive force, or he may file an amended complaint that  
6 addresses the deficiencies noted below. Should plaintiff choose to file an amended complaint,  
7 defendant Konrad will not be served until the new complaint is screened.

8 A claim of retaliation under the First Amendment has five elements: “(1) [a]n assertion  
9 that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s  
10 protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment  
11 rights, and (5) the action did not reasonably advance a legitimate correctional goal.” *Rhodes v.*  
12 *Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005). Plaintiff claims that after the assault, defendant  
13 removed plaintiff’s property, but he does not allege that defendant took that action because  
14 plaintiff engaged in protected conduct or that defendant did so in an effort to chill plaintiff’s  
15 exercise of his First Amendment rights. And even accepting as true plaintiff’s allegation that the  
16 disciplinary report contained false information, plaintiff does not have a constitutional right to be  
17 free from wrongfully issued disciplinary reports. *Buckley v. Gomez*, 36 F. Supp. 2d 1216, 1222  
18 (S.D. Cal. 1997), *aff’d*, 168 F.3d 498 (9th Cir. 1999); *Freeman v. Rideout*, 808 F.2d 949, 951 (2d  
19 Cir. 1986) (“The prison inmate has no constitutionally guaranteed immunity from being falsely or  
20 wrongly accused of conduct which may result in the deprivation of a protected liberty interest.”).  
21 Moreover, plaintiff claims that defendant never filed the disciplinary report. Accordingly,  
22 plaintiff’s retaliation and due process claims cannot proceed in their current form.

23 Accordingly, it is hereby ORDERED that:


- 24 1. Plaintiff’s request for leave to proceed *in forma pauperis*, ECF No. 4, is GRANTED.
- 25 2. Within thirty days from the service of this order, plaintiff must indicate his intent to  
26 proceed only with his excessive force claim against defendant Konrad, or he must file another  
27 amended complaint. If he selects the latter, no defendants will be served until the new complaint  
28 is screened.

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3. The Clerk of Court shall send plaintiff a section 1983 complaint form with this order.

IT IS SO ORDERED.

Dated: January 28, 2025

  
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JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE