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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 REYNALDO AYALA,) No. C 10-0979 JSW (PR)
10 Plaintiff,) **ORDER OF SERVICE**
11 v.)
12 ROBERT AYERS, JR., et al.,)
13 Defendants.)
14

15 **INTRODUCTION**

16 Plaintiff, a death-row inmate at San Quentin State Prison, filed this pro se civil
17 rights action pursuant to 42 U.S.C. § 1983. Plaintiff's application to proceed in forma
18 pauperis is granted in a separate order. This Court now reviews the complaint pursuant
19 to 28 U.S.C. § 1915A, and orders it served

20 **STANDARD OF REVIEW**

21 Federal courts must engage in a preliminary screening of cases in which prisoners
22 seek redress from a governmental entity or officer or employee of a governmental entity.
23 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the
24 complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or
25 fails to state a claim upon which relief may be granted," or "seeks monetary relief from a
26 defendant who is immune from such relief." *Id.* § 1915A(b). Pro se pleadings must be
27 liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.
28 1990).

1 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement
2 of the claim showing that the pleader is entitled to relief." "Specific facts are not
3 necessary; the statement need only "give the defendant fair notice of what the . . . claim
4 is and the grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
5 (2007) (citations omitted). Although in order to state a claim a complaint "does not need
6 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
7 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
8 recitation of the elements of a cause of action will not do. . . . Factual allegations must
9 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
10 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
11 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
12 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
13 699 (9th Cir. 1990).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
15 (1) that a right secured by the Constitution or laws of the United States was violated, and
16 (2) that the alleged violation was committed by a person acting under the color of state
17 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

18 ANALYSIS

19 When liberally construed, Plaintiff's allegations that Defendants Farita and
20 Wagner severely beat him despite his lack of resistance and that they did so in the
21 presence and/or at the direction of Defendants Guthrie and Schlosser, state a cognizable
22 claim against these Defendants for the use of excessive force in violation of the Eighth
23 Amendment. Plaintiff's allegations that these Defendants targeted him for this use of
24 force because he is Latino states a cognizable claim for a violation of the Equal
25 Protection Clause.

26 Similarly, Plaintiff's allegations that Defendants Edmonds and Hansen did not
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1 adequately treat the injuries he sustained states a cognizable claim against them for the
2 violation of his Eighth Amendment right to adequate medical care.

3 Plaintiff's allegations that the disciplinary hearing officer, Defendant Coleman,
4 was biased against him and therefore the discipline he received violated his right to due
5 process, states a cognizable claim for the violation of his right to due process

6 Plaintiff also names Defendant Ayers, the Warden, Defendant Wagner, an
7 Associate Warden, and Defendant Fox, a Captain. The only allegations against them are
8 that they authorized and employed the other Defendants. Respondeat superior is not a
9 basis for liability under Section 1983. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.
10 1989). Moreover, Plaintiff's conclusory allegations that they authorized the other
11 Defendants' actions are not sufficient to establish their liability. *Barren v. Harrington*,
12 152 F.3d 1193, 1194 (9th Cir. 1998) (at the pleading stage, "[a] plaintiff must allege
13 facts, not simply conclusions, that show that an individual was personally involved in the
14 deprivation of his civil rights"). Without specific facts alleged as to how these
15 Defendants authorized the actions of the other Defendants, liability cannot be imposed
16 upon them under Section 1983. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988).
17 Accordingly, the claims against Defendants Ayers, Fox and Wagner will be dismissed.

18 CONCLUSION

19 For the foregoing reasons, the Court orders as follows:

20 1. The claims under the Eighth Amendment, the Equal Protection Clause and due
21 process against Defendants Faria, Wagner, Guthrie, Schlosser, Edmonds, Hansen, and
22 Coleman are, when liberally construed, cognizable. All other claims are DISMISSED.

23 2. The Clerk of the Court shall issue summons and the United States Marshal
24 shall serve, without prepayment of fees, a copy of the **amended complaint** and all
25 attachments thereto with all attachments thereto, and a copy of this order upon:
26 Defendants **Lieutenant D. Schlosser; Lieutenant D. Coleman, Sergeant J. Guthrie,**
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1 **Correctional Officer J. Wagner, Correctional Officer S. Farita, Nurse J. Edmonds,**
2 **and Nurse B. Hansen at San Quentin State Prison.**

3 The Clerk shall also mail a courtesy copy of the complaint and this order to the
4 California Attorney General. The Clerk shall also serve a copy of this order on Plaintiff.

5 3. In order to expedite the resolution of this case, the Court orders as follows:

6 a. No later than **ninety (90) days** from the date this order is filed,
7 Defendants shall either file a motion for summary judgment or other dispositive motion,
8 or a notice to the Court that they are of the opinion that this matter cannot be resolved by
9 dispositive motion. The motion shall be supported by adequate factual documentation
10 and shall conform in all respects to Federal Rule of Civil Procedure 56.

11 **Defendants are advised that summary judgment cannot be granted, nor**
12 **qualified immunity found, if material facts are in dispute. If defendants are of the**
13 **opinion that this case cannot be resolved by summary judgment, they shall so**
14 **inform the Court prior to the date the summary judgment motion is due.**

15 All papers filed with the Court shall be promptly served on the Plaintiff.

16 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with
17 the court and served upon defendants no later than thirty days from the date of service of
18 the motion. Plaintiff must read the attached page headed "NOTICE -- WARNING,"
19 which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir.
20 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

21 If defendants file an unenumerated motion to dismiss claiming that plaintiff failed
22 to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),
23 plaintiff should take note of the attached page headed "NOTICE -- WARNING
24 (EXHAUSTION)," which is provided to him as required by *Wyatt v. Terhune*, 315 F.3d
25 1108, 1120 n. 4 (9th Cir. 2003)

26 c. Defendants shall file a reply brief no later than **fifteen (15) days** after
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1 Plaintiff's opposition is filed.

2 d. The motion shall be deemed submitted as of the date the reply brief is
3 due. No hearing will be held on the motion unless the Court so orders at a later date.

4 3. Discovery may be taken in accordance with the Federal Rules of Civil
5 Procedure. No further Court order under Federal Rule of Civil Procedure 30(a)(2) or
6 Local Rule 16 is required before the parties may conduct discovery.


7 4. Extensions of time are not favored, though reasonable extensions will be
8 granted. Any motion for an extension of time must be filed no later than **five** days prior
9 to the deadline sought to be extended.

10 5. All communications by Plaintiff with the Court must be served on Defendant,
11 or Defendant's counsel once counsel has been designated, by mailing a true copy of the
12 document to Defendant or Defendant's counsel.

13 6. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
14 Court informed of any change of address and must comply with the Court's orders in a
15 timely fashion. Failure to do so may result in the dismissal of this action for failure to
16 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

17 IT IS SO ORDERED.

18 DATED: November 12, 2010

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20 _____
21 JEFFREY S. WHITE
22 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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5 REYNALDO AYALA,
6 Plaintiff,
7

Case Number: CV10-00979 JSW

CERTIFICATE OF SERVICE

8 v.

9 ROBERT AYERS JR et al,
10 Defendant.

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on November 12, 2010, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 Reynaldo Ayala
18 E10000
19 San Quentin State Prison
20 San Quentin, CA 94974

21 Dated: November 12, 2010



22 Richard W. Wieking, Clerk
23 By: Jennifer Ottolini, Deputy Clerk
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