

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Cisneros v. Rowland

No. 1:24-cv-01070-JLT-EPG (PC) (E.D. Cal. Apr. 22, 2025) · No. 1:24-cv-01070-JLT-EPG (PC) · Decided April 22, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends that Matthew Cisneros’s § 1983 action proceed only on his Eighth Amendment excessive-force claim against correctional officers Rowland, Marroquin, and Garcia. The document recommends dismissal of the deliberate-indifference, conditions-of-confinement, personal-property, retaliation, and related claims and defendants, and permits objections within thirty days.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 22, 2025
DOCKET	1:24-cv-01070-JLT-EPG (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Screening of a pro se prisoner civil-rights complaint under 28 U.S.C. §§ 1915A and 1915(e)(2), followed by findings and recommendations after Plaintiff elected to stand on his original complaint.
STANDARD OF REVIEW	For prisoner and in forma pauperis screening, the complaint must be dismissed if it is frivolous, malicious, fails to state a claim, or seeks monetary relief from an immune defendant. Under Federal Rule of Civil Procedure 8 and the plausibility standard, conclusory allegations and threadbare recitals of elements are insufficient, while factual allegations are accepted as true and liberally construed for a pro se plaintiff.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- prisoners rights
- section 1983
- civil rights
- cruel and unusual punishment
- due process

PRACTICE AREAS

prisoner civil rights

constitutional torts

federal civil procedure

QUESTIONS PRESENTED

1. Whether the complaint stated a cognizable Eighth Amendment excessive-force claim against correctional officers Garcia, Rowland, and Marroquin.
2. Whether the allegations stated an Eighth Amendment deliberate-indifference claim based on delayed or inadequate medical treatment and unsanitary holding-cell conditions.
3. Whether the alleged loss or deprivation of personal property stated a Fourteenth Amendment due-process claim under 42 U.S.C. § 1983.
4. Whether the alleged property deprivation stated a First Amendment retaliation claim.

HOLDINGS

1. The allegations that Garcia, Rowland, and Marroquin threw Plaintiff to the ground, handcuffed him, and repeatedly punched and kicked him despite his compliance were sufficient at the screening stage to state Eighth Amendment excessive-force claims against those three defendants.
2. The complaint failed to state an Eighth Amendment deliberate-indifference claim against Alvarado, Patel, or Brown.
3. The allegation that Plaintiff spent approximately one hour in a holding cage without means to clean his wounds did not state an Eighth Amendment conditions-of-confinement claim.
4. The alleged negligent or intentional loss of Plaintiff's personal property did not state a § 1983 procedural due-process claim because California provides an adequate post-deprivation remedy.
5. The complaint failed to state a First Amendment retaliation claim because it did not allege facts connecting the property deprivation to Plaintiff's appeal of the use-of-force incident.

KEY QUOTATIONS

“whenever prison officials stand accused of using excessive physical force in violation of the [Eighth Amendment], the core judicial inquiry is . . . whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” (at 8)

“This case proceeds on the claim for excessive use of force against Defendants Rowland, Marroquin, and Garcia” (at 11)

FACTUAL BACKGROUND

Matthew Cisneros, a state prisoner at Kern Valley State Prison, alleged that on July 8, 2020, correctional officers Garcia, Rowland, and Marroquin stopped and searched him, threw him to the ground, handcuffed him, and repeatedly punched and kicked him despite his compliance and pleas to stop. He also alleged that medical personnel provided inadequate or delayed treatment after the incident and that he was temporarily deprived of personal property when placed in administrative segregation on July 8, 2020, and June 29, 2021. The Court

concluded that the allegations stated an excessive-force claim but did not state claims for deliberate indifference, unconstitutional conditions, property deprivation, or retaliation.

PROCEDURAL HISTORY

Plaintiff filed an in forma pauperis action under 42 U.S.C. § 1983 alleging excessive force, deliberate indifference to medical needs, unconstitutional conditions of confinement, deprivation of personal property, and retaliation. The Court screened the complaint on March 7, 2025, found only the excessive-force claim cognizable, and gave Plaintiff leave to amend or elect to proceed on that claim. Plaintiff notified the Court on April 2, 2025, that he wished to stand on his initial complaint. The magistrate judge recommended allowing the excessive-force claim against Rowland, Marroquin, and Garcia to proceed and dismissing all other claims and defendants, subject to objections.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 676-79 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
- Graham v. Connor, 490 U.S. 386, 393-94 (1989)
- Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)
- Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979)
- Hall v. City of Los Angeles, 697 F.3d 1059, 1068 (9th Cir. 2012)
- Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012)
- Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006)
- Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006)
- Marsh v. County of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012)
- Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978)
- Arnold v. International Business Machines Corp., 637 F.2d 1350, 1355 (9th Cir. 1981)
- Harper v. City of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008)
- Monell v. Department of Social Services of City of New York, 436 U.S. 658, 691, 695 (1978)
- Farmer v. Brennan, 511 U.S. 825, 832, 837 (1994)
- Hudson v. McMillian, 503 U.S. 1, 6-7, 9 (1992)
- Bearchild v. Cobban, 947 F.3d 1130, 1141 (9th Cir. 2020)
- Furnace v. Sullivan, 705 F.3d 1021, 1028 (9th Cir. 2013)
- Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)
- Estelle v. Gamble, 429 U.S. 97, 104 (1976)

- Hallet v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002)
- Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004)
- Peralta v. Dillard, 744 F.3d 1076, 1086 (9th Cir. 2014)
- McGuckin v. Smith, 974 F.2d 1050, 1060 (9th Cir. 1992)
- WMX Technologies v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc)
- Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000)
- Anderson v. County of Kern, 45 F.3d 1310, 1314 (9th Cir. 1995)
- Wilson v. Seiter, 501 U.S. 294, 298 (1991)
- Lavan v. City of Los Angeles, 693 F.3d 1022, 1031 (9th Cir. 2012)
- Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994)
- Hudson v. Palmer, 468 U.S. 517, 533 (1984)
- Manzanillo v. Jacquez, 555 F. App'x 651 (9th Cir. 2014)
- Cousins v. Lockyer, 568 F.3d 1063, 1070 (9th Cir. 2009)
- Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

1 2 3 4 5 UNITED STATES DISTRICT COURT 6 EASTERN DISTRICT OF CALIFORNIA 7 8
 MATTHEW CISNEROS, Case No. 1:24-cv-01070-JLT-EPG (PC) 9 Plaintiff, 10 FINDINGS AND
 RECOMMENDATIONS v. RECOMMENDING THAT THIS CASE 11 PROCEED ON
 EXCESSIVE USE OF FORCE ROWLAND, et al., AGAINST DEFENDANTS ROWLAND, 12
 MARROQUIN, AND GARCIA, AND THAT Defendants. ALL OTHER CLAIMS AND
 DEFENDANTS 13 BE DISMISSED 14 (ECF No. 1) 15 OBJECTIONS, IF ANY, DUE WITHIN
 THIRTY DAYS 16 17 Plaintiff Matthew Cisneros, a state prisoner, proceeds pro se and in forma
 pauperis in 18 this civil rights action filed under 42 U.S.C. § 1983.

(ECF No. 1). Plaintiff alleges that 19 corrections officers used excessive force against him, acted
 with deliberate indifference in 20 providing him with medical care, and deprived him of his
 personal property. 21 On March 7, 2025, the Court screened Plaintiff's complaint and concluded
 that Plaintiff 22 states a claim for excessive use of force against Defendants Rowland, Marroquin,
 and Garcia.

23 (ECF No. 14 at 11). The Court found that Plaintiff failed to state any other cognizable claims.
 24 (Id. at 8–10). The Court gave Plaintiff thirty days to either 1) notify the Court that he wishes to
 25 proceed only on the excessive force claim that the Court found cognizable; 2) file a first 26
 amended complaint; or 3) notify the Court in writing that he wishes to stand on his complaint.

27 (Id. at 11). On April 2, 2025, Plaintiff filed notice stating, “I want to stand on my initial 28 complaint.” (ECF No. 15). 1 For the reasons set forth below, the Court recommends that this case proceeds on the 2 excessive force claim against Defendants Rowland, Marroquin, and Garcia, and that all other 3 claims and defendants be dismissed. 4 Plaintiff has thirty days from the date of service of these findings and recommendations 5 to file his objections.

6 I. SCREENING REQUIREMENT 7 The Court is required to screen complaints brought by prisoners seeking relief against a 8 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). 9 The Court must dismiss a complaint if the prisoner has raised claims that are frivolous or 10 malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a 11 defendant who is immune from such relief.

28 U.S.C. § 1915A(b)(1), (2). Because Plaintiff is 12 proceeding in forma pauperis, the Court may also screen the complaint under 28 U.S.C. § 13 1915, which requires a court to dismiss a case if it is frivolous or malicious, fails to state a 14 claim, or seeks monetary relief from an immune defendant. 28 U.S.C. § 1915(e)(2)(B)(i-iii). 15 A complaint is required to contain “a short and plain statement of the claim showing 16 that the pleader is entitled to relief.” Fed.

R. Civ. P. 8(a)(2). Detailed factual allegations are not 17 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere 18 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 19 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A plaintiff must set forth “sufficient 20 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id. 21 (quoting *Twombly*, 550 U.S. at 570).

The mere possibility of misconduct falls short of meeting 22 this plausibility standard. Id. at 679. While a plaintiff’s allegations are taken as true, courts 23 “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 24 677, 681 (9th Cir. 2009) (citation and internal quotation marks omitted). Additionally, a 25 plaintiff’s legal conclusions are not accepted as true.

Iqbal, 556 U.S. at 678. 26 Pleadings of pro se plaintiffs “must be held to less stringent standards than formal 27 pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (holding that 28 pro se complaints should continue to be liberally construed after *Iqbal*). 1 II. SUMMARY OF PLAINTIFF’S COMPLAINT 2 Plaintiff’s complaint alleges as follows: 3 On July 8, 2020, three corrections officers used excessive force against him as he was 4 stopped and searched while returning to his housing unit.

Plaintiff also alleges a claim for 5 deliberate indifference based on medical treatment after the alleged assault and a loss of 6 personal property when he was placed in administrative segregation. Plaintiff alleges that the 7 events occurred at Kern Valley State Prison (KVSP) and names the following KVSP 8 employees as defendants: (1) Correctional Officer (CO) Rowland, (2) CO

Marroquin, (3) CO 9 Jim Garcia, (4) Registered Nurse (RN) Alvarado, (5) Physician Ismail Patel, and (6) Medical 10 Doctor B. Brown.

Plaintiff seeks monetary damages. 11 A. Excessive Force Allegations 12 In his first claim, Plaintiff alleges that he was subjected to excessive force on July 8, 13 2020. Plaintiff alleges he was stopped by Defendants Garcia, Rowland, and Marroquin as he 14 was returning to his housing unit. Plaintiff alleges he was ordered to turn around, place his 15 hands out to his side and submit to a search.

Plaintiff alleges he complied with the orders. 16 Plaintiff states that as Marroquin was searching him, Rowland aggressively grabbed Plaintiff's 17 arm, yelled at him, and accused him of concealing something in his hand. Plaintiff alleges he 18 was then "thrown face first, handcuffed, punched and kicked repeatedly" over his face, head, 19 and body by the three correctional officers.

Plaintiff alleges he begged them to stop as he was 20 pinned to the floor. 21 Plaintiff further alleges that he requested a use of force investigation, but his request 22 was denied several times. He was later interviewed by Sergeant Brown and Lieutenant Sell on 23 July 17, 2020. 24 B. Deliberate Indifference to Serious Medical Needs Allegations 25 In his second claim, Plaintiff alleges he was denied medical treatment and 26 sanitary conditions after the excessive force incident.

Plaintiff alleges that after he was 27 assaulted on July 8, 2020, he was placed in a holding cage and stripped of his clothes except for 28 a bloodied pair of boxers by Marroquin. 1 Plaintiff alleges he requested medical treatment, but Defendant RN Alvarado did not 2 arrive until approximately one hour after the incident. Plaintiff provides that during the hour, he 3 did not have access to running water or sanitary supplies to clean his wounds.

Plaintiff alleges 4 that he asked Alvarado how serious his injuries were and if his nasal bone was visible, to which 5 Alvarado responded that Plaintiff's injuries were very bad and that his nasal bone was visible. 6 Plaintiff contends that he was provided inadequate medical treatment because Alvarado 7 only passed him medical gauze with saline on it through the cuff port of the holding cage.

8 Plaintiff alleges he had to clean his own wounds, the holding cell was unsanitary, and he did 9 not have a mirror to see what he was doing. Plaintiff alleges as Alvarado was leaving the 10 holding cage, she said, "That's what you get when you cheek your suboxone." Plaintiff alleges 11 that Alvarado made small talk and laughed with Marroquin. 12 Afterwards, Plaintiff was referred to "T.T.A." but had to wait an additional hour to be 13 escorted there.

Plaintiff alleges he was escorted to T.T.A in handcuffs, and his wounds were 14 exposed to direct sunlight and wind, exacerbating his pain. Once at T.T.A., Plaintiff was 15 evaluated by Patel. Plaintiff alleges he was provided antibiotic ointment, Dr. Brown signed off 16 on his medical

treatment and x-rays, and Plaintiff was sent back to a holding cage. 17 C. Deprivation of Personal Property Allegations 18 Lastly, Plaintiff alleges that he was deprived access to his personal property on two 19 occasions when he was placed in administrative segregation.

Plaintiff alleges on July 8, 2020, 20 and June 29, 2021, he was moved to administrative segregation. Plaintiff alleges that on both 21 occasions his personal property was improperly packed, and he only received part of his 22 property. Plaintiff alleges some of his property was left behind with another inmate and that he 23 was never given the rest of his property.

Plaintiff alleges that four John Doe defendants were 24 responsible for improperly packing and delivering his property. 25 III. ANALYSIS OF PLAINTIFF’S COMPLAINT 26 A. Section 1983 27 The Civil Rights Act under which this action was filed provides as follows: 28 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or 1 other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, 2 shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

3 42 U.S.C. § 1983. 4 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a 5 method for vindicating federal rights elsewhere conferred.’” *Graham v. Connor*, 490 U.S. 386, 6 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)); see also *Chapman 7 v. Houston Welfare Rights Org.*, 441 U.S. 600, 618 (1979); *Hall v. City of Los Angeles*, 697 8 F.3d 1059, 1068 (9th Cir.

2012); *Crowley v. Nevada*, 678 F.3d 730, 734 (9th Cir. 9 2012); *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006). 10 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under 11 color of state law, and (2) the defendant deprived him of rights secured by the Constitution or 12 federal law. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir.

2006); see also 13 *Marsh v. County of San Diego*, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of 14 state law”). A person deprives another of a constitutional right, “within the meaning of § 1983, 15 if he does an affirmative act, participates in another’s affirmative act, or omits to perform an act 16 which he is legally required to do that causes the deprivation of which complaint is made.” 17 *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir.

1978). “The requisite causal connection can be 18 established not only by some kind of direct personal participation in the deprivation, but also by 19 setting in motion a series of acts by others which the actor knows or reasonably should know 20 would cause others to inflict the constitutional injury.” *Id.* at 743-44. This standard of causation 21 “closely resembles the standard ‘foreseeability’ formulation of proximate cause.” *Arnold v. 22 Int’l Bus.*

Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also *Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008). 24 A plaintiff must demonstrate that each named defendant personally participated in the 25 deprivation of his rights. *Iqbal*, 556 U.S. at 676-77.

In other words, there must be an actual 26 connection or link between the actions of the defendants and the deprivation alleged to have 27 28 1 been suffered by the plaintiff. See *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 2 691, 695 (1978). 3 B. Excessive Force 4 In his first claim, Plaintiff alleges that Garcia, Rowland, and Marroquin, three 5 corrections officers at KVSP, used excessive force against him on July 8, 2020.

6 “In its prohibition of ‘cruel and unusual punishments,’ the Eighth Amendment places 7 restraints on prison officials, who may not... use excessive physical force against prisoners.” 8 *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). “[W]henver prison officials stand accused of 9 using excessive physical force in violation of the [Eighth Amendment], the core judicial inquiry 10 is... whether force was applied in a good-faith effort to maintain or restore discipline, or 11 maliciously and sadistically to cause harm.” *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992).

12 “Five factors bear on the excessive force analysis in a typical Eighth Amendment claim: 13 ‘(1) the extent of injury suffered by an inmate; (2) the need for application of force; (3) the 14 relationship between that need and the amount of force used; (4) the threat reasonably 15 perceived by the responsible officials; and (5) any efforts made to temper the severity of a 16 forceful response.’” *Bearchild v. Cobban*, 947 F.3d 1130, 1141 (9th Cir.

2020) (quoting 17 *Furnace v. Sullivan*, 705 F.3d 1021, 1028 (9th Cir. 2013). While de minimis uses of physical 18 force generally do not implicate the Eighth Amendment, significant injury need not be evident 19 in the context of an excessive force claim, because “[w]hen prison officials maliciously and 20 sadistically use force to cause harm, contemporary standards of decency always are violated.” 21 *Hudson*, 503 U.S. at 9.

22 Here, Plaintiff alleges that Garcia, Rowland, and Marroquin stopped and searched his 23 person. Plaintiff alleges that although he complied with the officers’ orders, Rowland 24 aggressively grabbed his arm and accused him of concealing something in his hand. Plaintiff 25 contends that was impossible because his hands were “outstretched”, and his arms were 26 “stretched out to [his] side.” Plaintiff alleges he was thrown to the ground and handcuffed and 27 that the three officers repeatedly kicked and punched Plaintiff’s face, head, and body.

28 1 Based on Plaintiff’s allegations, the Court concludes, for the purposes of screening, that 2 Plaintiff has sufficiently stated claims for excessive use of force against Defendants (1) Garcia, 3 (2) Rowland, and (3) Marroquin.1 4 C. Deliberate Indifference to Serious Medical Needs 5 Plaintiff’s second claim incorporates allegations from his first claim and further alleges 6 that certain Defendants were deliberately indifferent to his serious medical needs.

7 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an 8 inmate must show ‘deliberate indifference to serious medical needs.’” *Jett v. Penner*, 439 F.3d 9 1091, 1096 (9th Cir. 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)).

To establish a 10 constitutional violation, plaintiffs “must satisfy both the objective and subjective components 11 of a two-part test.” *Hallet v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002) (citation omitted). This 12 requires Plaintiff to show (1) “a ‘serious medical need’ by demonstrating that ‘failure to treat a 13 prisoner’s condition could result in further significant injury or the unnecessary and wanton 14 infliction of pain,’” and (2) that “the defendant’s response to the need was deliberately 15 indifferent.” *Jett*, 439 F.3d at 1096 (citations omitted).

16 Deliberate indifference is established only where the defendant subjectively “knows of 17 and disregards an excessive risk to inmate health and safety.” *Toguchi v. Chung*, 391 F.3d 18 1051, 1057 (9th Cir. 2004) (citation omitted). Deliberate indifference can be established “by 19 showing (a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need 20 and (b) harm caused by the indifference.” *Jett*, 439 F.3d at 1096 (citation omitted). “To be 21 liable, ‘the official must both be aware of facts from which the inference could be drawn that a 22 substantial risk of serious harm exists, and he must also draw the inference.” *Peralta v. Dillard*, 23 744 F.3d 1076, 1086 (9th Cir.

2014) (quoting *Farmer*, 511, U.S. at 837). 24 25 1 Plaintiff also briefly alleges that KVSP staff did not immediately respond to his request for a 26 use of force investigation or adequately conduct the investigation.

To the extent Plaintiff intended this 27 allegation to be a separate claim, it is insufficient to allege a constitutional violation. See *Manzanillo v. Jacquez*, 555 Fed. App’x 651 (9th Cir. 2014) (holding alleged failure to adequately investigate an 28 excessive force claim in violation of prison policy does not constitute a violation of a federal right) (citing *Cousins v. Lockyer*, 568 F.3d 1063, 1070 (9th Cir.

2009)). 1 Additionally, to establish a claim of deliberate indifference arising from a delay in 2 providing care, a plaintiff must show that the delay led to further harm and that Defendants 3 purposefully ignored his medicals needs knowing about the risk of harm from delay in 4 treatment. See *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992) (“when, as here, a 5 claim alleges ‘mere delay of surgery,’ a prisoner can make ‘no claim for deliberate medical 6 indifference unless the denial was harmful.’”) overruled on other grounds by *WMX 7 Technologies v. Miller*, 104 F.3d 1133 (9th Cir.

1997) (en banc). 8 As an initial matter, Plaintiff does not allege that the delay in treating his injuries from 9 the assault caused him further harm. 10 Plaintiff also does not allege that any

defendant was deliberately indifferent to a serious 11 medical need. Plaintiff alleges Defendant Alvarado only provided him with saline-covered 12 gauze so he could clean his own wounds.

This allegation does not establish deliberate 13 indifference as to Defendant Alvarado because it does not allege that Defendant Alvarado 14 failed to respond to Plaintiff's serious medical need. 15 Similarly, as to Defendant Patel, Plaintiff alleges that Patel evaluated Plaintiff's injuries 16 and provided antibiotic ointment. This allegation also does not establish deliberate indifference.

17 Plaintiff does not allege any treatment he needed or was denied by Patel. 18 As to Defendant Brown, Plaintiff alleges that Brown signed off on the medical 19 treatment and x-rays but alleges no other factual basis against Dr. Brown. Plaintiff's allegations 20 do not establish that Dr. Brown acted with deliberate indifference or that Dr. Brown failed to 21 provide any medical treatment to him.

22 Although not expressly stated as a separate claim, Plaintiff alleges that the conditions of 23 the holding cell were unsanitary, and he had to wait to receive medical treatment. Although 24 routine discomfort inherent in the prison setting is inadequate to satisfy the objective prong of 25 an Eighth Amendment inquiry, 'those deprivations denying "the minimal civilized measure of 26 life's necessities" are sufficiently grave to form the basis of an Eighth Amendment violation.'" 27 *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir.

2000) (quoting *Wilson v. Seiter*, 501 U.S. 294, 28 298 (1991)). "[S]ubjection of a prisoner to lack of sanitation that is severe or prolonged can 1 constitute an infliction of pain within the meaning of the Eighth Amendment." *Anderson v. 2 County of Kern*, 45 F.3d 1310, 1314 (9th Cir. 1995). 3 Plaintiff fails to allege a conditions of confinement claim. Plaintiff's allegation that he 4 was in the holding cage for an hour without the means to clean his wounds is insufficient to 5 state a prolonged deprivation.

6 For those reasons, Plaintiff fails to state a claim for deliberate indifference to serious 7 medical needs or based on the conditions of his confinement. 8 D. Loss of Personal Property 9 In his third claim, Plaintiff alleges that corrections officers, listed as four John Does 10 within the body of his complaint, deprived him of property because they improperly packed 11 and subsequently left or lost his belongings.

12 Under the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or 13 property, without due process of law." U.S. CONST. amend. XIV, § 1. "'Any significant taking 14 of property by the State is within the purview of the Due Process Clause.'" *Lavan v. City of Los 15 Angeles*, 693 F.3d 1022, 1031 (9th Cir. 2012) (citation omitted).

However, "a negligent or 16 intentional deprivation of a prisoner's property fails to state a claim under section 1983 if the 17 state has an adequate post deprivation remedy." *Barnett v. Centoni*, 31

F.3d 813, 816 (9th Cir. 18 1994) (citing *Hudson v. Palmer*, 468 U.S. 517, 533 (1984)). 19 Plaintiff alleges that on July 8, 2020, and June 29, 2021, he was placed in administrative 20 segregation.

Plaintiff alleges that on both instances, his property was only partially packed and 21 provided to him while some of his property was left behind with another inmate. Plaintiff 22 alleges that he appealed this issue and staff recovered the remainder of his property.

However, 23 Plaintiff also alleges that he never fully recovered all his property. 24 Ultimately, Plaintiff's claim based on the loss of his property fails to state a claim 25 because "California Law provides an adequate post-deprivation remedy for any property 26 deprivations." *Barnett*, 31 F.3d at 816-817 (citing Cal. Gov't Code §§ 810-859).

As noted by 27 the Court in *Barnett*, the California Government Claims Act provides remedy for the type of 28 deprivation alleged here. Further, under *Hudson*, 468 U.S. at 533, if a post-deprivation remedy 1 is available, as there is here, the deprivation of property "does not constitute a violation of the 2 procedural requirements of the Due Process Clause of the Fourteenth Amendment." 3 Accordingly, Plaintiff fails to state a claim for deprivation of property against any of the 4 named defendants or against any potential John Doe defendants.2 5 IV.

CONCLUSION AND ORDER 6 The Court finds that Plaintiff states a claim for excessive use of force against 7 Defendants Rowland, Marroquin, and Garcia. The Court also finds that Plaintiff fails to state 8 any other claims.

The Court previously provided Plaintiff with applicable legal standards, 9 explained why Plaintiff's complaint failed to state any other cognizable claims besides the 10 excessive force claim, and gave Plaintiff leave to file an amended complaint, but Plaintiff chose 11 to stand on his original complaint. 12 Based on the foregoing, IT IS RECOMMENDED that: 13 1.

This case proceeds on the claim for excessive use of force against Defendants 14 Rowland, Marroquin, and Garcia; 15 2. All other claims and defendants be dismissed; 16 These findings and recommendations will be submitted to the United States district 17 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 18 thirty days after being served with these findings and recommendations, Plaintiff may file 19 written objections with the Court.

The document should be captioned "Objections to Magistrate 20 Judge's Findings and Recommendations." Any objections shall be limited to no more than 15 21 pages including exhibits. 22 23 24 2 Plaintiff briefly alleges that the deprivation of his personal property was retaliation for his 25 appeal of the use of force. "Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an 26 inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's 27 exercise of his First Amendment rights, and (5) the action

did not reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567–68 (9th Cir.

2005) (footnote and citations 28 omitted). However, Plaintiff does not allege facts showing that his personal property was taken due to the appeal, such as anything anyone said connecting those two events. 1 Plaintiff is advised that failure to file objections within the specified time may result in 2 || the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir.

2014) 3 || (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). 4 5 IT IS SO ORDERED. 6 || Dated: _ April 22, 2025 [spe ey — 7 UNITED STATES MAGISTRATE JUDGE 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 11