

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Young v. Herrea

Young · No. 1:24-cv-0873-BAM (PC) · Decided April 10, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends allowing Gale Joseph Young’s action to proceed against correctional officer Herrea on an Eighth Amendment excessive-force claim. The court recommends dismissing all other claims and defendants, including claims concerning property deprivation, supervisory liability, retaliation, false reports, and claims barred by Eleventh Amendment immunity.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 10, 2025
DOCKET	1:24-cv-0873-BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Prisoner civil-rights action under 42 U.S.C. § 1983; magistrate judge screened the second amended complaint and issued findings and recommendations that one excessive-force claim proceed and all other claims and defendants be dismissed.
STANDARD OF REVIEW	Screening under 28 U.S.C. § 1915A; the complaint must contain sufficient factual matter to state a facially plausible claim under Federal Rule of Civil Procedure 8(a)(2), and conclusory allegations and unwarranted inferences are insufficient.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Gale Joseph Young v. Herrea, Sgt. Gonzales, California Department of Rehabilitation and Correction

TOPICS

- section 1983
- prisoners rights
- civil rights
- eleventh amendment immunity

PRACTICE AREAS

prisoner civil rights

constitutional law

federal civil procedure

remedies

QUESTIONS PRESENTED

1. Whether Plaintiff's allegations that correctional officer Herrea slammed him headfirst while handcuffed plausibly state an Eighth Amendment excessive-force claim.
2. Whether Plaintiff's allegations concerning the confiscation and nonreturn of his television, CD player, and CD state a Fourteenth Amendment procedural due-process claim.
3. Whether Plaintiff stated a First Amendment prisoner-retaliation claim.
4. Whether supervisory-liability allegations stated a § 1983 claim against Sergeant Gonzales or other supervisors.
5. Whether claims for damages or injunctive relief against the California Department of Rehabilitation and Correction or other state entities are barred by the Eleventh Amendment.
6. Whether alleged false prison reports or chronos, standing alone, state a claim under § 1983.

HOLDINGS

1. Liberally construed, Plaintiff stated a cognizable Eighth Amendment excessive-force claim against correctional officer Herrea based on allegedly slamming Plaintiff headfirst while Plaintiff was handcuffed.
2. Plaintiff failed to state a cognizable Fourteenth Amendment due-process claim based on the alleged unauthorized deprivation of his property because California provides a meaningful post-deprivation remedy.
3. Plaintiff failed to state a supervisory-liability claim against Sergeant Gonzales or any other supervisor because he did not allege personal participation, direction, knowledge coupled with failure to act, or a constitutionally deficient policy that was the moving force behind a violation.
4. Plaintiff could not pursue damages or injunctive-relief claims against California, the California Department of Corrections and Rehabilitation, or Corcoran because the Eleventh Amendment bars such § 1983 claims absent waiver or valid congressional abrogation.
5. Plaintiff failed to state a cognizable First Amendment retaliation claim because he did not adequately identify protected conduct, the adverse action and actor, a chilling effect or more-than-minimal harm, and the absence of a legitimate correctional goal.
6. The alleged falsification of prison reports or chronos, standing alone, did not state a claim under § 1983.

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 5)

“an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful post deprivation remedy for the loss is available.” (at 6)

“The creation of false evidence, standing alone, is not actionable under § 1983.” (at 8)

FACTUAL BACKGROUND

Plaintiff, a state prisoner, alleged that during a June 5, 2022 cell search, correctional officer Herrea confiscated his television and CD player, then squeezed Plaintiff's arm and slammed him headfirst while he was handcuffed, causing loss of consciousness and a concussion requiring outside-hospital treatment. Plaintiff alleged that Sergeant Gonzales failed to return the property and falsely asserted that it bore another inmate's identification number. Plaintiff also alleged retaliation-related conduct and false reports, but the Court found those allegations insufficient to state separate claims.

PROCEDURAL HISTORY

Plaintiff filed a civil-rights complaint, then a first amended complaint. After screening, the Court granted leave to amend or proceed on a cognizable claim. Plaintiff filed a second amended complaint on April 7, 2025. The magistrate judge found a cognizable Eighth Amendment excessive-force claim against correctional officer Herrea, found all other claims deficient, recommended dismissal of those claims and defendants without further leave to amend, and directed the Clerk to randomly assign a district judge.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 676-78 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009)
- Simmons v. Navajo County, Arizona, 609 F.3d 1011, 1020-21 (9th Cir. 2010)
- Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009)
- Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002)
- Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)
- Starr v. Baca, 652 F.3d 1202, 1205-06 (9th Cir. 2011)
- Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009)
- Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991)
- Farmer v. Brennan, 511 U.S. 825 (1994)
- Aholelei v. Department of Public Safety, 488 F.3d 1144, 1147 (9th Cir. 2007)
- Dittman v. California, 191 F.3d 1020, 1025-26 (9th Cir. 1999)

- Fireman's Fund Insurance Co. v. City of Lodi, California, 302 F.3d 928, 957 n.28 (9th Cir. 2002)
- Atascadero State Hospital v. Scanlon, 473 U.S. 234, 241 (1985)
- Brown v. California Department of Corrections, 554 F.3d 747, 752 (9th Cir. 2009)
- Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006)
- Hudson v. McMillian, 503 U.S. 1, 5-9 (1992)
- Whitley v. Albers, 475 U.S. 312, 321-22, 327 (1986)
- Estelle v. Gamble, 429 U.S. 97, 106 (1976)
- Hansen v. May, 502 F.2d 728, 730 (9th Cir. 1974)
- Hudson v. Palmer, 468 U.S. 517, 532-33 & n.13 (1984)
- Logan v. Zimmerman Brush Co., 455 U.S. 422, 435-36 (1982)
- Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1985)
- Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985)
- Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989)
- Pratt v. Rowland, 65 F.3d 802, 807 (9th Cir. 1995)
- Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
- Watison v. Carter, 668 F.3d 1108, 1114-15 (9th Cir. 2012)
- Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009)
- Hernandez v. Johnston, 833 F.2d 1316, 1319 (9th Cir. 1987)
- Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

(PC) Young v. Herrea

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 GALE JOSEPH YOUNG, Case No. 1:24-cv-0873-BAM (PC) 12 Plaintiff, ORDER
DIRECTING CLERK OF COURT TO

RANDOMLY ASSIGN DISTRICT JUDGE TO

13 v. ACTION

14 HERREA, et al., FINDINGS AND RECOMMENDATIONS

REGARDING DISMISSAL OF CERTAIN

15 Defendants. CLAIMS AND DEFENDANTS 16 (ECF No. 14)

17 FOURTEEN (14) DAY DEADLINE

18 19 Plaintiff Gale Joseph Young (“Plaintiff”) is a state prisoner proceeding pro se and in 20

forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Before the Court could 21 screen the complaint, Plaintiff filed a first amended complaint. The Court screened Plaintiff's 22 first amended complaint, and Plaintiff was granted leave to amend or to notify the Court of his 23 willingness to proceed on the cognizable claim. Plaintiff's second amended complaint is 24 currently before the Court for screening. (ECF No. 14.) 25 I. Screening Requirement and Standard 26 The Court is required to screen complaints brought by prisoners seeking relief against a 27 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. 28 § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous 1 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary 2 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b). 3 A complaint must contain "a short and plain statement of the claim showing that the 4 pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not 5 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere 6 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 7 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as 8 true, courts "are not required to indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 9 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). 10 To survive screening, Plaintiff's claims must be facially plausible, which requires 11 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable 12 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret 13 Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully 14 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility 15 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969. 16 II. Plaintiff's Allegations 17 Plaintiff is currently housed at Martinez County Jail, in Martinez, California. Plaintiff 18 alleges the events in the complaint occurred while he was a state prisoner housed at Corcoran 19 State Prison. Plaintiff names as defendants: (1) California Department of Rehabilitation and 20 Correction, (2) Herrea, correctional officer, C-yard, (3) Sgt. Gonzales, sergeant on C-yard. 21 In claim 1, Plaintiff alleges excessive force, cruel and punishment. On or about June 5, 22 2022, during an institutional cell search, correctional officer Herrea searched Plaintiff's cell and 23 confiscated Plaintiff's TV with CD player and CD purchased from an approved vendor by 24 Plaintiff's family. While doing so, Plaintiff yelled at CO Herrea, "that's mine, my family bought 25 that, you can't just take it!" CO Herrea then escorted Plaintiff back to his cell with hands cuffed 26 behind his back. Vindictively CO Herrea squeezed Plaintiff's right arm to make Plaintiff look 27 and half turn, then slammed Plaintiff on Plaintiff's head extremely hard causing Plaintiff to lose 28 consciousness and suffer a concussion that had to be treated at an outside hospital. The incident 1 was caught on security video from multiple angles. Days later, two sergeants contacted Plaintiff 2 and encouraged Plaintiff to write a grievance promising Plaintiff would not suffer retaliation, 3 which was not true. To this day, Plaintiff suffers from migraine

headaches due to the concussion 4 caused by Herrea. 5 In claim 2, Plaintiff alleges Due Process and cruel and unusual punishment. Sergeant 6 Gonzales, who handles inmates' property (TV w/CD player) issues, initially told Plaintiff that he 7 would return Plaintiff's TV w/CD player if Plaintiff could show a receipt. Sgt. Gonzales even 8 told Plaintiff there was not a confiscation receipt. Plaintiff produced 2 receipts for TVs with 9 CD/player that were purchased while Plaintiff was housed in Corcoran, both receipts were 10 already filed in Plaintiff's inmate C-file. While Plaintiff was showing Sgt. Gonzales the receipts, 11 Plaintiff also met with Internal Affairs, then Sgt. Gonzales falsely claimed Plaintiff's TV w/CD 12 play had another inmate's ID number on it. Plaintiff then asked Sgt. Gonzales to show Plaintiff 13 or take a picture of the TV with the ID number he falsely claimed was on Plaintiff's TV, knowing 14 he could not. Sgt. Gonzales then stopped responding to Plaintiff's grievance to return the TV 15 w/CD player and CD. A whole year passed for the response time, and even when Plaintiff saw 16 Sgt. Gonzales on prison grounds in passing and asked about returning Plaintiff's property, he 17 refused to discuss the matter. 18 Plaintiff seeks financial compensation and a formal apology. 19 III. Discussion 20 Supervisory Liability 21 Insofar as Plaintiff is attempting to sue Defendant Sergeant Gonzales, or any other 22 defendant, based on his supervisory role, he may not do so. Liability may not be imposed on 23 supervisory personnel for the actions or omissions of their subordinates under the theory of 24 respondeat superior. *Iqbal*, 556 U.S. at 676–77; *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011, 25 1020–21 (9th Cir. 2010); *Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); *Jones v. 26 Williams*, 297 F.3d 930, 934 (9th Cir. 2002). 27 Supervisors may be held liable only if they “participated in or directed the violations, or 28 knew of the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989); accord *Starr v. Baca*, 652 F.3d 1202, 1205–06 (9th Cir. 2011); *Corales v. Bennett*, 2 567 F.3d 554, 570 (9th Cir. 2009). Supervisory liability may also exist without any personal 3 participation if the official implemented “a policy so deficient that the policy itself is a 4 repudiation of the constitutional rights and is the moving force of the constitutional violation.” 5 *Redman v. County of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations 6 marks omitted), abrogated on other grounds by *Farmer v. Brennan*, 511 U.S. 825, 114 S.Ct. 1970, 7 128 L.Ed.2d 811 (1970). 8 Here, Plaintiff has failed to establish that Defendant Sergeant Gonzales, or other 9 supervisor, participated in or directed any constitutional violation or that he implemented a policy 10 so deficient that it was the moving force of any constitutional violation. 11 Eleventh Amendment Immunity 12 “The Eleventh Amendment bars suits for money damages in federal court against a state, 13 its agencies, and state officials acting in their official capacities.” *Aholelei v. Dep't of Public 14 Safety*, 488 F.3d 1144, 1147 (9th Cir. 2007). Indeed, the Eleventh Amendment prohibits federal 15 courts from hearing a Section 1983 lawsuit in which damages or injunctive relief is sought against 16 a state, its agencies (such as CDCR) or individual prisons, absent “a waiver by the state or a valid 17 congressional override....” *Dittman v. California*, 191 F.3d 1020, 1025 (9th Cir. 1999). “The 18 Eleventh Amendment bars suits which

seek either damages or injunctive relief against a state, ‘an arm of the state,’ its instrumentalities, or its agencies.” See *Fireman's Fund Ins. Co. v. City of Lodi, Cal.*, 302 F.3d 928, 957 n.28 (9th Cir. 2002) (internal quotation and citations omitted), cert. denied, 538 U.S. 961, 123 S.Ct. 1754, 155 L.Ed.2d 512 (2003). “The State of California has not waived its Eleventh Amendment immunity with respect to claims brought under § 1983 in federal court....” *Dittman*, 191 F.3d at 1025–26 (citing *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241, 105 S.Ct. 3142, 87 L.Ed.2d 171 (1985)); see also *Brown v. Cal. Dep't. of Corrs.*, 554 F.3d 25, 747, 752 (9th Cir. 2009) (finding California Department of Corrections and California Board of Prison Terms entitled to Eleventh Amendment immunity). Therefore, Plaintiff cannot pursue claims for damages or injunctive relief against the State, CDCR, or Corcoran in this action.

Eight Amendment - Excessive Force

The Eighth Amendment protects prisoners from inhumane methods of punishment and from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 4 2006). The unnecessary and wanton infliction of pain violates the Cruel and Unusual Punishments Clause of the Eighth Amendment. *Hudson v. McMillian*, 503 U.S. 1, 5 (1992) 6 (citations omitted). Although prison conditions may be restrictive and harsh, prison officials must 7 provide prisoners with food, clothing, shelter, sanitation, medical care, and personal safety. 8 *Farmer v. Brennan*, 511 U.S. 825, 832–33 (1994) (quotations omitted). 9 “[W]henever prison officials stand accused of using excessive physical force in violation 10 of the [Eighth Amendment], the core judicial inquiry 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 6-7. 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 Finally, because the use of force relates to the prison's legitimate penological interest in 17 maintaining security and order, the court must be deferential to the conduct of prison officials. 18 See *Whitley*, 475 U.S. at 321–22. Not “every malevolent touch by a prison guard gives rise to a 19 federal cause of action.” *Id.* at 9. De minimis uses of physical force do not violate the constitution 20 provided that the use of force is not of a sort “repugnant to the conscience of mankind.” *Whitley v. Albers*, 475 U.S. 312, 327 (1986) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). 22

Liberal construing the allegations, Plaintiff states a cognizable claim against Defendant 23 Herrea for excessive force for slamming Plaintiff down, head first while handcuffed. 24

Fourteenth Amendment Due Process

Insofar as Plaintiff also alleges that Defendant Herrea wrongfully took his property, these 26 allegations also are not sufficient to support a cognizable claim. Prisoners have a protected 27 interest in their personal property. *Hansen v. May*, 502 F.2d 728, 730 (9th Cir. 1974). An 28 authorized, intentional deprivation of property is actionable under the Due Process Clause. See 1 *Hudson v. Palmer*, 468 U.S. 517, 532 n.13 (1984) (citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435–36 (1982)); *Quick v. Jones*, 754 F.2d 1521, 1524 (9th

Cir. 1985). However, “an 3 unauthorized intentional deprivation of property by a state employee does not constitute a 4 violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment 5 if a meaningful post deprivation remedy for the loss is available.” Hudson, 468 U.S. at 533. 6 Plaintiff contends that Defendant Herrea improperly took his property. As Defendant 7 Herrea’s conduct was an unauthorized deprivation of property, due process is satisfied if there is a 8 meaningful post-deprivation remedy available to Plaintiff. Id. Plaintiff has an adequate post- 9 deprivation remedy available under California law. Barnett v. Centoni, 31 F.3d 813, 816–17 (9th

10 Cir. 1994) (citing Cal. Gov’t Code §§ 810–95). Therefore, Plaintiff fails to allege a cognizable 11 due process claim for the alleged deprivation of his property. 12 Retaliation 13 Allegations of retaliation against a prisoner’s First Amendment rights to speech or to 14 petition the government may support a section 1983 claim. Rizzo v. Dawson, 778 F.2d 527, 532 15 (9th Cir. 1985); see also Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v. 16 Rowland, 65 F.3d 802, 807 (9th Cir. 1995). “Within the prison context, a viable claim of First 17 Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some 18 adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that 19 such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did 20 not reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567– 21 68 (9th Cir. 2005); accord Watison v. Carter, 668 F.3d 1108, 1114-15 (9th Cir. 2012); Silva, 658 22 at 1104; Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009). 23 Adverse action taken against a prisoner “need not be an independent constitutional 24 violation. The mere threat of harm can be an adverse action.” Watison, 668 F.3d at 1114 25 (internal citations omitted). A causal connection between the adverse action and the protected 26 conduct can be alleged by an allegation of a chronology of events from which retaliation can be 27 inferred. Id. The filing of grievances and the pursuit of civil rights litigation against prison 28 officials are both protected activities. Rhodes, 408 F.3d at 567–68. The plaintiff must allege 1 either a chilling effect on future First Amendment activities, or that he suffered some other harm 2 that is “more than minimal.” Watison, 668 F.3d at 1114. A plaintiff successfully pleads that the 3 action did not reasonably advance a legitimate correctional goal by alleging, in addition to a 4 retaliatory motive, that the defendant’s actions were “arbitrary and capricious” or that they were 5 “unnecessary to the maintenance of order in the institution.” Id. 6 Plaintiff has failed to cure any deficiency. Plaintiff failed to allege what conduct Plaintiff 7 engaged in which was protected conduct, who took an adverse action that chilled Plaintiff’s First 8 Amendment rights, that did not advance a legitimate correctional goal. 9 False Reports 10 To the extent Plaintiff alleges that any defendant falsified chronos or disciplinary reports 11 against Plaintiff, he cannot state a claim. 12 The creation of false evidence, standing alone, is not actionable under § 1983. See 13 Hernandez v. Johnston, 833 F.2d 1316, 1319 (9th Cir. 1987) (independent right to accurate prison 14 record has not been recognized); Johnson v. Felker, No. 1:12-cv-02719 GEB KJN (PC), 2013 15 WL 6243280, at *6 (E.D. Cal. Dec. 3, 2013)

(“Prisoners have no constitutionally guaranteed right to be free from false accusations of misconduct, so the mere falsification of a report does not give rise to a claim under section 1983.”) (citations omitted). IV. Conclusion Based on the above, the Court finds that Plaintiff’s second amended complaint, filed on

April 7, 2025 (ECF No. 14), states a cognizable claim against Defendant correctional officer Herrea for excessive force in violation of the Eighth Amendment. Plaintiff fails to state any other claim against any defendant. Despite being provided with the relevant pleading and legal standards, Plaintiff has been unable to cure the identified deficiencies and further leave to amend is not warranted. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a District Judge to this action. Furthermore, IT IS HEREBY RECOMMENDED that: 1. This action proceed on Plaintiff’s second amended complaint, filed on April 7, 2025 (ECF No. 14), against Defendant correctional officer Herrea for excessive force in violation of the Eighth Amendment; and 2. All other claims and defendants be dismissed based on Plaintiff’s failure to state claims upon which relief may be granted. These Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these Findings and Recommendation, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Objections, if any, shall not exceed fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page number if already in the record before the Court. Any pages filed in excess of the 15-page limit may not be considered. The parties are advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 159 F.2d 1391, 1394 (9th Cir. 1991)). IT IS SO ORDERED. Dated: April 9, 2025 /s/ Barbara A. McAuliffe _

UNITED STATES MAGISTRATE JUDGE

19 20 21 22 23 24 25 26 27 28