

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

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. 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 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 19 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. 21 denied, 538 U.S. 961, 123 S.Ct. 1754, 155 L.Ed.2d 512 (2003). “The State of California has not 22 waived its Eleventh Amendment immunity with respect to claims brought under § 1983 in federal 23 court....” *Dittman*, 191 F.3d at 1025–26 (citing *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 24 241, 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 26 Prison Terms entitled to Eleventh Amendment immunity). 27 Therefore, Plaintiff cannot pursue claims for damages or injunctive relief against the 28 State, CDCR, or Corcoran in this action. 1

Eight Amendment - Excessive Force 2 The Eighth Amendment protects prisoners from inhumane methods of punishment and 3 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 5 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 Liberally 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 25 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. 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 not reasonably advance a legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567–68 (9th Cir. 2005); accord Watison v. Carter, 668 F.3d 1108, 1114-15 (9th Cir. 2012); Silva, 658 F.3d at 1104; Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009). An adverse action taken against a prisoner "need not be an independent constitutional violation. The mere threat of harm can be an adverse action." Watison, 668 F.3d at 1114 (internal citations omitted). A causal connection between the adverse action and the protected conduct can be alleged by an allegation of a chronology of events from which retaliation can be inferred. Id. The filing of grievances and the pursuit of civil rights litigation against prison officials are both protected activities. Rhodes, 408 F.3d at 567–68. The plaintiff must allege either a chilling effect on future First Amendment activities, or that he suffered some other harm that is "more than minimal." Watison, 668 F.3d at 1114. A plaintiff successfully pleads that the action did not reasonably advance a legitimate correctional goal by alleging, in addition to a retaliatory motive, that the defendant's actions were "arbitrary and capricious" or that they were "unnecessary to the maintenance of order in the institution." Id. Plaintiff has failed to cure any deficiency. Plaintiff failed to allege what conduct Plaintiff engaged in which was protected conduct, who took an adverse action that chilled Plaintiff's First Amendment rights, that did not advance a legitimate correctional goal. False Reports To the extent Plaintiff alleges that any defendant falsified chronos or disciplinary reports against Plaintiff, he cannot state a claim. The creation of false evidence, standing alone, is not actionable under § 1983. See Hernandez v. Johnston, 833 F.2d 1316, 1319 (9th Cir. 1987) (independent right to accurate prison record has not been recognized); Johnson v. Felker, No. 1:12-cv-02719 GEB KJN (PC), 2013 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

20 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 7 (14) days after being served with these Findings and Recommendation, Plaintiff may file written 8 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s 9 Findings and Recommendation.” Objections, if any, shall not exceed fifteen (15) pages or 10 include exhibits. Exhibits may be referenced by document and page number if already in 11 the record before the Court. Any pages filed in excess of the 15-page limit may not be 12 considered. The parties are advised that failure to file objections within the specified time may 13 result in the waiver of the “right to challenge the magistrate’s factual findings” on 14 appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 15 923 F.2d 1391, 1394 (9th Cir. 1991)). 16 IT IS SO ORDERED. 17 18 Dated: April 9, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE
19 20 21 22 23 24 25 26 27 28