

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA**

**Baltsas v. Pfeffer**

Baltsas · No. 1:24-cv-01278-BAM (PC) · Decided May 7, 2025

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**OPINION**

(PC)Baltsas v. Pfeffer

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 EVAN BALTSAS, Case No. 1:24-cv-01278-BAM (PC) 12 Plaintiff, ORDER DIRECTING  
CLERK OF COURT TO

RANDOMLY ASSIGN DISTRICT JUDGE TO

13 v. ACTION

14 PFIEFFER, et al., FINDINGS AND RECOMMENDATIONS

REGARDING DISMISSAL OF CERTAIN

15 Defendants. CLAIMS AND DEFENDANTS 16 (ECF Nos. 1, 8)

17 FOURTEEN (14) DAY DEADLINE

18 19 I. Background 20 Plaintiff Evan Baltsas (“Plaintiff”) is a state prisoner proceeding pro se  
and in forma 21 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. 22 On March 20,  
2025, the Court screened the complaint and found that Plaintiff stated a 23 cognizable claim  
against Defendant D. Nunez for excessive force in violation of the Eighth 24 Amendment, but  
failed to state any other cognizable claims for relief against any other defendant. 25 (ECF No. 7.)  
The Court ordered Plaintiff to either file an amended complaint or notify the Court 26 of his  
willingness to proceed only on the cognizable claim identified by the Court. (Id.) On May 27 5,  
2025, Plaintiff notified the Court that he does not wish to file a first amended complaint, and 28  
wishes to proceed on the claim against Defendant D. Nunez for excessive force in violation of the  
1 Eighth Amendment. (ECF No. 8.) 2 II. Screening Requirement and Standard 3 The Court is  
required to screen complaints brought by prisoners seeking relief against a 4 governmental entity  
and/or against an officer or employee of a governmental entity. 28 U.S.C. 5 § 1915A(a). Plaintiff’s  
complaint, or any portion thereof, is subject to dismissal if it is frivolous 6 or malicious, if it fails  
to state a claim upon which relief may be granted, or if it seeks monetary 7 relief from a defendant  
who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). 8 A complaint must contain “a  
short and plain statement of the claim showing that the 9 pleader is entitled to relief. . . .” Fed. R.  
Civ. P. 8(a)(2). Detailed factual allegations are not 10 required, but “[t]hreadbare recitals of the

elements of a cause of action, supported by mere 11 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell 12 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as 13 true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 14 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). 15 To survive screening, Plaintiff’s claims must be facially plausible, which requires 16 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable 17 for the misconduct alleged. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. U.S. Secret 18 Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully 19 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility 20 standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572 F.3d at 969. 21 A. Allegations in Complaint 22 Plaintiff is currently housed at California Medical Facility in Vacaville, California. 23 Plaintiff alleges the events in the complaint occurred while he was housed at Wasco State Prison. 24 Plaintiff names as defendants: (1) Christian Pfeiffer, Warden at Wasco State Prison, (2) J. 25 Mariscal, Corrections Officer, (3) D. Nunez, Corrections Officer, (4) R. Garcia, Corrections 26 Officer, (5) A. Aguirre, Corrections Officer, (6) Rios, (7) Mullen, Licensed Vocational Nurse, 27 (8) Villanueva, Registered Nurse. 28

/// 1 Plaintiff alleges a violation of the Eighth Amendment. On June 24, 2024, Plaintiff was in 2 the dormitory at Wasco Reception where he was speaking with his girlfriend via telephone. His 3 girlfriend told Plaintiff of Plaintiff’s aunt’s passing. His girlfriend said that Plaintiff needed to 4 call his mother because she was very sad. After the phone call, Plaintiff approached staff about 5 consoling his grieving mother. They told Plaintiff it was shift change and Plaintiff must wait until 6 next shift when Ms. Ochoa would be there. Plaintiff agreed and waited. When she arrived, 7 Plaintiff told her of the situation and asked to see about calling his mother. She said NO! Go 8 back to your rack! Plaintiff persisted and informed her his mental state was deteriorating and 9 needed to speak with a sergeant or lieutenant. She asked if Plaintiff was suicidal, and he 10 responded those are your words, please call someone. She told Plaintiff to sit at the dayroom 11 table. 12 Four officers arrived, J. Mariscal, D. Nunez, R. Garcia, and A. Aguirre. J. Mariscal said 13 to Plaintiff, “Hey why don’t you come outside and talk about this.” Plaintiff followed and they 14 walked outside and down a corridor. There was one officer behind Plaintiff and three ahead of 15 him. Plaintiff asked if he could call his mom. Officer D. Nunez behind Plaintiff said, “no and to 16 shut up and keep walking.” Plaintiff stopped and turned around and said “What? Why?” and then 17 said take me to the hole. Mid-sentence, he grabbed the back of Plaintiff’s head and slammed it 18 into the fence. Plaintiff started bleeding. The officers then put Plaintiff on the ground and 19 handcuffed his hands first, then his legs. Plaintiff did not resist. Blood was dripping down his 20 face and into his mouth. “I freaked out.” D. Nunez asked Plaintiff why Plaintiff was giving Ms. 21 Ochoa a hard time. The other officers were bending Plaintiff’s feet and fingers and causing 22 Plaintiff extreme pain. Plaintiff was being tortured and he screamed in agony. Plaintiff was 23 saying f\*\*\* you and I am going to sue you. Nunez said, “we have the badges, who do you

think 24 the[y are] going to believe.” They continued to put extreme pressure on Plaintiff’s feet, legs, and 25 fingers. D. Nunez said that Plaintiff had 2 options, One, get up go back to the dorm and shut up. 26 Or, two, “you know what two is.” Plaintiff was so emotionally damaged all Plaintiff said was no 27 and f\*\*\* you. Plaintiff was so stunned and shaken. Then Plaintiff felt hard pressure on the back 28 of his neck. He could hardly breathe and started screaming I can’t breathe. Plaintiff heard the 1 same voice say shut up. You[ are] not George Floyd. They all started to laugh at Plaintiff. 2 Plaintiff felt helpless and excruciating pain on his fingers and feet. Then someone was punching 3 his side repeatedly. Plaintiff went numb and he started crying. Plaintiff believes at this point the 4 officers started to feel bad for Plaintiff. They had beaten Plaintiff and tortured him and all 5 Plaintiff wanted was to cry to his mom about his favorite aunt passing. 6 They then picked him up and took him to a stand up cage. They took the cuffs off of his 7 legs and arms. It took some time for the blood to flow back properly. They had him stripped 8 down to his boxers. They were doing a medical assessment of his injuries. Plaintiff remembers a 9 black woman asking if Plaintiff had anything to say. He said yes, they beat me. She shook her 10 head and walked away. 11 Plaintiff asked if they would take pictures of his injuries and they did not respond and they 12 said no. J. Mariscal said he was not sure what they were going to do with Plaintiff yet. He said 13 Plaintiff turned on a cop and that’s an assault on a peace officer. He said he was not going to get 14 new charges because the DA doesn’t pick up assaults. They took Plaintiff to Ad-seg, the hole, 15 where Plaintiff spoke with a psychologist named Barba. She believed Plaintiff and told him to 16 file a grievance and saw Plaintiff’s bloodied face. 17 Plaintiff is suing all four officers for racial injustice and excessive force. He is suing the 18 medical staff for medical negligence and malpractice. The RN and LVN did not report Plaintiff’s 19 injuries properly and performed a false 7219 indicating that Plaintiff had caused self-injury. They 20 refused to document Plaintiff injuries based on being battered by fellow officers. J. Mariscal lied 21 and said Plaintiff has scraped Plaintiff’s forehead when he took Plaintiff to the ground as the 22 reason for the bleeding. Staff claimed Plaintiff was banging his head on the cage causing self- 23 injury. That is a coverup. Plaintiff claims he is being racially targeted because he is white, and 24 the four officers are Hispanic. 25 As remedies, Plaintiff seeks damages. 26 B. Discussion 27 Plaintiff’s complaint fails to comply with Federal Rules of Civil Procedure 8 and fails to 28 state a cognizable claim for relief, except as noted below. 1 1. Federal Rule of Civil Procedure 8 and Linkage 2 Pursuant to Rule 8, a complaint must contain “a short and plain statement of the claim 3 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed factual allegations 4 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere 5 conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (citation omitted). Plaintiff must 6 set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on 7 its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). While factual allegations 8 are accepted as true, legal conclusions are not. *Id.*; see also *Twombly*, 550 U.S. at 556–57; *Moss*, 9 572 F.3d at 969. 10 Plaintiff’s complaint is relatively short, but it is not a plain statement of his

claims. While 11 it identifies the specific claims, the allegations are conclusory as to what happened and who was 12 involved. Plaintiff must clearly state factual support for what happened, when it happened, and 13 who was involved. Plaintiff uses the word “they” and “officers” when describing what happened 14 to him and it is unclear which defendants went with him and engaged in harm. Plaintiff does not 15 allege what the LVN and RN did or did not do to violate his rights. 16 In addition, Section 1983 plainly requires that there be an actual connection or link 17 between the actions of the defendants and the deprivation alleged to have been suffered by 18 Plaintiff. See *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 19 (1976). Plaintiff must link each defendant to purported constitutional violations. For instance, 20 Plaintiff fails to link Rios to any wrongful conduct. 21

2. Supervisory Liability 22 Insofar as Plaintiff is attempting to sue Defendant Warden, or any other defendant, based 23 on his supervisory role, he may not do so. Liability may not be imposed on supervisory personnel 24 for the actions or omissions of their subordinates under the theory of respondeat superior. *Iqbal*, 25 556 U.S. at 676–77; *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011, 1020–21 (9th Cir. 2010); 26 *Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); *Jones v. Williams*, 297 F.3d 930, 27 934 (9th Cir. 2002). 28

/// 1 Supervisors may be held liable only if they “participated in or directed the violations, or 2 knew of the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th 3 Cir. 1989); accord *Starr v. Baca*, 652 F.3d 1202, 1205–06 (9th Cir. 2011); *Corales v. Bennett*, 4 567 F.3d 554, 570 (9th Cir. 2009). Supervisory liability may also exist without any personal 5 participation if the official implemented “a policy so deficient that the policy itself is a 6 repudiation of the constitutional rights and is the moving force of the constitutional violation.” 7 *Redman v. Cty. of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations 8 marks omitted), abrogated on other grounds by *Farmer v. Brennan*, 511 U.S. 825 (1970). 9 Here, Plaintiff has failed to establish that Defendant Warden, or other supervisor, 10 participated in or directed any constitutional violation or that he implemented a policy so 11 deficient that it was the moving force of any constitutional violation. 12

3. Eighth Amendment 13

a. Excessive Force 14

The Eighth Amendment protects prisoners from inhumane methods of punishment and 15 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 16 2006). The unnecessary and wanton infliction of pain violates the Cruel and Unusual 17 Punishments Clause of the Eighth Amendment. *Hudson v. McMillian*, 503 U.S. 1, 5 (1992) 18 (citations omitted). Although prison conditions may be restrictive and harsh, prison officials must 19 provide prisoners with food, clothing, shelter, sanitation, medical care, and personal safety. 20 *Farmer v. Brennan*, 511 U.S. 825, 832–33 (1994) (quotations omitted). 21 “[W]henever prison officials stand accused of using excessive physical force in violation 22 of the [Eighth Amendment], the core judicial inquiry is . . . whether force was applied in a good- 23 faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” 24 *Hudson*, 503 U.S. at 6–7. Relevant factors for this consideration include “the extent of 25 injury . . . [,] the need

for application of force, the relationship between that need and the amount of force used, the threat ‘reasonably perceived by the responsible officials,’ and ‘any efforts made to temper the severity of a forceful response.’ “ Id. (quoting *Whitley v. Albers*, 475 U.S. 1078, 1085 (1986)). Finally, because the use of force relates to the prison’s legitimate penological interest in maintaining security and order, the court must be deferential to the conduct of prison officials. See *Whitley*, 475 U.S. at 321–22. Not “every malevolent touch by a prison guard gives rise to a federal cause of action.” Id. at 9. De minimis uses of physical force do not violate the constitution 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)). Plaintiff states a cognizable excessive force claim against D. Nunez. Plaintiff may be able to state a cognizable claim against J. Mariscal, R. Garcia, and A. Aguirre. But as currently plead, the complaint is not clear if each of the defendants engaged in force against Plaintiff because he refers to “officers” and “they” and not which officer engaged in force. If each officer engaged in force, Plaintiff should identify which officer engaged in what force, to the extent he is able to do so. b. Failure to Protect A prisoner may state a § 1983 claim under the Eighth Amendment against prison officials only where the officials acted with “deliberate indifference” to the threat of serious harm or injury to an inmate by another prisoner, *Berg v. Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986); see also *Valandingham v. Bojorquez*, 866 F.2d 1135, 1138 (9th Cir. 1989) (deliberately spreading rumor that prisoner is snitch may state claim for violation of right to be protected from violence while in state custody), or by physical conditions at the prison. The official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. See *Farmer*, 511 U.S. at 837. Mere negligent failure to protect an inmate from harm is not actionable under Section 1983. See *Farmer*, 511 U.S. at 835. It is unclear from the allegations if Plaintiff is claiming that any defendant failed to protect Plaintiff during the beating or if Plaintiff is alleging all officers engaged in the beating. c. Deliberate Indifference to Medical Care A prisoner’s claim of inadequate medical care does not constitute cruel and unusual punishment in violation of the Eighth Amendment unless the mistreatment rises to the level of “deliberate indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 1 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). The two-part test for deliberate indifference requires Plaintiff to show (1) “a ‘serious medical need’ by demonstrating that failure to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary and wanton infliction of pain,’ “ and (2) “the defendant’s response to the need was deliberately indifferent.” *Jett*, 439 F.3d at 1096. A defendant does not act in a deliberately indifferent manner unless the defendant “knows of and disregards an excessive risk to inmate health or safety.” 7 *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). “Deliberate indifference is a high legal standard,” 8 *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011, 1019 (9th Cir. 2010); *Toguchi v. Chung*, 391 F.3d 9 1051, 1060 (9th Cir. 2004), and is shown where there

was “a purposeful act or failure to respond 10 to a prisoner’s pain or possible medical need” and the indifference caused harm. *Jett*, 439 F.3d at 11 1096. 12 Negligence or medical malpractice do not rise to the level of deliberate indifference. 13 *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980) (citing *Estelle*, 429 U.S. at 105–06). 14 “[A] complaint that a physician has been negligent in diagnosing or treating a medical condition 15 does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical 16 malpractice does not become a constitutional violation merely because the victim is a prisoner.” 17 *Estelle*, 429 U.S. at 106; see also *Anderson v. Cty. of Kern*, 45 F.3d 1310, 1316 (9th Cir. 1995). 18 Even gross negligence is insufficient to establish deliberate indifference to serious medical needs. 19 See *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990). Additionally, a prisoner’s mere 20 disagreement with diagnosis or treatment does not support a claim of deliberate indifference. 21 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). 22 Further, a “difference of opinion between a physician and the prisoner—or between 23 medical professionals—concerning what medical care is appropriate does not amount to 24 deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978, 987 (9th Cir. 2012) (citing *Sanchez v. 25 Vild*, 891 F.2d at 242, overruled in part on other grounds, *Peralta v. Dillard*, 744 F.3d 1076, 26 1082–83 (9th Cir. 2014); *Wilhelm v. Rotman*, 680 F.3d 1113, 1122–23 (9th Cir. 2012)) (citing 27 *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1986)). Rather, Plaintiff “must show that the 28 course of treatment the doctors chose was medically unacceptable under the circumstances and 1 that the defendants chose this course in conscious disregard of an excessive risk to [his] health.” 2 *Snow*, 681 F.3d at 988 (citing *Jackson*, 90 F.3d at 332) (internal quotation marks omitted). 3 Plaintiff fails to include any facts that he was denied or delayed medical care and who was 4 responsible for denying or delaying needed care. 5 4. Fourteenth Amendment – Equal Protection 6 The Equal Protection Clause requires that persons who are similarly situated be treated 7 alike. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439, (1985); *Shakur v. 8 Schriro*, 514 F.3d 878, 891 (9th Cir. 2008). An equal protection claim may be established by 9 showing that defendants intentionally discriminated against a plaintiff based on his membership 10 in a protected class, *Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690, 11 702– 03 (9th Cir. 2009); *Serrano v. Francis*, 345 F.3d 1071,1082 (9th Cir. 2003), or that similarly 12 situated individuals were intentionally treated differently without a rational relationship to a 13 legitimate state purpose, *Engquist v. Oreg. Dep’t of Agr.*, 553 U.S. 591, 601–02 (2008); *Village of 14 Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 15 592 (9th Cir. 2008). 16 The Court finds that Plaintiff has not stated a cognizable equal protection claim. Plaintiff 17 does not allege that he was discriminated against because of his membership in any protected 18 class. He also does not allege that he was intentionally treated differently than other similarly 19 situated inmates without a rational relationship to a legitimate state purpose. While Plaintiff 20 speculates that the attack was racially motivated because he is a white man and the officers were 21 Hispanic, there are not facts to support this conclusory assertion. 22 5. State Law Claims 23 To the extent Plaintiff also

alleges violations of California law, Plaintiff is informed that 24 the California Government Claims Act requires that a tort claim against a public entity or its 25 employees be presented to the California Victim Compensation and Government Claims Board 26 no more than six months after the cause of action accrues. Cal. Gov't Code §§ 905.2, 910, 911.2, 27 945.4, 950-950.2. Presentation of a written claim, and action on or rejection of the claim are 28 conditions precedent to suit. *State v. Super. Ct. of Kings Cty. (Bodde)*, 32 Cal. 4th 1234, 1239 1 (Cal. 2004); *Shirk v. Vista Unified Sch. Dist.*, 42 Cal. 4th 201, 209 (2007). To state a tort claim 2 against a public employee, a plaintiff must allege compliance with the California Tort Claims 3 Act. Cal. Gov't Code § 950.6; *Bodde*, 32 Cal. 4th at 1244. "[F]ailure to allege facts 4 demonstrating or excusing compliance with the requirement subjects a complaint to general 5 demurrer for failure to state a cause of action." *Bodde*, 32 Cal. 4th at 1239. 6 Plaintiff does not allege that he has complied with the Government Claims Act. 7 6. False Accusations 8 Plaintiff may be claiming violations for being falsely accused of wrongful conduct or false 9 medical reports. 10 Prisoners do not have a liberty interest in being free from false accusations of misconduct. 11 The filing of a false Rules Violation Report by a prison official against a prisoner is not a per se 12 violation of the prisoner's constitutional rights. See *Muhammad v. Rubia*, 2010 WL 1260425, at 13 \*3 (N.D. Cal., Mar. 29, 2010), *aff'd*, 453 Fed. App'x 751 (9th Cir. 2011) ("[A] prisoner has no 14 constitutionally guaranteed immunity from being falsely or wrongly accused of conduct which 15 may result in the deprivation of a protected liberty interest. As long as a prisoner is afforded 16 procedural due process in the disciplinary hearing, allegations of a fabricated charge fail to state a 17 claim under § 1983.") (citations omitted); *Harper v. Costa*, 2009 WL 1684599, at \*2-3 (E.D. 18 Cal., June 16, 2009), *aff'd*, 393 Fed. App'x 488 (9th Cir. 2010) ("Although the Ninth Circuit has 19 not directly addressed this issue in a published opinion, district courts throughout California . . . 20 have determined that a prisoner's allegation that prison officials issued a false disciplinary charge 21 against him fails to state a cognizable claim for relief under § 1983."). Plaintiff fails to state a 22 claim for the purportedly false accusations. 23 Likewise, false medical reports do not give rise to a cognizable claim. *Evans v. Diaz*, No. 24 1:22-CV-00291 ADA BAM PC, 2022 WL 17417816, at \*12 (E.D. Cal. Dec. 5, 2022) (failure to 25 state a claim for fabricated medical reasoning in medical report); *Martin v. Pfeiffer*, No. 1:22-CV- 26 00889 AWI BAM PC, 2022 WL 4345686, at \*8 (E.D. Cal. Sept. 19, 2022), report and 27 recommendation adopted, No. 1:22-CV 00889 AWI BAM PC, 2022 WL 17406535 (E.D. Cal.

28 Dec. 2, 2022) (Plaintiff's complaint fails to state a claim based on allegations of a false medical 1 injury report); *Sanford v. Eaton*, No. 1:20-CV-00792 BAM (PC), 2021 WL 1172911, at \*7 (E.D. 2 Cal. Mar. 29, 2021) (denying a claim alleging falsified medical report and statements made by 3 Plaintiff), denying to adopt on other grounds, *Sanford v. Eaton*, No. 1:20-CV00792-JLT 4 BAM(PC), 2022 WL 168530, at \*2 (E.D. Cal. Jan. 19, 2022). False charges or false medical 5 information are not cognizable claims. 6 III. Conclusion and Recommendation 7 Based on the above, the Court finds that Plaintiff's complaint states a cognizable claim 8 against Defendant D.

Nunez for excessive force in violation of the Eighth Amendment. However, 9 Plaintiff's complaint fails to state any other cognizable claims for relief against any other 10 defendants. 11 Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a 12 District Judge to this action. 13 Furthermore, it is HEREBY RECOMMENDED that: 14 1. This action proceed on Plaintiff's complaint, filed October 21, 2024, (ECF No. 1), against 15 Defendant D. Nunez for excessive force in violation of the Eighth Amendment; and 16 2. All other claims and defendants be dismissed based on Plaintiff's failure to state claims 17 upon which relief may be granted. 18 \* \* \* 19 These Findings and Recommendations will be submitted to the United States District 20 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 21 fourteen (14) days after being served with these Findings and Recommendations, the parties may 22 file written objections with the court. The document should be captioned "Objections to 23 Magistrate Judge's Findings and Recommendations." Objections, if any, shall not exceed 24 fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page 25 /// 26 /// 27 /// 28 /// 1 number if already in the record before the Court. Any pages filed in excess of the 15-page 2 limit may not be considered. The parties are advised that failure to file objections within the 3 specified time may result in the waiver of the "right to challenge the magistrate's factual 4 findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 6 IT IS SO ORDERED. 7 8 Dated: May 7, 2025 /s/ Barbara A. McAuliffe \_

UNITED STATES MAGISTRATE JUDGE

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