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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DOUGLAS J. WOLD,

Plaintiff,

v.

NICK HENZEL, in his individual capacity as a Columbia County Sheriff's Deputy; JOE HELM, in his individual capacity as a Columbia County Sheriff's Deputy; WALTER J. HESSLER, in his official capacity as the Sheriff of Columbia County, and in his individual capacity as Columbia County Sheriff's Deputy; and COLUMBIA COUNTY, a municipal corporation

Defendants.

No. CV-12-0225-EFS

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

On November 20, 2013, the Court heard oral argument on Defendants' Motion for Summary Judgment, ECF No. 24. At the hearing, the Court directed the parties provide supplemental briefing on the issue of ratification. Having reviewed the submissions of the parties, the record in this matter, and having consulted the applicable authority, the Court is fully informed. For the reasons set forth below, the Court finds that there is a material issue of fact as to the excessive use of force claim.

1 **B. Procedural History**

2 Plaintiff filed his initial Complaint on April 27, 2012. ECF
3 No. 1. On January 15, 2013, Plaintiff filed his Amended Complaint
4 asserting Defendants violated his civil rights through the use of
5 excessive force and being deliberately indifferent to his medical
6 needs. ECF No. 18. Defendants filed their Answer to the Amended
7 Complaint on April 29, 2013, asserting the defense of qualified
8 immunity. ECF No. 22. On September 12, 2013, Defendants filed the
9 instant motion for summary judgment. ECF No. 24.

10 **III. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

11 Defendants seek summary judgment on Plaintiff's claims of
12 deliberate indifference and excessive force, and maintain they are
13 entitled to qualified immunity.

14 **A. Legal Standards**

15 Summary judgment is appropriate if the "movant shows that there
16 is no genuine dispute as to any material fact and the movant is
17 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).
18 Once a party has moved for summary judgment, the opposing party must
19 point to specific facts establishing that there is a genuine dispute
20 for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If
21 the nonmoving party fails to make such a showing for any of the
22 elements essential to its case for which it bears the burden of proof,
23 the trial court should grant the summary judgment motion. *Id.* at 322.
24 "When the moving party has carried its burden under Rule [56(a)], its
25 opponent must do more than simply show that there is some metaphysical
26 doubt as to the material facts. . . . [T]he nonmoving party must come

1 forward with 'specific facts showing that there is a genuine issue for
2 trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.
3 574, 586-87 (1986) (internal citation omitted) (emphasis in original).

4 When considering a motion for summary judgment, the Court does
5 not weigh the evidence or assess credibility; instead, "the evidence
6 of the non-movant is to be believed, and all justifiable inferences
7 are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477
8 U.S. 242, 255 (1986).

9 **B. Discussion**

10 Section 1983 imposes two essential proof requirements upon a
11 claimant: (1) that a person acting under color of state law committed
12 the conduct at issue, and (2) that the conduct deprived the claimant
13 of some right, privilege, or immunity protected by the Constitution or
14 laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535
15 (1981). A person deprives another "of a constitutional right, within
16 the meaning of section 1983, if he does an affirmative act,
17 participates in another's affirmative acts, or omits to perform an act
18 which he is legally required to do that causes the deprivation of
19 which [the plaintiff complains]." *Johnson v. Duffy*, 588 F.2d 740, 743
20 (9th Cir. 1978). The inquiry into causation must be individualized
21 and focus on the duties and responsibilities of each individual
22 defendant whose acts or omissions are alleged to have caused a
23 constitutional deprivation. See *Rizzo v. Goode*, 423 U.S. 362, 370-71
24 (1976). Liability for a violation will not arise from *respondeat*
25 *superior* liability. *Monell v. Dep't of Social Servs.*, 436 U.S. 658,
26 690-92 (1978). A causal link between a person holding a supervisory

1 position and the claimed constitutional violation must be shown; vague
2 and conclusory allegations are insufficient. See *Fayle v. Stapley*,
3 607 F.2d 858, 862 (9th Cir. 1979); *Ivey v. Bd. of Regents*, 673 F.2d
4 266, 268 (9th Cir. 1982).

5 Here, the parties agree each Defendant was acting under color of
6 state law. Accordingly, the Court takes up each of the alleged
7 violations in turn.

8 1. Deliberate Indifference

9 Plaintiff's complaint asserts that Defendants were deliberately
10 indifferent of his medical needs. With regard to medical needs, the
11 due process clause imposes, at a minimum, the same duty the Eighth
12 Amendment imposes: "persons in custody ha[ve] the established right to
13 not have officials remain deliberately indifferent to their serious
14 medical needs." *Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1996).
15 This duty to provide medical care encompasses detainees' psychiatric
16 needs. *Cabrales v. County of Los Angeles*, 864 F.2d 1454, 1461 (9th
17 Cir. 1988).

18 Under the Eighth Amendment's standard of deliberate
19 indifference, a person is liable for denying a prisoner needed medical
20 care only if the person "knows of and disregards an excessive risk to
21 inmate health and safety." *Farmer v. Brennan*, 511 U.S. 825, 841
22 (1994). In order to know of the excessive risk, it is not enough that
23 the person merely "be aware of facts from which the inference could be
24 drawn that a substantial risk of serious harm exists, [] he must also
25 draw that inference." *Id.* If a person should have been aware of the
26 risk, but was not, then the person has not violated the Eighth

1 Amendment, no matter how severe the risk. *Jeffers v. Gomez*, 267 F.3d
2 895, 914 (9th Cir. 2001). But if a person is aware of a substantial
3 risk of serious harm, a person may be liable for neglecting a
4 prisoner's serious medical needs on the basis of either his action or
5 his inaction. *Farmer*, 511 U.S. at 842.

6 First, prior to the pepper-spray and take-down incidents,
7 Plaintiff, throughout his briefing and oral arguments, has not shown
8 facts indicating that Defendants subjectively knew of an excessive
9 health risk. Additionally, after Plaintiff suffered injuries from
10 contacting the concrete sidewalk, the evidence clearly shows Plaintiff
11 was provided medical assistance. Accordingly, based upon the
12 undisputed facts, Plaintiff has not demonstrated the requisite
13 knowledge required for a deliberate indifference claim. Therefore,
14 Defendants' motion is granted as to deliberate indifference.

15 2. Excessive Use of Force

16 Second, Plaintiff contends Defendants used excessive force in
17 the use of pepper spray and the "take down." To succeed on his
18 excessive force claim, Plaintiff must show "that excessive force was
19 used against [him]" and "that the law at the time . . . clearly
20 established that the force used was unconstitutionally excessive."
21 *Moss v. U.S. Secret Serv.*, 675 F.3d 1213, 1229 (9th Cir. 2012).
22 Fourth Amendment claims of excessive force are evaluated according to
23 the framework established by *Graham v. Connor*, 490 U.S. 386 (1989).
24 Under *Graham*, "all claims that law enforcement officers have used
25 excessive force—deadly or not—in the course of an arrest,
26 investigatory stop, or other 'seizure' . . . should be analyzed under

1 the Fourth Amendment and its 'reasonableness' standard." 490 U.S. at
2 395. This analysis "requires balancing the 'nature and quality of the
3 intrusion' on a person's liberty with the 'countervailing governmental
4 interests at stake' to determine whether the force used was
5 objectively reasonable under the circumstances." *Smith v. City of*
6 *Hemet*, 394 F.3d 689, 701 (9th Cir. 2005) (quoting *Graham*, 490 U.S. at
7 396).

8 a. Defendant Helm

9 Plaintiff contends that Defendant Helm, in his individual
10 capacity, used excessive force. However, in assessing Helm's
11 liability under § 1983, the Court's inquiry into causation must be
12 individualized and focus on the duties and responsibilities of each
13 individual defendant. See *Rizzo v. Goode*, 423 U.S. 362, 370-71
14 (1976). Here, Defendant Helm was Henzel's immediate duty supervisor.
15 However, he was not present for the pepper-spray incident.
16 Additionally, while Defendant Helm walked over to Plaintiff prior to
17 the take down, the video clearly shows that Defendant Helm did not
18 assist Defendant Henzel in taking Plaintiff to the ground.
19 Accordingly, the undisputed evidence before the Court does not
20 demonstrate how Defendant Helm by not being present for the pepper
21 spray incident, and merely passively observing the take down, is in
22 anyway liable under section 1983. Therefore, as to Defendant Helm,
23 Defendants' motion is granted.

24 b. Defendant Henzel

25 Plaintiff contends that Defendant Henzel, in his individual
26 capacity, used excessive force. The Court finds there is a material

1 issue of fact as to whether Defendant Henzel's use of pepper spray and
2 taking Plaintiff to the ground was objectively reasonable. Having
3 reviewed the video footage of both incidents, a reasonable juror could
4 find either that the use of force depicted is reasonable or that the
5 use of force was excessive. Accordingly, as a material issue of fact
6 exists as to the force used, the issue is best reserved for the trier
7 of fact.

8 c. Defendants Columbia County & Hessler

9 Finally, Plaintiff maintains that Defendants Hessler, in his
10 official capacity as Columbia County Sheriff, and Columbia County,
11 violated his rights by maintaining a policy or custom permitting the
12 excessive use of force. Specifically, Plaintiff maintains that
13 Defendant Hessler's approval of Defendant Henzel's conduct ratified
14 that conduct, and accordingly Defendants Hessler and Columbia County
15 are now liable for Henzel's actions.

16 A municipality is liable for the violation of constitutional
17 rights if a city officer's conduct is directly attributable to the
18 city's policy or custom. *Monell v. Dep't of Soc. Servs. of New York*,
19 436 U.S. 658, 691-94 (1978). Plaintiff may establish liability of
20 municipal defendants under § 1983: 1) by showing that decision-making
21 official was, as matter of state law, final policymaking authority
22 whose edicts or acts may fairly be said to represent official policy
23 in area of decision, or 2) by showing that official with final
24 policymaking authority either delegated that authority to, or ratified
25 decision of, subordinate. *Monell*, 436 U.S. at 694; *City of St. Louis*
26 *v. Praprotnik*, 485 U.S. 112, 124 (1988).

1 Here, Defendant Hessler, as Sheriff, was the final policymaking
2 authority and Plaintiff maintains the municipality is liable because
3 he ratified Defendant Henzel's conduct.

4 The Supreme Court has stated that "if the authorized
5 policymakers approve a subordinate's decision and the basis for it,
6 their ratification would be chargeable to the municipality because
7 their decision is final." *City of St. Louis v. Praprotnik*, 485 U.S.
8 112, 127 (1988). The Court held that "a single decision by a
9 municipal policymaker may be sufficient to trigger section 1983
10 liability under *Monell*, even though the decision is not intended to
11 govern future situations." *Gillette v. Delmore*, 979 F.2d 1342, 1347
12 (9th Cir. 1992) (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469,
13 480-81 (1986). However, there must be evidence of a conscious,
14 affirmative choice. *Id.* "Municipal liability under section 1983
15 attaches only where 'a deliberate choice to follow a course of action
16 is made from among various alternatives by the official or officials
17 responsible for establishing final policy with respect to the subject
18 matter in question.'" *Id.* (quoting *Pembaur*, 475 U.S. at 483-84
19 (plurality opinion)); accord *City of Oklahoma City v. Tuttle*, 471 U.S.
20 808, 823 (1985) (plurality opinion) ("The word 'policy' generally
21 implies a course of action consciously chosen from among various
22 alternatives."). However, "ratification requires, among other things,
23 knowledge of the alleged constitutional violation." *Christie v. Iopa*,
24 176 F.3d 1231, 1239 (9th Cir. 1999). "A policymaker's knowledge of an
25 unconstitutional act does not, by itself, constitute ratification.
26 Instead, a plaintiff must prove that the policymaker approved of the

1 subordinate's act. For example, it is well-settled that a
2 policymaker's mere refusal to overrule a subordinate's completed act
3 does not constitute approval." *Christie v. Iopa*, 176 F.3d 1231, 1239
4 (9th Cir. 1999) (citing *Weisbuch v. Cnty. of Los Angeles*, 119 F.3d
5 778, 781 (9th Cir. 1997) ("To hold cities liable under section 1983
6 whenever policymakers fail to overrule the unconstitutional
7 discretionary acts of subordinates would simply smuggle respondeat
8 superior liability into section 1983."))

9 The Ninth Circuit, in its unpublished opinion in *Au Hoon v. City*
10 *and County of Honolulu*, 922 F.2d 844 (1991), found a single subsequent
11 act of ratification was sufficient to create liability. In
12 overturning the district court, the Ninth Circuit stated that "[a]
13 review of the transcript of proceedings below makes apparent that the
14 district court believed that 'ratification' could not apply to actions
15 that had already been taken at a lower level. That was error." *Id.*
16 at 4 ("Thus, it is not correct to say that only actions approved in
17 advance are 'ratified' for purposes of imposing liability on a
18 municipality under section 1983. To do so confuses decisionmaking
19 authority with policymaking authority, and further ignores the fact
20 that ratification demonstrates that the act was consonant with the
21 policy of the entity").

22 Additionally, in *Larez v. City of Los Angeles*, 946 F.2d 630 (9th
23 Cir. 1991), a police chief sent a signed letter stating that an
24 internal affairs complaint could not be sustained. *Id.* at 635. The
25 Court found that by signing the letter the police chief ratified the
26 investigation into the complaint and therefore "[t]he jury verdict was

1 not in plain error." *Id.* at 646. "The jury properly could find such
2 policy or custom from the failure of [the police chief] to take any
3 remedial steps after the violations." *Id.* at 647.

4 Here, Defendant Hessler admits to approving of Henzel's conduct
5 in its entirety. ECF No. 44-1, Ex 7. Accordingly, taking the
6 evidence in a light most favorable to the Plaintiff, this act could be
7 ratification of Henzel's conduct, and if that conduct violated a
8 right, could evidence a policy or custom of approving excessive use of
9 force, analogues to the letter in *Larez*. Accordingly, the Court finds
10 that there is a triable issue as to whether Defendants Hessler, in his
11 official capacity, and Columbia County, are liable for Defendant
12 Henzel's conduct. Accordingly, Defendants' motion as to Defendant
13 Hessler, in his official capacity, and Defendant Columbia County is
14 denied.

15 **C. Conclusion**

16 For the foregoing reasons, the deliberate indifference claim is
17 dismissed against all Defendants, and the excessive force claim
18 against Defendant Helm is dismissed. The remaining claims for trial
19 are 1) Plaintiff's claim Defendant Henzel, in his individual capacity,
20 used excessive force and 2) Plaintiff's claim Defendant Hessler
21 ratified Defendant Henzel's conduct establishing liability for
22 Defendants Hessler, in his official capacity, and Columbia County.

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1 IV. CONCLUSION

2 Accordingly, **IT IS HEREBY ORDERED:** Defendants' Motion for
3 Summary Judgment, **ECF No. 24**, is **GRANTED IN PART** (dismissing all
4 deliberate indifference claims; dismissing all claims against
5 Defendant Helm) **AND DENIED IN PART** (remainder).

6 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
7 Order and provide copies to counsel.

8 **DATED** this 23rd day of December 2013.

9
10 s/ Edward F. Shea
EDWARD F. SHEA
11 Senior United States District Judge
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