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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 ARBI KAMALI,

12 Plaintiff,

13 vs.

14 STEVENS, et al.,

15 Defendants.  
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**Case No.: 1:19-cv-01432-JLT-GSA (PC)**

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS IN PART  
(Doc. 49.)**

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION FOR JUDGMENT ON THE  
PLEADINGS  
(Doc. 37.)**

18 Defendant moved for judgment on the pleadings, arguing that Plaintiff's claims were barred by  
19 the favorable termination rule set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994). (Doc. 37.) The  
20 Magistrate Judge recommended that the motion be denied. (Doc. 49.) Defendants filed objections to  
21 the findings and recommendations. (Doc. 50.)

22 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this court  
23 has conducted a *de novo* review of this case. Having carefully reviewed the entire file, including  
24 Defendants' objections, the Court finds the findings and recommendations to be supported by the  
25 record and proper analysis, although the Court agrees with Defendants' alternative objection that any  
26 claims premised upon Plaintiff's initial altercation with Defendants Villegas and Solis are barred by  
27 *Heck*.

28 In their objections, Defendants argue that the magistrate judge did not directly address the

1 Heck-bar issue of whether success on the Plaintiff’s present claims would necessarily imply or  
2 demonstrate that Plaintiff’s guilty conviction in a prison disciplinary hearing was invalid. (Doc. 50 at  
3 2.) The findings and recommendations conclude that Plaintiff’s allegations could support a conclusion  
4 that there was a distinct “break” in the events surrounding Plaintiff’s disciplinary infraction. (Doc. 49  
5 at 13.) Specifically, the magistrate judge reasoned:

6 In *Hooper [v. County of San Diego]*, 629 F.3d [1127,] 1132 [(9th Cir. 2011)], the Ninth  
7 Circuit held that excessive force claims can coexist with convictions for resisting arrest  
8 where there is a “break” between the Plaintiff’s criminal activity and the officer’s  
9 response. In *Hooper*, *Heck* did not apply because although the chain of events  
10 constituting the plaintiff’s arrest was “one continuous transaction” for purposes of a  
11 resisting-arrest conviction under state law, the conviction and the excessive-force claim  
12 were based on different actions because of a “break” during that transaction. (*Id.*)  
13 Likewise in this case, according to Plaintiff there was a distinct “break” after Plaintiff’s  
14 criminal activity because Plaintiff alleges that after the initial altercation with  
15 Defendants, Plaintiff then lost consciousness and when he came to he was in tight  
16 handcuffs and all of the following then occurred: Defendant C/O J. Bryan was slapping  
17 him, which turned into punches; C/O Hernandez punched Plaintiff in the face; C/O  
18 Bryan slammed Plaintiff headfirst into the floor; Defendant Hernandez then walked up  
19 to him and gave him three to four kicks to the left side of his face and ear, penetrating  
20 his ear. As a result, Plaintiff claims that he lost his hearing and started bleeding all over  
21 the floor from the left side of his face and mouth. Finally at the end, Plaintiff alleges  
22 Defendant Stevens walked up to Plaintiff’s head, lifted it and sprayed his face with OC  
23 pepper spray.

18 *Id.*

19 Defendants object to these findings, arguing that the magistrate judge did not properly examine  
20 the record to determine which acts necessarily formed the basis for the disciplinary conviction. (Doc.  
21 50 at 2–3.) Defendants are correct that the Ninth Circuit’s recent decision in *Lemos v. Cnty. of*  
22 *Sonoma*, 40 F.4th 1002, 1006 (9th Cir. 2022), confirmed that “[t]o decide whether success on a section  
23 1983 claim would necessarily imply the invalidity of a conviction,” a court “must determine which acts  
24 formed the basis for the conviction.” *Id.* When, as in this case, the conviction is based upon findings  
25 made by a jury (i.e., a finder of fact), “a court must look at the record of the criminal case—including  
26 the jury instructions—to determine which facts the jury necessarily found.” *Id.* *Lemos* reiterated that  
27 “[a]n action under section 1983 is barred if—but only if—success in the action would undermine the  
28 jury’s findings in a way that ‘would necessarily imply or demonstrate that the plaintiff’s earlier

1 conviction was invalid.” (*Id.* (citing *Smith v. City of Hemet*, 394 F.3d 689, 699 (9th Cir. 2005) (en  
2 banc).)

3 In this case, Plaintiff was charged in a Rules Violation Report of violating Rule 3005(d)(1) of  
4 Title 15 of the California Code of Regulations, which prohibits inmates from committing assault and  
5 battery. Specifically, Plaintiff was charged with “Battery Causing Serious Injury” in connection with  
6 an incident that took place on January 21, 2018. (Doc. 37-1, Ex. A. at AGO 167.) Plaintiff was found  
7 “Guilty as Charged based on a preponderance of evidence.” (*Id.* at AGO 171.)

8 A judge of this Court has previously noted “the fact that Plaintiff battered a correctional officer  
9 and refused orders from a correctional officer does not offer a blank check for use of force by  
10 correctional officers.” *Stevenson v. Holland*, No. 1:16-CV-01831-AWI-SKO, 2018 WL 1109707, at \*8  
11 (E.D. Cal. Mar. 1, 2018). An earlier ruling in *Stevenson* provided a cogent summary of cases applying  
12 *Heck* and *Holland* where an inmate has been convicted of battering a corrections officer.

13 A prisoner cannot challenge the fact or duration of his sentence by way of a Section  
14 1983 claim. *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005). . . .

15 On the other hand, where the facts underlying the disciplinary conviction and the facts  
16 alleged in the Section 1983 action are separate incidents—i.e., the prisoner assaulted a  
17 correctional officer necessitating the use of force, then after the force was no longer  
18 necessary, the officer used force in retaliation—*Heck* does not operate as a bar. *See*  
19 *Nettles v. Grounds*, 830 F.3d 922, 928-929 (9th Cir. 2016) (en banc). Challenges to  
disciplinary proceedings are only barred by *Heck* if the Section 1983 action “would be  
seeking a judgment at odds with . . . the State's calculation of time to be served” or the  
validity of the disciplinary conviction. *Id.* at 929. . . .

20 [W]here a complaint alleges a continuous chain of events with two separate factual  
21 predicates—the first, acts by the prisoner leading to the prisoner's rules violation under  
22 California Code of Regulations title 15, section 3005(d)(1) for battery, and the second,  
23 acts of excessive force in response to the prisoner's conduct by the officer—*Heck* would  
24 not operate as a bar. *Smith v. City of Hemet*, 394 F.3d 689, 695 (9th Cir. 2005);  
25 *Cunningham v. Gates*, 312 F.3d 1148, 1153-54 (9th Cir. 2002); *Hernandez v. Holman*,  
26 2017 U.S. Dist. LEXIS 94202, \*13 (C.D. Cal. June 19, 2017) (citing *Brown v. Holland*,  
27 2014 WL 1339687, \*4 (N.D. Cal. Mar. 28, 2014)). Such was the case in *Brown v.*  
28 *Holland*, 2014 WL 1339687, where a RVR was issued based on the prisoner's battery of  
a police officer and a Section 1983 excessive force claim was maintained based on the  
officer's allegedly excessive response to that battery. The plaintiff in *Brown* proceeded  
on the theory that, assuming the validity of the battery conviction, the responsive use of  
force was excessive.

1 *Hernandez v. Holman*, 2017 U.S. Dist. LEXIS 94202, presents the opposite situation—  
2 the RVR and the alleged excessive force arise from the same factual premise. In  
3 *Hernandez*, the prisoner-plaintiff alleged that he made a rude comment to a correctional  
4 officer and the correctional officer physically attacked the plaintiff as a result.  
5 *Hernandez*, 2017 U.S. Dist. LEXIS 94202, \*14. The plaintiff argued that the RVR was  
6 false and issued only to cover up the correctional officer's use of excessive force. *Id.*  
7 However, the RVR indicated that the “[p]laintiff made essentially the same rude  
8 comment to [the correctional officer] ...; [the p]laintiff challenged [the correctional  
9 officer] to a fight; [the correctional officer] told [the p]laintiff to relax ...; [the p]laintiff  
10 tried to pull away, lunged, head-butted [the correctional officer] ... and attempted to  
11 kick [him].” *Id.* at \*13-14. The correctional officer then forced the plaintiff to the  
12 ground and attempted to control the plaintiff while the plaintiff attempted to fight back.  
*Id.* at \*14. The court explained that the complaint was premised on the theory that any  
use of force was excessive because the plaintiff was innocent of the rules violation for  
which he was convicted since he did not commit battery. *Id.* The events alleged in the  
Section 1983 complaint and the events in the RVR were wholly inconsistent such that a  
finding in the plaintiff's favor would necessarily imply the invalidity of the RVR  
conviction. *Id.* For that reason, the plaintiff's Section 1983 complaint was barred by  
*Heck*.

13 *Stevenson v. Holland*, No. 1:16-CV-01831-AWI-SKO, 2017 WL 2958731, at \*7–8 (E.D. Cal. July 11,  
14 2017).

15 Defendants suggest that a review of the records of the disciplinary proceedings against Plaintiff  
16 demonstrates that Plaintiff's disciplinary conviction is incompatible with the present allegations in this  
17 case. First, Defendants point to a document entitled Disciplinary Hearing Results, which reflects the  
18 outcome of the due process hearing that took place on February 10, 2018. (Doc. 37-1, Ex. A at AGO  
19 167–76.) Defendants appear to focus on a lengthy section of this form entitled “Evidence,” which  
20 states that “[t]he following evidence was used to support the findings” made by the finder of fact:

21 1. CDCR Rule Violation Report, authored by Sergeant J. Jiminez which states, in part,  
22 “On January 21, 2018, at approximately 1401.hours. Correctional Officer I. Villegas  
23 working as Facility C visiting officer #3, he was assisting in processing the inmates  
24 back to Faculty C after visiting hours were completed. Utilizing the Low Dose Body  
25 Scanner Correctional Officer R. Stevens had detected a foreign object near the buttocks  
26 area of inmate Kamali's, AH0208 FCB1-124L. Correctional Officer R. Stevens  
27 requested Correctional Officer M. Solis to review the Low Dose Body scanner to  
28 confirm what she had observed. Solis asked Kamali to step down from the low dose  
Body Scanner and to prepare for a clothed body search. Villegas observed Kamali  
become nervous and reach his hands into the back side of his pants and pull his hands  
out. Solis and Villegas grabbed his arms as he turned around simultaneously bringing  
his hands up to his chest. Villegas could see something in his hands as he took a step  
towards the restroom and began swinging his elbows side to side and Villegas stated he  
believed the inmate was trying to get to the restroom to destroy what was in his hands.  
The Officers used their combined weight to take the inmate to the ground. Villegas

1 landed on his Knees and left wrist breaking helping to break the fall. Villegas pressed  
2 his Personal Alarm Device and continued to try and gain control of the inmate. The  
3 inmate was still throwing his elbows from side to side and struck Villegas on the lower  
4 left side of his mouth. Kamali had broken open the contraband and appeared to be  
5 trying to swallow it and scatter it everywhere. The white powder like substance got in  
6 the mouth of Villegas as he struggled to maintain his grasp on the inmate. Officer  
7 Stevens said "I'm going to spray you," and sprayed the inmate in the facial area. It did  
8 not have the desired effect but it did cause the inmate to begin spitting out the white  
9 powdery substance he was trying to swallow. Facility C responding staff arrived and the  
10 inmate was restrained. Villegas was taken to the Triage and Treatment Center and  
11 medically evaluated. A 7219 Medical Report of Injury Form was completed noting  
12 injuries to Officer Villegas Left Wrist, Both knees, and that he had swallowed an  
13 unknown narcotic substance. Investigative Services Unit Officer B. Long arrived and  
14 took photographs of the injuries and the white powdery subs[ta]nce on all injured and  
15 affected staff. All staff exposed to the Narcotic Powder were given a temporary change  
16 of clothes and transported to an Outside Facility for Medical evaluation of there injuries  
17 and Exposure to Controlled substance incur[r]ed during this incident.

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Officer Long notified me that he tested the suspected narcotics using a Narcotics  
Identification Kit (NIK) and it was presumptive positive for Methamphetamine with a  
total weight of 37.4 grams. Inmate Kamali's actions caused for Officer Villegas, Officer  
Solis and Officer Stevens to be exposed to Methamphetamine. Officer Villegas was  
exposed to the face and some of the narcotics was able to get into his mouth. Officer  
Stevens was exposed to the narcotics due to the fine powder from the  
Methamphetamine in the air, causing her to inhale the narcotics. Officer Solis was  
exposed to the narcotics due to the fine powder from the Methamphetamine in the air,  
causing him to inhale the narcotics. It was later discovered On January 25, 2018, that  
Correctional Officer R. Stevens sustained a fractured wrist during the altercation with  
Inmate Kamali."

2. CDCR-837C Crime Incident Report, authored by Officer R. Stevens, which states, in  
part, "I observed Kamali tearing the blue bindles apart while thrashing back and forth  
striking my partners with his elbows and exposing my partners and the air to the white  
powder. I observed Kamali eating the white powder trying to destroy the evidence. I  
placed my body between my partners and placed my right knee on the inmate's back  
and said, "stop resisting. I'm going to spray you." Fearing that Kamali was putting his  
own life in danger injecting large amounts of presumed controlled substance, I sprayed  
Kamali in the facial area from approximately 2 feet away with an approximate 2 second  
burst of OC pepper spray from my MK9 to stop his actions. I moved to the left side of  
Kamali's body and reached down with my left hand to gain control of Kamali's head  
but he continued thrashing with his whole body and caused my hand and thumb to be  
bent back which caused me great pain. I attempted to return to work on Thursday,  
January 25, 2018, and left early due to pain in my left wrist. I contacted return to work  
prior to leaving and was instructed to go straight to the Workers Compensation Doctor.  
It was discovered at this time that I had a fractured left wrist.

3. Inmate Kamali pled not guilty to the charge but failed to provide any evidence to  
refute the charge. Further, Inmate Kamali refused to explain how he was covered in OC  
pepper spray the day of this incident or how Officer Stevens sustained a fractured wrist.

Based on the totality of the above stated information, I feel a reasonable person would  
find sufficient evidence to support a guilty finding of the charge.

1 (Doc. 37-1 at AGO 172.) Because the conclusion indicates that “[b]ased on a totality of the  
2 circumstances, I feel a reasonable person would find sufficient evidence to support a guilty finding of  
3 the charge,” (*id.*), the Court does not read the preceding “summary of the evidence” section as an  
4 explicit finding by the factfinder that all the events described therein were necessary to the finding of  
5 guilt. *Lemos* nonetheless indicates that the Court should independently examine the entire record of  
6 the underlying disciplinary case to determine “which facts the [finder of fact] necessarily found.” 40  
7 F.4th at 1006.

8 Defendants contend that the finding of guilt necessarily required the following factual findings:  
9 that Plaintiff was the aggressor and intentionally resisted a search, striking Defendants in the process,  
10 and showering them with narcotics; Defendants forced Plaintiff to the floor to take control of the  
11 sudden altercation, and that Plaintiff resisted Defendants’ control; and that it took five correctional  
12 officers using their body weight to overcome Plaintiff’s extreme resistance so that they could get him  
13 in handcuffs and leg restraints. (Doc. 50 at 3 (citing Doc. 37-1, Ex. A at AGO 172).) Defendants fail  
14 to explain why any of these purported factual “findings” were necessarily required as part of the  
15 ultimate finding that Plaintiff committed a battery on a correctional officer causing serious injury.  
16 Rather, as was the case in *Hooper*, the record here is “silent on which act or acts formed the basis of  
17 [the rules violation] conviction.” *See Sanders v. City of Pittsburg*, 14 F.4th 968, 971 (9th Cir. 2021)  
18 (discussing *Hooper*, 629 F.3d at 1132–33.) Viewing the facts in a light most favorable to the Plaintiff,  
19 as the Court must, the conviction here could be premised, for example, only on the finding that  
20 Plaintiff resisted the body search, struck at least one Defendant in the process and, during that initial  
21 altercation between Plaintiff and Defendants Villegas and Solis, Defendant Villegas broke his wrist.  
22 Under such a scenario, the Court can divide the incident into “separate ‘factual contexts,’” and *Heck*  
23 would be “no impediment” to any allegations of excessive force premised upon actions that can be  
24 separated from those necessarily linked to the conviction. *See id.* (citing *Hooper*, 629 F.3d at 1132–  
25 33). This is, in effect, what the magistrate judge was getting at. As the findings and recommendations  
26 explain, after the initial altercation between Plaintiff and Defendants Villegas and Solis, Plaintiff  
27 alleges he lost consciousness; that when he awoke, he was in tight handcuffs; and that various other  
28 Defendants (C/O J. Bryan and C/O Hernandez) proceeded severely beat Plaintiff and eventually pepper

1 sprayed him. A finding that the Defendants applied excessive force after the initial encounter between  
2 Plaintiff and Defendants Villegas and Solis would not tend to invalidate the disciplinary conviction for  
3 battering a corrections officer causing serious injury.

4 The Court is not moved by Defendants' assertion that there was no "break" in the interaction  
5 between Defendants and Plaintiff and that, instead, "Plaintiff continued resisting up until the point  
6 where he was restrained with leg restraints and handcuffs; after Plaintiff stopped resisting, there was no  
7 further use of force and he was escorted to medical for evaluation." (Doc. 50 at 3-4.) In support of  
8 this assertion, Defendants cite an amended incident report concerning the events of January 21, 2018,  
9 which they have requested the Court judicially notice. (*See id.* at 4 (citing Doc. 37-1, Ex. A at AGO  
10 181).) Defendants fail to explain why the contents of the report is proper matter for judicial notice,  
11 and, again, have failed to demonstrate that Plaintiff's disciplinary conviction necessarily required the  
12 asserted findings. To the contrary, as mentioned, viewing the facts in a light most favorable to  
13 Plaintiff, it appears that he could have been convicted of battering a corrections officer causing serious  
14 injury based upon only his first interaction with Defendants Villegas and Solis.

15 Defendants' final objection requests, in the alternative, that the Court dismiss any claims that  
16 are premised upon "pre-break" conduct and limit Plaintiff's claims to the "post-break" conduct  
17 identified in the findings and recommendations. (Doc. 50 at 5.) Defendants are correct that the  
18 operative First Amended Complaint is broadly worded and could be read to encompass the entirety of  
19 the events that took place on January 21, 2018. (*See* Doc. 13 at 4-5 (generally describing the entire  
20 incident as "supporting facts"); *but see id.* at 6 (describing "Claim 1" as being premised upon acts that  
21 took place after Plaintiff was handcuffed.) Defendants are correct that *Heck* bars any claims premised  
22 upon factual allegations that if accepted in this case would necessarily undermine the validity of the  
23 disciplinary conviction. Plaintiff was convicted of battery resulting in serious injury. As the Court  
24 explained above, the facts suggest that Plaintiff's disciplinary conviction could stand on only the initial  
25 altercation between Plaintiff and Defendants Villegas and Solis. As the findings and recommendations  
26 indicated, Plaintiff's own allegations suggest a distinction between the initial altercation (among  
27 Plaintiff and Defendants Villegas and Solis) and later acts after Plaintiff allegedly lost consciousness  
28 and awoke in handcuffs. The Court agrees with Defendants that Plaintiffs claims may proceed only as

1 to the “post-break” conduct. Any claims premised upon earlier acts are barred by *Heck*. Accordingly,  
2 the Court **ORDERS**:

- 3 1. The findings and recommendations issued on August 9, 2022, are ADOPTED  
4 IN PART.
- 5 2. Defendants’ motion for judgment on the pleadings, filed on January 24, 2022, is  
6 GRANTED as to claims premised upon the initial altercation between Plaintiff  
7 and Defendants Villegas and Solis and DENIED in all other respects.
- 8 3. This case is referred to the Magistrate Judge for further proceedings.

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10 IT IS SO ORDERED.

11 Dated: September 29, 2022

  
12 UNITED STATES DISTRICT JUDGE