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

ROGER ARDEN ELSETH; PATRICIA	)	
ANN ELSETH; and ALLEN ELSETH, by	)	2:08-cv-02890-GEB-KJM
his guardian ad litem, ROGER	)	
ARDEN ELSETH and PATRICIA ANN	)	
ELSETH,	)	<u>ORDER GRANTING MOTION FOR</u>
	)	<u>SUMMARY ADJUDICATION</u>
Plaintiffs,	)	
	)	
v.	)	
	)	
VERNON SPEIRS, Chief Probation	)	
Officer of the County of	)	
Sacramento, individually; DAVID	)	
GORDON, Superintendent	)	
Sacramento County Department of	)	
Education, individually; Deputy	)	
Probation Officer RONALD TAM,	)	
individually; Deputy Probation	)	
Officer JEFF ELORDUY,	)	
individually; DR. RICHARD	)	
SAXTON, M.D., individually,	)	
	)	
Defendants.	)	
_____	)	

Defendants Verne Speirs, Ronald Tam, and Jeff Elorduy ("Defendants") move for summary adjudication on Plaintiffs' first claim for "Assault and Battery upon a Juvenile." Specifically, Defendants seek summary adjudication of the following:

- 1) Plaintiffs Patricia Elseth and Roger Elseth's first claim against all Defendants;

- 1           2)    Plaintiff Allen Elseth's first claim against Defendant  
2                    Verne Speirs; and  
3           3)    Plaintiff Allen Elseth's first claim against Defendant  
4                    Ronald Tam.<sup>1</sup>

5           Plaintiffs did not file an opposition or statement of non-  
6 opposition in response to the motion, as required by Local Rule 230(c).

7                                   **I.   LEGAL STANDARD**

8           A party seeking summary judgment bears the initial burden of  
9 demonstrating the absence of a genuine issue of material fact for trial.  
10 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If this burden is  
11 satisfied, "the non-moving party must set forth, by affidavit or as  
12 otherwise provided in [Federal] Rule [of Civil Procedure] 56, specific  
13 facts showing that there is a genuine issue for trial." T.W. Elec.  
14 Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th  
15 Cir. 1987) (quotations and citation omitted) (emphasis omitted). This  
16 requires that the non-moving party "come forward with facts, and not  
17 allegations, [that] controvert the moving party's case." Town House,  
18 Inc. v. Paulino, 381 F.2d 811, 814 (9th Cir. 1967) (citation omitted).  
19 All reasonable inferences that can be drawn from the evidence "must be  
20 drawn in favor of the non-moving party." Bryan v. McPherson, 608 F.3d  
21 614, 619 (9th Cir. 2010).

22           When the defendant is the moving party and is seeking summary  
23 judgment on one or more of plaintiff's claims,

24                   "[The defendant] has both the initial burden of  
25                   production and the ultimate burden of persuasion on  
                  [the motion]. In order to carry its burden of

26                   \_\_\_\_\_

27           <sup>1</sup> Defendant Jeff Elorduy is moving for summary adjudication only  
28 as to Plaintiffs Patricia Elseth and Roger Elseth. He is not seeking  
summary adjudication on the claim against Plaintiff Allen Elseth.  
(Def.'s Mem. of P.&A. in Supp. of Mot. for Summ. Adjud. 2 n.1.)

1 production, the [defendant] must either produce  
2 evidence negating an essential element of the  
3 [plaintiff's claim] or show that the [plaintiff]  
4 does not have enough evidence of an essential  
5 element to carry its ultimate burden of persuasion  
at trial. In order to carry its ultimate burden of  
persuasion on the motion, the [defendant] must  
persuade the court that there is no genuine issue  
of material fact."

6 Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc., 210 F.3d  
7 1099, 1102 (9th Cir. 2000) (citations omitted).

8 The Eastern District's Local Rule 260(b) further requires:

9 Any party opposing a motion for summary judgment or  
10 summary adjudication [must] reproduce the itemized  
11 facts in the [moving party's] Statement of  
12 Undisputed Facts and admit those facts that are  
13 undisputed and deny those that are disputed,  
14 including with each denial a citation to the  
particular portions of any pleading, affidavit,  
deposition, interrogatory answer, admission, or  
other document relied upon in support of that  
denial.

15 E.D. Cal. R. 260(b). "If the moving party's statement of facts are not  
16 controverted in this manner, the Court may assume the facts as claimed  
17 by the moving party are admitted to exist without controversy."  
18 Farrakhan v. Gregoire, 590 F.3d 989, 1002 (9th Cir. 2010) (quoting Beard  
19 v. Banks, 548 U.S. 521, 527 (2006)) (finding that a party opposing  
20 summary judgment who "fail[s] [to] specifically challenge the facts  
21 identified in the [moving party's] statement of undisputed facts . . .  
22 is deemed to have admitted the validity of [those] facts . . .").

## 23 **II. UNCONTROVERTED FACTS**

24 On December 5, 2006, Plaintiff Allen Elseth ("Allen") was  
25 housed at the Sacramento County Juvenile Hall. (Defs.' Statement of  
26 Undisputed Facts ("SUF") #10.) That morning, an officer noticed Allen  
27 was standing in the doorway of his cell looking out the window, which  
28

1 was against the rules. Id. #11. The officer asked him to back away from  
2 the window, but Allen refused. Id.

3           Sometime thereafter, Defendants Ronald Tam ("Tam") and Jeff  
4 Elorduy ("Elorduy"), who were on-duty as members of the facility's  
5 security response team, were called to respond to a disruption in  
6 Allen's room. Id. #12. Tam and Elorduy went to his room and admonished  
7 Allen to follow the rules. Id.

8           Shortly thereafter, Elorduy and Tam received another call to  
9 respond to Allen's room. Id. #13. They went to the housing unit and met  
10 with Probation Assistant Iohola Thomas ("Thomas"), who told them that  
11 Allen was kicking his door and yelling gang slurs and derogatory  
12 comments. Id. Thomas, Elorduy and Tam went to Allen's room, where he was  
13 laying on his bed. Id. 14. Allen denied he was the person who had been  
14 yelling and kicking the door. Id.

15           Eventually, Thomas asked Elorduy and Tam to remove Allen from  
16 his room. Id. #15. Elorduy placed Allen's left arm in an arm bar, and  
17 Thomas did the same with his right arm. Id. Tam restrained Allen's legs.  
18 Id. Thomas and Elorduy then transitioned Allen into a rear wrist lock.  
19 Id. Allen alleges that during this interaction, Elorduy struck him in  
20 the face. Id. #16. He does not allege that Thomas or Tam hit him. Id.

21           After the officers secured Allen, Elorduy grabbed one of  
22 Allen's shoulders, Thomas grabbed the other shoulder, and Tam grabbed  
23 his feet and carried him out of the room. Id. #17.

24           Tam did not strike Allen, or cause any part of Allen's face to  
25 come into contact with something, at any time during his interactions  
26 with him on December 5, 2006. Id. #21.

1           At the time of the incident, Defendant Verne Speirs ("Speirs")  
2 was the Chief Probation Officer of the Sacramento County Probation  
3 Department. Id. #7. He was not involved in removing Allen from his room,  
4 nor did he have any role in supervising his removal. Id. #19.

5           Allen does not remember ever meeting or talking to Speirs. Id.  
6 #20. Before the filing of this action, Plaintiffs Roger Elseth and  
7 Patricia Elseth had no contact with any of the Defendants. Id. #23.

8           Prior to December 5, 2006, Tam and Elorduy received training  
9 regarding the use of force on juveniles and how to respond to situations  
10 in Juvenile Hall. Id. #22. They were also aware that the County of  
11 Sacramento had a use of force policy in effect at the time, and received  
12 training concerning that policy prior to December 5, 2006. Id.

13           The Sacramento County Probation Department ("Department")  
14 created a distinct training unit that specialized in teaching Probation  
15 Assistants and Deputy Probation Officers the proper methods for handling  
16 juveniles in detention and use of force. Id. #24. Outside trainers were  
17 brought in to provide routine and specialized "JIREH training" and  
18 training regarding crisis de-escalation. Id. The Department also sent  
19 staff members to training sessions around the country to learn the most  
20 advanced techniques to incorporate within the Department's training. Id.

21           As of December 5, 2006, the Department also had established  
22 policies governing the complaints of staff misconduct, including  
23 excessive force. Id. #25. The policies required prompt and impartial  
24 investigations of all complaints. Id. If a complaint was sustained, the  
25 Department took timely, appropriate corrective and disciplinary action.  
26 Id.

1 The Department investigated Allen's allegations concerning his  
2 removal from his room on December 5, 2006 and concluded Allen's  
3 allegations of excessive force were unfounded. Id. 26.

### 4 III. DISCUSSION

5 Plaintiffs allege this action is premised on 28 U.S.C. §  
6 1343(a)(3) and 42 U.S.C. § 1983 and is brought to "redress the  
7 deprivation of civil rights arising under the Constitution of the United  
8 States, [the] 8th Amendment (Cruel and Unusual Punishment) and [the]  
9 14th Amendment § 1, to redress injuries inflicted under color of law,  
10 and the denial of both substantive due process and procedural due  
11 process." (Fifth Am. Compl. ¶ 1.1.) The only claim asserted against  
12 Defendants is Plaintiffs' first claim, which is titled "Assault and  
13 Battery Upon a Juvenile." Id. at 13:24-14-20.

14 Plaintiffs sued Speirs, Tam, and Elorduy in their individual  
15 capacities. Plaintiffs' allegations under the first claim include the  
16 following:

17 On or about 12/05/2006, CERT team members,  
18 including Tam and Elorduy, acting under color of  
19 state law, secured [Allen] in a private room and  
20 inflicted corporal punishment without due process  
or provocation, by beating him for a period of time  
causing severe personal injuries, emotional  
distress, and pain.

21 Speirs by his administrative indifference or  
22 willful neglect, failed to train the CERT team in  
23 the proper methods of response to situations in the  
24 Juvenile Centers, and the limits of their authority  
to inflict corporal punishment upon the minors  
housed therein.

25 Speirs by his administrative indifference or  
26 willful neglect, created an environment of  
27 hostility that permitted Tam and Elorduy to  
subjectively, but objectively unreasonably, believe  
their conduct was authorized.

28 (Fifth Am. Compl. ¶¶ 4.3, 4.5, 7.3, 7.4, 7.5.)

1           **A. Plaintiffs Roger Elseth and Patricia Elseth's Claim against**  
2           **Defendants**

3           Defendants contend they are entitled to summary adjudication  
4 against Plaintiffs Patricia Elseth and Roger Elseth, arguing, *inter*  
5 *alia*, "there are no facts alleged to show that [they] suffered any  
6 injury as a result of the action or inaction of Defendants[;]"  
7 therefore, they "lack standing to make a claim against [them]." (Mot.  
8 7:14-15, 7:26-28.)

9           To establish standing in federal court, "[a] plaintiff must  
10 allege personal injury fairly traceable to the defendant's allegedly  
11 unlawful conduct and likely to be redressed by the requested relief."  
12 Allen v. Wright, 468 U.S. 737, 751 (1984). Further, the injury must be  
13 "particularized," i.e. it "must affect the plaintiff in a personal and  
14 individual way." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 n.1  
15 (1992). A plaintiff generally "cannot rest his claim to relief on the  
16 legal rights or interests of [others]." Madrigal v. Tommy Bahama Group,  
17 Inc., No. CV 09-08924 SJO (MANx), 2010 WL 4384235 (C.D. Cal. 2010)  
18 (quoting Warth v. Seldon, 422 U.S. 490, 499 (1975).)

19           Although Roger Elseth and Patricia Elseth are listed as  
20 Plaintiffs in this claim, they do not allege that they have suffered any  
21 injury caused by Defendants. Patricia Elseth and Roger Elseth are not  
22 even mentioned in the allegations specific to the first claim. (Fifth  
23 Am. Compl. 13:24-14-20.) Further, it is uncontroverted that Tam, Elorduy  
24 and Speirs had no contact with Patricia Elseth or Roger Elseth until  
25 after this federal lawsuit was filed. Therefore, Defendants have shown  
26 the absence of a genuine issue of material fact on this issue, and  
27 Defendants' motion for summary adjudication on Patricia Elseth and Roger  
28 Elseth's first claim is granted.

1           **B. Plaintiff Allen Elseth's Claim against Defendant Verne Speirs**

2           Defendant Verne Speirs argues he is entitled to summary  
3 adjudication against Allen since Allen "does not allege that [he]  
4 personally participated in [his removal from his room]" and "there are  
5 no facts or evidence [to] support a supervisory liability claim against  
6 [him]." (Mot. 9:9-10, 9:18-19.)

7           To recover under 42 U.S.C. § 1983 against an individual in his  
8 or her supervisory capacity, a plaintiff must prove the defendant  
9 "directed his or her subordinates to commit the offensive act," "set  
10 into motion a series of acts by others which he knew or reasonably  
11 should have known would cause others to inflict the constitutional  
12 injury," "knew of the violations being committed by subordinates yet  
13 failed to act to prevent them," or "acquiesc[ed] in the constitutional  
14 deprivations of which the complaint is made." Gonzalez v. City of  
15 Fresno, No. 1:06-cv-01751-OWW-TAG, 2009 WL 2208300, at \*4 (E.D. Cal.  
16 2009) (quotations and citations omitted). "The Ninth Circuit also  
17 recognizes that '[s]upervisory liability [can be] imposed against a  
18 supervisory official in his individual capacity for his own culpable  
19 action or inaction in the training, supervision, or control of his  
20 subordinates . . . .'" Id. (quoting Menotti v. City of Seattle, 409 F.3d  
21 1113, 1149 (9th Cir.2005).)

22           While the Ninth Circuit has articulated various  
23 circumstances in which a supervisor can be liable  
24 in a § 1983 case, the common theme is that to  
25 impose individual liability on a supervisor, the  
26 supervisor must have either taken part in the  
alleged constitutional violation or in some manner  
caused the constitutional violation through his or  
her own culpable action or inaction.

27           Id. at \*5 (quotation and citations omitted).



1 Here, the unopposed Declaration of Verne Speirs and Allen's  
2 deposition testimony evidence that Speirs did not personally participate  
3 in, nor did he supervise, Allen's removal from his room. (Allen Depo.  
4 144:2-8, Defs.' App. of Ex., Ex. B; Verne Decl. ¶8, Ex. H.) Further, it  
5 is undisputed that the Department had policies in effect at the time of  
6 the alleged incident concerning both the use of force on juveniles and  
7 complaints about staff misconduct. The Department had a separate  
8 training unit, which specialized in training officers concerning the use  
9 of force and the proper methods in handling juveniles in detention, and  
10 both Tam and Elorduy declare they received such training prior to the  
11 incident. (Elorduy Decl. ¶ 7, Ex. I; Tam Decl. ¶ 7, Ex. J.) Lastly, it  
12 is uncontroverted that the Department conducted an internal  
13 investigation into Allen's allegations.

14 There is no evidence that Speirs "[took] part in [Allen's]  
15 alleged constitutional violation or in some manner caused the  
16 constitutional violation through [his] own culpable action or inaction."  
17 Gonzalez v. City of Fresno, 2009 WL 2208300, at \*5. Therefore, Speirs'  
18 motion for summary adjudication on Allen Elseth's first claim is  
19 granted.

20 **C. Plaintiff Allen Elseth's Claim against Defendant Ronald Tam**

21 Defendant Ronald Tam moves for summary judgment on Allen  
22 Elseth's first claim, arguing, *inter alia*, "the law is not clearly  
23 established that a deputy probation officer can be held liable . . .  
24 simply by holding a juvenile's legs to secure him . . . or by assisting  
25 in carrying the juvenile out of his room[;]" therefore, he is entitled  
26 to qualified immunity. (Mot. 13:1-8.)

27 The doctrine of qualified immunity "protects government  
28 officials from liability for civil damages insofar as their conduct does

1 not violate clearly established statutory or constitutional rights of  
2 which a reasonable person would have known." Pearson v. Callahan, 129  
3 S. Ct. 808, 815 (2009) (quotation omitted). A defendant's entitlement to  
4 qualified immunity is evaluated using a two-step inquiry. Saucier v.  
5 Katz, 533 U.S. 194, 200 (2001) (quotation omitted). Under Saucier's  
6 first step, the court must consider "whether, taken in the light most  
7 favorable to the party asserting the injury, the facts alleged show the  
8 officer's conduct violated a constitutional right." Ramirez v. City of  
9 Buena Park, 560 F.3d 1012, 1020 (9th Cir. 2009) (quotation omitted).  
10 Under Saucier's second step, the court asks "if the right was clearly  
11 established." Id. (quotation omitted). "The relevant, dispositive  
12 inquiry in determining whether a right is clearly established is whether  
13 it would be clear to a reasonable officer that his conduct was unlawful  
14 in the situation he confronted." Saucier v. Katz, 533 U.S. at 202  
15 (citation omitted). It is within the district court's "sound discretion  
16 in deciding which of the two prongs of the qualified immunity analysis  
17 should be addressed first in light of the circumstances of the  
18 particular case at hand." Pearson v. Callahan, 129 S. Ct. at 818.


19           The gravaman of Allen's first claim is his allegation that he  
20 was subjected to "corporal punishment" when Tam and Elorduy "beat[] him  
21 for a period of time." (Fifth Am. Compl. ¶ 7.2.) However, Allen gave  
22 deposition testimony that only Elorduy hit him, and Tam declares his  
23 only physical contact with Allen was "plac[ing] his legs in a figure  
24 four[,] and holding him by his feet when he, Elorduy and Thomas removed  
25 him from his room. (Allen Depo. 143:9-17, Ex. B; Tam Decl. ¶¶ 4-6, Ex.  
26 J.) Tam further declares that at no time during his interactions with  
27 Allen did he strike him or cause any part of his face to come into  
28 contact with something. (Tam Decl. ¶¶ 6, Ex. J.) It would not be clear

1 to a reasonable officer that such conduct was unlawful under the  
2 circumstances in which Tam acted, i.e. being asked to remove a person  
3 from their room in a juvenile detention center after responding to two  
4 disturbance calls involving that person. See Hudson v. McMillian, 503  
5 U.S. 1, 5-6 (1992) ("[W]henver prison officials stand accused of using  
6 excessive physical force in violation of the Cruel and Unusual  
7 Punishments Clause, the core judicial inquiry is . . . whether force was  
8 applied in a good-faith effort to maintain or restore discipline, or  
9 maliciously and sadistically to cause harm."); White v. Roper, 901 F.2d  
10 1501, 1506-1507 (9th Cir. 1990) (holding "egregious government conduct  
11 in the form of excessive and brutal force constitutes a violation of  
12 substantive due cognizable under section 1983"). Therefore, Tam's motion  
13 for summary adjudication on Allen Elseth's first claim is granted.

14 **IV. CONCLUSION**

15 For the stated reasons, Defendants' motion for summary  
16 adjudication is GRANTED.

17 Dated: November 19, 2010

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GARLAND E. BURRELL, JR.  
United States District Judge