



1 Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Under summary judgment practice, the  
2 moving party

3 . . . always bears the initial responsibility of informing the district court of  
4 the basis for its motion, and identifying those portions of “the pleadings,  
5 depositions, answers to interrogatories, and admissions on file, together  
6 with the affidavits, if any,” which it believes demonstrate the absence of a  
7 genuine issue of material fact.

8 Id., at 323 (quoting former Fed. R. Civ. P. 56(c)); see also Fed. R. Civ. P. 56(c)(1).

9 If the moving party meets its initial responsibility, the burden then shifts to the  
10 opposing party to establish that a genuine issue as to any material fact actually does exist. See  
11 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to  
12 establish the existence of this factual dispute, the opposing party may not rely upon the  
13 allegations or denials of its pleadings but is required to tender evidence of specific facts in the  
14 form of affidavits, and/or admissible discovery material, in support of its contention that the  
15 dispute exists. See Fed. R. Civ. P. 56(c)(1); see also Matsushita, 475 U.S. at 586 n.11. The  
16 opposing party must demonstrate that the fact in contention is material, i.e., a fact that might  
17 affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S.  
18 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th  
19 Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could  
20 return a verdict for the nonmoving party, Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436  
21 (9th Cir. 1987). To demonstrate that an issue is genuine, the opposing party “must do more than  
22 simply show that there is some metaphysical doubt as to the material facts . . . . Where the record  
23 taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no  
24 ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted). It is sufficient that “the  
25 claimed factual dispute be shown to require a trier of fact to resolve the parties’ differing versions  
26 of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631.

27 In resolving the summary judgment motion, the court examines the pleadings,  
28 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any.  
See Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed, see Anderson,  
477 U.S. at 255, and all reasonable inferences that may be drawn from the facts placed before the

1 court must be drawn in favor of the opposing party, see Matsushita, 475 U.S. at 587.  
2 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to  
3 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen  
4 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir.  
5 1987). Ultimately, “[b]efore the evidence is left to the jury, there is a preliminary question for the  
6 judge, not whether there is literally no evidence, but whether there is any upon which a jury could  
7 properly proceed to find a verdict for the party producing it, upon whom the onus of proof is  
8 imposed.” Anderson, 477 U.S. at 251.

## 10 I. BACKGROUND

### 11 A. Plaintiff’s Allegations

12 This action proceeds on Plaintiff’s verified original complaint, filed on January 5,  
13 2023. See ECF No. 1. Plaintiff names the following as defendants: (1) E. Corter, a correctional  
14 officer at California State Prison – Sacramento (CSP-Sac.); (2) D. Baker, a sergeant at CSP-Sac.;  
15 (3) J. Avila, a correctional officer at CSP-Sac.; (4) Vere, a correctional officer at CSP-Sac.; (5)  
16 M. Saeteurn, a correctional officer at CSP-Sac.; (6) A. Gonzalez, a sergeant at CSP-Sac.; and (7)  
17 J. Woods, a sergeant at CSP-Sac. See id. at 2. Plaintiff claims that Defendants violated his rights  
18 under the Eighth Amendment while he was housed at CSP-Sac. See id. at 3.

19 Plaintiff states that on April 14, 2022, prison staff opened his cell door and told  
20 him to go to the rotunda to collect his belongings. See id. According to Plaintiff, Defendant  
21 Baker, Defendant Corter, and C.O.L Saelee were standing in the rotunda with boxes of his  
22 personal property. See id.

23 Plaintiff proceeded to put his property into his cell. See id. Plaintiff alleges that  
24 after putting one of three boxes into his cell, Defendant Baker stepped in front of him and asked,  
25 “what’s with the angry body language?” See id. Plaintiff responded with “don’t worry about it.”  
26 See id. Plaintiff then contends that Defendant Baker directed Defendant Corter and C.O.L Saelee  
27 to “take back [Plaintiff’s] property and put him in his cell.” See id. Plaintiff alleges that  
28 Defendant Corter put him in handcuffs, slammed him into the concrete floor, and pressed his knee

1 into Plaintiff's back. See id., pg. 6.

2 Plaintiff then states that Defendant Avila, Vere, and Saeteurn ran into the building  
3 and picked him up off the floor. See id. Plaintiff alleges that the above-mentioned Defendants  
4 proceeded to slam him back on the concrete floor; knee him in the back, rib, and shoulder area;  
5 and press his face into the concrete floor. See id.

6 Plaintiff next contends that he was put in leg restraints and escorted to a holding  
7 cage, where his clothes were cut off with a pair of scissors. See id. Plaintiff alleges that while in  
8 the holding cage, his handcuffs and leg restraints cut off circulation to his hands and feet. Plaintiff  
9 contends that he was left naked in the holding cage for two hours. See id.

10 Plaintiff argues that Defendants Corter, Avila, Vere, and Saeteurn acted with  
11 "unreasonable, unnecessary and wanton excessive force" when they slammed Plaintiff on the  
12 concrete floor while handcuffed; kneed him in the back, rib, and shoulder area; and forced him  
13 into a holding cage without clothes for two hours. See ECF No. 1, pgs. 8-9. Plaintiff alleges that  
14 Defendant Baker violated his rights under the Eighth Amendment when he failed to intervene and  
15 prevent Defendant Corter from using excessive force. See id. Plaintiff also argues that Defendants  
16 Gonzales and Wood, violated his rights under the Eighth Amendment when they failed to  
17 intervene and prevent Defendants Avila, Vere, and Saeteurn from using excessive force.

18 As a result of this incident, Plaintiff alleges bruising, as well as back, neck, arm,  
19 and leg pain. See id., pg. 4. Plaintiff seeks compensatory and punitive damages. See id., pg. 11.

20 **B. Procedural History**

21 On July 25, 2023, the Court issued an order directing service of Plaintiff's  
22 complaint. See ECF No. 11. All defendants – except Defendant Vere – waived service and filed  
23 their answer to Plaintiff's complaint on November 6, 2023. See ECF No. 19. Personal service by  
24 the United States Marshal was attempted on Defendant Vere, but not accomplished due to  
25 insufficient information to identify the defendant. See ECF No. 17. Plaintiff has not provided  
26 additional identification information and Defendant Vere remains unserved.<sup>1</sup>

27 \_\_\_\_\_  
28 <sup>1</sup> The Court will recommend dismissal of Defendant Vere for failure to effect timely  
service of process as required by Federal Rule of Civil Procedure 4(m).

1 On February 8, 2024, the Court issued a discovery and scheduling order,  
2 permitting the parties to conduct discovery through October 7, 2024, with dispositive motions due  
3 to be filed within 120 days after this date. See ECF No. 28. Defendants filed the currently  
4 pending motion for summary judgment based on lack of exhaustion on April 2, 2024. See ECF  
5 NO. 32. Plaintiff filed an opposition on April 11, 2024. See ECF No. 34. Defendants filed their  
6 reply brief on April 26, 2024. See ECF No. 35. On Defendants' motion, the schedule for this  
7 case imposed on February 8, 2024, has been suspended and discovery has been stayed pending  
8 resolution of Defendants' motion for summary judgment. See ECF No. 36.

## 10 II. THE PARTIES' EVIDENCE

### 11 A. Defendants' Evidence

12 Defendants' motion for summary judgment is supported by a memorandum of  
13 points and authorities, ECF No. 32-2, a separate statement of undisputed facts, ECF No. 32-1, as  
14 well as the declarations of D. Contreras, E. Moseley, and P. Williams, and exhibits attached  
15 thereto, ECF Nos. 32-3, 32-4, and 32-5.

16 According to Defendants, the following facts related to exhaustion of  
17 administrative remedies are undisputed:

18 12. Plaintiff submitted multiple grievances to SAC's OOG  
19 [Office of Grievances] and the OOA [Office of Appeals] between April  
20 14, 2022, when Plaintiff's allegations first giving rise to his lawsuit  
occurred, through January 5, 2023, when Plaintiff filed his complaint.  
Contreras Decl. ¶8, Exhibit A; Moseley Decl. ¶7, Exhibit A.

21 13. Plaintiff submitted one related grievance during the  
22 relevant time frame - Grievance Log Number 269163. He also submitted  
23 one relevant grievance outside [after] the relevant time frame -Grievance  
Log Number 354757/356726. Contreras Decl. ¶¶11-14, Exhibits B-C.

24 14. In Grievance Log Number 269163, Plaintiff expressed  
25 dissatisfaction with the guilty finding in RVR log number 7175162 and  
26 stated he was "appealing the ruling." He alleged that Corter "lied about  
27 what happened and fabricated the RVR to cover up his use of excessive  
28 force." He further alleged that the Senior Hearing Officer (SHO) gave him  
three loss[es] of privileges while he could only take two. Plaintiff  
requested these issues be investigated and included a copy of the RVR.  
SAC received this grievance on June 17, 2022. Because Plaintiff's  
grievance concerned an allegation of staff misconduct, the SAC OOG  
referred it outside the grievance process and deemed it exhausted on June

1 24, 2022. The grievance did not contain any specific allegations regarding  
2 the alleged excessive force and focused on the RVR. Plaintiff took no  
3 further action regarding this grievance. Contreras Decl. ¶12; Exhibit B;  
4 Moseley Decl. ¶7, Exhibit A.

5 15. In Grievance Log Number 354757, Plaintiff alleged that on  
6 April 14, 2022, Sergeant Baker ordered him to return to his cell. Officer  
7 Corter ordered Plaintiff to “cuff-up,” and Plaintiff complied. Corter then  
8 slammed Plaintiff to the ground face first, kned him in the back, and  
9 pressed his face into the concrete floor. Officers Avila, Vere, and Saeteurn  
10 and Sergeants Gonzalez and Woods then ran into the building. Saeteurn  
11 and Yang then picked Plaintiff up and then all four officers slammed  
12 Plaintiff back on the ground and began kneeling him in the back, rib, and  
13 shoulder area and pressing his face into the floor. Plaintiff was then placed  
14 in leg restraints, the officers cut off his clothes, and he was placed naked  
15 in a holding cell for two hours. Plaintiff requested that the alleged  
16 excessive force incident be investigated. Plaintiff dated the grievance “4-  
17 15-22.” A close review of this date shows Plaintiff initially dated it “1-15-  
18 23” but then went back over the date and attempted to back date it to “4-  
19 15-22.” He included a letter to the California State Prison, Calipatria  
20 grievance office (where he was housed at the time) asking them to forward  
21 his grievance to SAC. California State Prison, Calipatria received this  
22 grievance on January 19, 2023, and forwarded it to SAC. SAC then re-  
23 assigned the grievance log number 356726. Because Plaintiff made an  
24 allegation of staff misconduct, SAC referred the grievance for  
25 investigation outside the grievance process and deemed the grievance  
26 exhausted on January 28, 2023. Plaintiff took no further action regarding  
27 this grievance. Contreras Decl. ¶14, Exhibit C; Cal. Cal. Code of Regs.,  
28 tit. 15, § 3483 (g)(8); Moseley Decl. ¶7, Exhibit A.

16 16. Plaintiff also submitted various unrelated grievances and  
17 appeals during the relevant time frame. Contreras Decl. ¶15; ¶¶16-22,  
18 Exhibits D-J; Moseley Decl. ¶7, Exhibit A; ¶¶ 10-12, Exhibits B-D.

19 17. Plaintiff did not submit any other appeals or grievances,  
20 related or unrelated to the allegations in his Complaint, during the relevant  
21 time frame beyond the ones provided. Contreras Decl. ¶23; *see also* ¶8,  
22 Exhibit A; Moseley Decl. ¶7, Exhibit A; ¶¶ 10-12, Exhibits B-D.

23 ECF No. 32-1.

## 24 **B. Plaintiff’s Evidence**

25 Plaintiff has not filed a separate statement of disputed facts but has attached as  
26 Exhibit A to his opposition a copy of an inmate grievance (form CDCR 602-1), dated June 5,  
27 2022. See ECF No. 34, pgs. 5-6. In this document, Plaintiff stated: “On 4-15-22 I filed a 602  
28 [inmate grievance] about a [sic] excessive force incident that happened on 4-14-22 and I haven’t  
received a response.” Id. at 5. In addition to this exhibit, the Court will also consider Plaintiff’s  
verified complaint as his declaration.

### III. DISCUSSION

In their motion for summary judgment, Defendant argue that they are entitled to judgment in their favor as a matter of law because Plaintiff failed to exhaust available remedies prior to filing suit.

Prisoners seeking relief under § 1983 must exhaust all available administrative remedies prior to bringing suit. See 42 U.S.C. § 1997e(a). This requirement is mandatory regardless of the relief sought. See Booth v. Churner, 532 U.S. 731, 741 (2001) (overruling Rumbles v. Hill, 182 F.3d 1064 (9th Cir. 1999)). Because exhaustion must precede the filing of the complaint, compliance with § 1997e(a) is not achieved by exhausting administrative remedies while the lawsuit is pending. See McKinney v. Carey, 311 F.3d 1198, 1199 (9th Cir. 2002). The Supreme Court addressed the exhaustion requirement in Jones v. Bock, 549 U.S. 199 (2007), and held: (1) prisoners are not required to specially plead or demonstrate exhaustion in the complaint because lack of exhaustion is an affirmative defense which must be pleaded and proved by the defendants; (2) an individual named as a defendant does not necessarily need to be named in the grievance process for exhaustion to be considered adequate because the applicable procedural rules that a prisoner must follow are defined by the particular grievance process, not by the PLRA; and (3) the PLRA does not require dismissal of the entire complaint if only some, but not all, claims are unexhausted. The defendant bears burden of showing non-exhaustion in the first instance. See Albino v. Baca, 747 F.3d 1162, 1172 (9th Cir. 2014). If met, the plaintiff bears the burden of showing that the grievance process was not available, for example because it was thwarted, prolonged, or inadequate. See id.

The Supreme Court held in Woodford v. Ngo that, in order to exhaust administrative remedies, the prisoner must comply with all of the prison system's procedural rules so that the agency addresses the issues on the merits. 548 U.S. 81, 89-96 (2006). Thus, exhaustion requires compliance with "deadlines and other critical procedural rules." Id. at 90. Partial compliance is not enough. See id. Substantively, the prisoner must submit a grievance which affords prison officials a full and fair opportunity to address the prisoner's claims. See id. at 90, 93. The Supreme Court noted that one of the results of proper exhaustion is to reduce the

1 quantity of prisoner suits “because some prisoners are successful in the administrative process,  
2 and others are persuaded by the proceedings not to file an action in federal court.” Id. at 94.  
3 When reviewing exhaustion under California prison regulations which have since been amended,  
4 the Ninth Circuit observed that, substantively, a grievance is sufficient if it “puts the prison on  
5 adequate notice of the problem for which the prisoner seeks redress. . . .” Griffin v. Arpaio, 557  
6 F.3d 1117, 1120 (9th Cir. 2009); see also Sapp v. Kimbrell, 623 F.3d 813, 824 (9th Cir. 2010)  
7 (reviewing exhaustion under prior California regulations).

8           Until June 1, 2020, California allowed inmates to administratively appeal “any  
9 policy, decision, action, condition, or omission by the department or its staff that the inmate or  
10 parolee can demonstrate as having a material adverse effect upon his or her health, safety, or  
11 welfare.” Cal. Code Regs., tit. 15, § 3084.1(a); Munoz v. Cal. Dep’t of Corrs., No. CV 18-10264-  
12 CJC (KS), 2020 WL 5199517, at \*6 (C.D. Cal. July 24, 2020). CDCR used a three-step process  
13 for grievances. Id. (describing the former three-step process). CDCR also used the three-step  
14 process for health care grievances until September 1, 2017. Id. CDCR then adopted a new two-  
15 step procedure for inmate grievances (which was renumbered to its current section number in  
16 2018). See Cal. Code Regs., tit. 15, § 3999.225–.230; see also Singh v. Nicolas, No. 18-cv-1852,  
17 2019 WL 2142105 at \*3 & nn. 1–4 (E.D. Cal. May 16, 2019) (discussing the restructured  
18 grievance procedure); Garrett v. Finander, 2019 WL 7879659, at \*2–3 (C.D. Cal. Dec. 5, 2019)  
19 (describing the new grievance procedures). The first level of review is the institutional level of  
20 review. Cal. Code Regs., tit. 15, § 3999.228(a). The second level of review is the headquarters  
21 level of review. Cal. Code Regs., tit. 15, § 3999.230(a). The headquarters level is the final level of  
22 health care grievance review. Cal. Code Regs., tit. 15, § 3999.230(h). The headquarters level  
23 decision also exhausts administrative remedies. Id.

24           “[T]he PLRA exhaustion requirement is satisfied if prison officials decide a  
25 potentially procedurally flawed grievance on the merits.” Reyes v. Smith, 810 F.3d 654, 657 (9th  
26 Cir. 2016). “[W]hen prison officials address the merits of a prisoner’s grievance instead of  
27 enforcing a procedural bar, the state’s interests in administrative exhaustion have been served.”  
28 Id. at 657.

1 In this case, the undisputed evidence shows that two grievances are at issue – (1)  
2 Grievance Log Number 269163; and (2) Grievance Log Number 354757/356726. See Contreras  
3 Decl. ¶¶11-14, Exhibits B-C. Defendants contend that neither exhausted Plaintiff’s claims in this  
4 case. The Court does not agree.

5 **A. Grievance Log Number 269163**

6 Grievance Log Number 269163 was received by prison officials on June 17, 2022,  
7 referred as a staff complaint outside the grievance process, and deemed exhausted on June 24,  
8 2022. See Contreras Decl. ¶12; Exhibit B; Moseley Decl. ¶7, Exhibit A. In this grievance,  
9 Plaintiff complained that a Rules Violation Report had been fabricated to cover up the use of  
10 excessive force. See id.

11 Defendants contend that Grievance Log Number 269163 was procedurally  
12 defective in that it fails to satisfy the PLRA’s exhaustion requirement because it did not put the  
13 institution on notice of Plaintiff’s claims by specifically mentioning the alleged use of excessive  
14 force at issue in this action. According to Defendants:

15 Here, Plaintiff failed to place the institution on notice of his  
16 excessive force and failure to intervene claims in Grievance Log Number  
17 269163, as this grievance concerned his related RVR and sought redress  
18 related to the RVR. (DUF 14.) For remedies to be fully exhausted, an  
19 appeal must “alert the prison to a problem and facilitate its resolution.”  
20 *Griffin v. Arpaio*, 557 F.3d at 1120 (concluding that a prisoner's grievance  
21 cannot serve to exhaust administrative remedies where it fails to “ ‘alert[ ]  
22 the prison to the nature of the wrong for which redress is sought’ ”)  
23 (citation omitted). This grievance did not provide adequate notice to  
24 prison officials of the Plaintiff’s claims against Defendants because he  
25 focused the grievance on his related RVR, not the use of force incident.  
26 *See, e.g., Baker v. Villalobos*, No. 2:18-CV-02301-PA-GJS, 2021 WL  
27 6804237, at \*4 (C.D. Cal. Sept. 29, 2021), report and recommendation  
28 adopted, No. 2:18-CV-2301 PA GJS, 2022 WL 326132 (C.D. Cal. Feb. 1,  
2022), *aff’d*, No. 22-55198, 2023 WL 5608985 (9th Cir. Aug. 30, 2023)  
(holding that grievance of RVR did not exhaust excessive force and  
deliberate indifference claims); *Jones v. Lowder*, No. 1:16-cv-01911-  
AWI-SAB-PC, 2019 WL 1870457, at \*3 (E.D. Cal. Apr. 18, 2018)  
(holding that a grievance complaining of a false RVR was inadequate to  
put prison officials on notice of an equal protection issue because it did  
not complain of racial discrimination); *see also Blair v. Viss*, No. 2:22-  
CV-0670 KJM DB P, 2023 WL 5673103, at \*5 (E.D. Cal. Sept. 1, 2023),  
report and recommendation adopted, No. 2:22-CV-00670 KJM DB P,  
2023 WL 8023859 (E.D. Cal. Nov. 20, 2023) (Plaintiff failed to exhaust

1           retaliation claim when he failed to adequately raise it with his excessive  
2           force claim).

3           ECF No. 32-2, pgs. 9-10.

4           Defendants' argument is unpersuasive. While Grievance Log Number 269163  
5           seems to primarily relate to Plaintiff's claim that the RVR guilty finding was flawed, the Court  
6           observes that underlying Plaintiff's claim is his assertion that the RVR process was used to cover  
7           up the use of excessive force alleged in this action. The Court finds that this was sufficient to put  
8           the institution on notice of the excessive force claims at issue in this case. See Griffin, 557 F.3d  
9           at 1120; Sapp, 623 F.3d at 824. Moreover, to the extent Grievance Log Number 269163 was  
10          procedurally defective for failing to make specific reference to the alleged use of excessive force,  
11          the undisputed evidence shows that the institution nonetheless processed the grievance as a staff  
12          complaint and deemed it exhausted. Because the institution resolved the grievance  
13          notwithstanding any procedural defect, the PLRA's exhaustion requirement would be considered  
14          satisfied. See Reyes, 810 F.3d at 657.

15          These conclusions are supported by evidence showing that the grievance was  
16          processed as a staff complaint outside the grievance process, possibly due to the allegations of use  
17          of excessive force by prison officials. At a minimum, there appears to be a genuine dispute of  
18          material fact as to why Grievance Log Number 269163 was processed as a staff complaint. If it  
19          was due to the allegations of excessive force, then the grievance would have put the institution on  
20          notice of Plaintiff's claims. Because the evidence before the Court shows either that the  
21          institution was put on notice by referring Plaintiff's grievance as a staff complaint due to the  
22          excessive force allegation, or that there is a genuine dispute of material fact as to this question,  
23          the Court finds that Defendants have not met their burden on summary judgment of showing the  
24          non-existence of a dispute of material fact as to Grievance Log Number 269163.

25          ///

26          ///

27          ///

28          ///

1           **B. Grievance Log Number 354757/356726**

2           The undisputed evidence shows that Grievance Log Number 354757 includes  
3 Plaintiff’s specific allegations of excessive force asserted in this action. See Contreras Decl. ¶14,  
4 Exhibit C; Moseley Decl. ¶7, Exhibit A. The grievance was first received at California State  
5 Prison – Calipatria on January 19, 2023 – 14 days after this action was filed on January 5, 2023 –  
6 and forwarded to California State Prison – Sacramento, which processed the grievance as a staff  
7 complaint outside the grievance process and deemed it exhausted on January 28, 2023. See id.

8           Though the grievance clearly relates to the subject of this lawsuit, Defendants  
9 argue that it nonetheless fails to satisfy the PLRA because exhaustion occurred after suit was  
10 filed. According to Defendants:

11                         Here, Plaintiff filed suit on January 5, 2023. (DUF 2.) Two weeks  
12 later, he submitted the relevant grievance - 354757 / 356726. (DUF 15.)  
13 Rather than wait to file suit after completing the exhaustion process,  
14 Plaintiff chose to commence this lawsuit. (DUF 2, 15.) Plaintiff seemingly  
15 realized this error and attempted to backdate his grievance to change “1-  
16 15-23” to “4-15-22.” (DUF 15.) However, there is evidence that this  
17 grievance was not submitted on April 15, 2022, and instead prepared and  
18 submitted on or about January 19, 2023. First, a close inspection of the  
19 date on the grievance shows that “4-15-22” has been written over “1-15-  
20 23.” (*Id.*) Second, the grievance is marked received on January 19, 2023,  
21 by California State Prison, Calipatria. (*Id.*) Third, Plaintiff included a letter  
22 with the grievance asking Calipatria to forward the grievance to SAC. (*Id.*)  
23 Plaintiff did not transfer from SAC to Calipatria until November 29, 2022;  
24 well after the April 15, 2022, date. (DUF 5.) Plaintiff could not have been  
25 housed at Calipatria, and thus could not have requested they forward his  
26 grievance to SAC on the backdated April 15, 2022, date.

27                         ECF No. 32-2, pgs. 8-9.

28           This argument is also unpersuasive. While there is evidence that Plaintiff  
attempted to cure a procedural defect in his grievance by attempting to back-date it to a time prior  
to filing suit, there is also evidence before the Court suggesting otherwise. Specifically, in his  
opposition brief, which the Court accepts as Plaintiff’s declaration, Plaintiff states that he  
originally submitted this grievance regarding use of excessive force on April 14, 2022, prior to  
filing suit while he was still housed at California State Prison – Sacramento, but that he never  
received any response. See ECF No. 34. Plaintiff further states that he resubmitted the grievance  
following his transfer to California State Prison – Calipatria, a contention Defendants’ evidence

1 supports. In evaluating Defendants' motion for summary judgment, the Court is required to  
2 believe Plaintiff's evidence and to draw any reasonable inferences in Plaintiff's favor. See  
3 Anderson, 477 U.S. at 255; Matsushita, 475 U.S. at 587. Consistent with this standard, the Court  
4 finds that as to the issue of whether Plaintiff timely submitted a grievance, there exists a question  
5 of material facts as to which there are genuine disputes, and as such, summary judgement is not  
6 appropriate here.

7  
8 **IV. CONCLUSION**

9 Based on the foregoing, the undersigned recommends as follows:

- 10 1. Defendant Vere be dismissed for failure to effect timely service of process.  
11 2. Defendants' motion for summary judgment, ECF No. 32, be denied.

12 These findings and recommendations are submitted to the United States District  
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
14 after being served with these findings and recommendations, any party may file written objections  
15 with the Court. Responses to objections shall be filed within 14 days after service of objections.  
16 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.  
17 Ylst, 951 F.2d 1153 (9th Cir. 1991).

18  
19 Dated: March 4, 2025



20 DENNIS M. COTA  
21 UNITED STATES MAGISTRATE JUDGE  
22  
23  
24  
25  
26  
27  
28