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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIARAPHAEL GEORGE RAYFORD,  
Plaintiff,  
v.  
F. MEDINA, et al.,  
Defendants.Case No. [14-1318-VC \(PR\)](#)**ORDER OF SERVICE; DENYING  
MOTION FOR APPOINTMENT OF  
COUNSEL**

Doc. no. 2

Raphael George Rayford, an inmate at Salinas Valley State Prison proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against officers and employees of the prison. Rayford has filed a motion for leave to proceed in forma pauperis, which is granted in a separate order. Rayford also files a motion to appoint counsel which, as explained below, is denied. The Court now addresses the claims asserted in Rayford's complaint.

**DISCUSSION****I. Standard of Review**

A federal court must screen any case in which a prisoner seeks redress from a governmental entity, or officer or employee of a governmental entity, to identify any cognizable claims and dismiss any that: (1) are frivolous or malicious; (2) fail to state a claim upon which relief may be granted; or (3) seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(a). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:  
2 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that  
3 the alleged violation was committed by a person acting under the color of state law. *West v.*  
4 *Atkins*, 487 U.S. 42, 48 (1988).

5 Liability may be imposed on an individual defendant under 42 U.S.C. § 1983 if the  
6 plaintiff can show that the defendant's actions both actually and proximately caused the  
7 deprivation of a federally protected right. *Lemire v. California Dep't of Corrections &*  
8 *Rehabilitation*, 726 F.3d 1062, 1074 (9th Cir. 2013); *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir.  
9 1988). A person deprives another of a constitutional right within the meaning of Section 1983 if  
10 he does an affirmative act, participates in another's affirmative act or fails to perform an act which  
11 he is legally required to do, that causes the deprivation of which the plaintiff complains. *Leer*, 844  
12 F.2d at 633.

13 **II. Rayford's Allegations**

14 Rayford's complaint alleges the following.

15 On April 17, 2013, Rayford was placed in Administrative Segregation because he filed a  
16 complaint against a correctional officer. Defendant Officer F. Medina harassed Rayford on a  
17 regular basis in retaliation for Rayford's filing of that complaint. For instance, one time Medina  
18 threw Rayford's lunch into the toilet and, another time, Medina dropped a portion of Rayford's  
19 lunch on the ground, kicked it under the cell door and stated, "Enjoy your meal." On another  
20 occasion, Medina and two other officers threw three five-gallon buckets of chemically treated  
21 water into Rayford's cell.

22 In May 2013, Rayford described Medina's conduct to Defendant Sergeant Sanchez and  
23 expressed fear that Medina would harm him. Sanchez stated, "I can't tell those guys what to do  
24 because I've done some of those things myself." When Rayford asked Sanchez to move him to  
25 another location, Sanchez refused.

26 From May 15 through July 21, 2013, Rayford sought help from Defendant Dr. K. Chase,  
27 his mental health care provider. Rayford told Chase about Medina's conduct and expressed fear  
28 that Medina would harm him, but Dr. Chase said there was nothing she could do because "their

1 boss is not my boss.” She also told Rayford to become “more congruent.” When Rayford asked  
2 Chase to have him moved, she said she was not able to do so.

3 On July 21, 2013, Medina opened the food port of Rayford’s cell and, without warning,  
4 sprayed pepper spray on Rayford. Rayford was only wearing boxer shorts and attempted to  
5 protect himself with a blanket, but it was perforated, so he was struck on his face, torso, forearms  
6 and crotch with pepper-spray. After Medina emptied the first can of pepper spray, he told  
7 Defendant Officer E. Brown to give him another can of pepper spray and Brown complied.  
8 Medina opened the food port of Rayford’s cell and began spraying Rayford with the second can.  
9 Defendant Officer J. Carmona assisted Medina by acting as a look out. Carmona stood guard at  
10 the front of the cell laughing as he watched Medina assault Rayford with pepper spray. Carmona  
11 made a false radio call stating that there was a resistive inmate in Delta 8, A-Pod, referring to  
12 Rayford. When the second can of pepper spray was empty, Medina pressed his alarm and yelled,  
13 “cuff up, put it out.” Carmona opened the food port to Rayford’s cell to place him in waist  
14 restraints. Rayford was placed in a holding cell where he was examined by the medical nurse and  
15 fire marshal.

16 Medina, Carmona and Brown were supervised by Defendant Sergeant T. Tomasian.  
17 Tomasian covered up the pepper-spray incident by treating the incident as arson perpetrated by  
18 Rayford. Tomasian told Medina and Carmona, who were writing their incident reports, how to  
19 treat the incident as arson. Tomasian took photographs of Rayford’s cell and submitted nine  
20 photographs, but none of them showed the back of the cell where the pepper-spraying took place.  
21 Tomasian then wrote a false supplemental report to cover up the pepper-spraying.

22 After the pepper-spray incident, Rayford filed a complaint against Medina and Carmona  
23 for excessive force. Defendant Sergeant E. Sanchez investigated Rayford’s complaint. Sanchez’s  
24 investigative report did not include Rayford’s facts about the incident.

25 On December 23, 2013, Defendant Lieutenant G. R. Salazar held a disciplinary hearing  
26 against Rayford about the pepper-spray incident based on the falsified reports submitted by  
27 Medina, Carmona, Brown, and Tomasian. Salazar denied Rayford the right to question six  
28 witnesses including Medina, Carmona, Brown, Tomasian, Chase and the fire marshal. Salazar

1 failed to state in writing why Rayford’s questions for his proposed witnesses were not relevant.  
2 During the hearing, Rayford was denied the right to present rebuttal evidence and was denied the  
3 right to see the nine photographs of the alleged arson scene that was used as evidence against him.

4 As a result of the harassment, Rayford became suicidal. He was referred to mental health  
5 services, placed on medication and then re-housed in a different yard at the request of Dr. Chin.

6 **III. Rayford’s Claims**

7 Based on these allegations, Rayford asserts the following claims: (1) denial of access to the  
8 court; (2) denial of due process; (3) conspiracy; (4) retaliation; (5) falsifying documents;  
9 (6) staging a crime scene; (7) cruel and unusual punishment; and (8) equal protection.

10 Liberally construed, the pleadings appear to state a cognizable Eighth Amendment  
11 excessive force claim against Medina, Carmona, Brown and Tomasian. *See Hudson v. McMillian*,  
12 503 U.S. 1, 6 (1992) (Eighth Amendment protects inmates from unnecessary and wanton infliction  
13 of pain). Liberally construed, the complaint also appears to state a cognizable Eighth Amendment  
14 claim against Sanchez and Chase for knowing about the defendants’ unconstitutional behavior and  
15 doing nothing to intervene to prevent it or to transfer Rayford to a safe location. *See Robins v.*  
16 *Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995) (prison officials who personally use excessive force  
17 against a prisoner as well as those who fail to intervene to stop the actions of other prison officials  
18 can violate a prisoner’s Eighth Amendment right to be free from the use of excessive force).

19 Liberally construed, the complaint appears to state a cognizable First Amendment  
20 retaliation claim against Medina for physically abusing Rayford in retaliation for filing a  
21 complaint against an officer. *See Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005)  
22 (footnote omitted) (an inmate may state a First Amendment retaliation claim by alleging that a  
23 state actor took some adverse action against the inmate because of that inmate’s protected conduct,  
24 that such action chilled the inmate's exercise of his First Amendment rights, and that the action did  
25 not reasonably advance a legitimate correctional goal). Because the complaint does not allege that  
26 any other defendant retaliated against Rayford, the retaliation claim as to all other defendants is  
27 dismissed. Dismissal is with leave to amend for Rayford to remedy this deficiency against other  
28 defendants, if he truthfully can do so.

1           Liberally construed, the complaint appears to state a cognizable due process claim against  
2 Salazar for denying Rayford the ability to call witnesses, to see the evidence against him and to  
3 present rebuttal evidence. *See Serrano v. Francis*, 345 F.3d 1071, 1079-80 (9th Cir. 2003)  
4 (finding a due process violation where hearing officer failed to offer a convincing explanation for  
5 why he did not allow witnesses and failed to follow state regulation requiring him to document his  
6 reasons for refusing to grant inmate's request for witnesses. The due process claim against all  
7 other defendants is dismissed.

8           The complaint does not state a cognizable claim against Sanchez for failing to provide the  
9 investigative report that Rayford would have liked. *See Ramirez v. Galaza*, 334 F.3d 850, 860  
10 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988) (there is no federal  
11 constitutional right to a prison administrative appeal or grievance system for California inmates;  
12 prison officials not liable for failing to process an appeal properly, denying an inmate appeal or  
13 granting an inmate appeal).

14           Likewise, the complaint does not state cognizable claims based on Defendants' falsifying  
15 reports or staging a crime scene. *See Sprouse v. Babcock*, 870 F.2d 450, 452 (9th Cir. 1989)  
16 (standing alone, allegation of falsity of charges does not establish violation of constitutional right).  
17 However, in *Sprouse*, the court noted that a retaliation claim based on such allegations may state a  
18 cognizable claim. *Id.*

19           Further, the complaint contains no allegations that support claims based on lack of access  
20 to the court or violation of equal protection. Therefore, these claims against all defendants are  
21 dismissed. Plaintiff may file an amended complaint with allegations that would state such claims,  
22 if he truthfully can do so.

23 **IV. Motion to Appoint Counsel**

24           Rayford moves for the appointment of counsel because the legal issues are complex and he  
25 is unable to adequately investigate or present the factual issues regarding his claims.

26           "[I]t is well-established that there is generally no constitutional right to counsel in civil  
27 cases." *United States v. Sardone*, 94 F.3d 1233, 1236 (9th Cir. 1996). Nonetheless, under 28  
28 U.S.C. § 1915(e)(1), the Court has the discretion to appoint counsel to "any person unable to

1 afford counsel.” The discretionary appointment of counsel typically is reserved for cases  
2 involving “exceptional circumstances.” *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).  
3 “A finding of exceptional circumstances requires an evaluation of both ‘the likelihood of success  
4 on the merits and the ability of the petitioner to articulate his claims pro se in light of the  
5 complexity of the legal issues involved.’ Neither of these factors is dispositive and both must be  
6 viewed together before reaching a decision.” *Id.* At this stage, exceptional circumstances  
7 requiring the appointment of counsel are not evident. The request for appointment of counsel is  
8 DENIED. If, in the future, the Court concludes it is necessary to appoint counsel to represent  
9 Plaintiff, it shall do so *sua sponte*.

### 10 CONCLUSION

11 For the foregoing reasons, the Court orders as follows:

12 1. The complaint appears to state a cognizable Eighth Amendment claim for excessive  
13 force against Medina, Carmona, Brown and Tomasian. The complaint appears to state a  
14 cognizable Eighth Amendment claim against Sanchez and Chase for knowing of and failing to  
15 prevent the alleged unconstitutional physical abuse and excessive force against Rayford.

16 2. The complaint appears to allege a cognizable First Amendment retaliation claim against  
17 Medina. This claim against all other defendants is dismissed with leave to amend.

18 3. The complaint appears to state a cognizable claim against Salazar for failing to provide  
19 Rayford with procedural due process at his disciplinary hearing. This claim is dismissed as to all  
20 other defendants.

21 4. The claims based on falsifying documents and staging a crime scene are dismissed.  
22 Plaintiff is granted leave to amend to base a retaliation claim on these allegations, if he truthfully  
23 can do so.

24 5. The complaint does not state cognizable claims based on denial of access to the court or  
25 violation of equal protection. These claims are dismissed as to all defendants with leave to amend.

26 6. Rayford may, but is not required to, file a first amended complaint (“FAC”) remedying  
27 the deficiencies noted above regarding the claims for retaliation, denial of access to the court and  
28 equal protection. If he so chooses, he must include factual allegations indicating the specific

1 conduct of each defendant that violated these constitutional rights.

2 7. If Rayford wishes to file a FAC, he must do so within twenty-one days from the date of  
3 this Order. The FAC must include the caption and civil case number used in this Order and the  
4 words FIRST AMENDED COMPLAINT on the first page. Because an amended complaint  
5 completely replaces the original complaint, Rayford must include in it all the allegations he wishes  
6 to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate  
7 material from the original complaint by reference. Failure to amend within the designated time  
8 will result in the dismissal with prejudice of the claims that are dismissed in this Order with leave  
9 to amend. Rayford's cognizable claims will proceed in accordance with the schedule set forth  
10 below.

11 8. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of  
12 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint  
13 (docket no. 1) and all attachments thereto and a copy of this Order to Medina, Carmona, Brown,  
14 Tomasian, Sanchez, Chase and Salazar at SVSP. The Clerk shall also mail a courtesy copy of the  
15 complaint with all attachments and a copy of this Order to the California Attorney General's  
16 Office and a copy of this Order to Plaintiff.

17 9. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure require  
18 them to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant  
19 to Rule 4, if Defendants, after being notified of this action and asked by the Court, on behalf of  
20 Plaintiff, to waive service of the summons, fail to do so, they will be required to bear the cost of  
21 such service unless good cause be shown for their failure to sign and return the waiver forms. If  
22 service is waived, this action will proceed as if Defendants had been served on the date that the  
23 waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendants will not be required to serve  
24 and file an answer before sixty days from the date on which the request for waiver was sent. (This  
25 allows a longer time to respond than would be required if formal service of summons is  
26 necessary.)

27 Defendants are advised to read the statement set forth at the foot of the waiver form that  
28 more completely describes the duties of the parties with regard to waiver of service of the

1 summons. If service is waived after the date provided in the Notice but before Defendants have  
2 been personally served, the answer shall be due sixty days from the date on which the request for  
3 waiver was sent or twenty days from the date the waiver form is filed, whichever is later.

4 10. The following briefing schedule shall govern dispositive motions in this action:

5 a. No later than thirty days from the date the answer is due, Defendants shall file a  
6 motion for summary judgment or other dispositive motion. If Defendants file a motion for  
7 summary judgment, it shall be supported by adequate factual documentation and shall conform in  
8 all respects to Federal Rule of Civil Procedure 56. If Defendants are of the opinion that this case  
9 cannot be resolved by summary judgment, they shall so inform the Court prior to the date the  
10 summary judgment motion is due. All papers filed with the Court shall be promptly served on  
11 Plaintiff.

12 At the time of filing the motion for summary judgment or other dispositive motion,  
13 Defendants shall comply with the Ninth Circuit's decision in *Woods v. Carey*, 684 F.3d 934 (9th  
14 Cir. 2012), and provide Plaintiff with notice of what is required of him to oppose a summary  
15 judgment motion.

16 b. Plaintiff's opposition to the motion for summary judgment or other dispositive  
17 motion shall be filed with the Court and served on Defendants no later than twenty-eight days  
18 after the date on which Defendants' motion is filed.

19 Before filing his opposition, Plaintiff is advised to read the notice that will be provided to  
20 him by Defendants when the motion is filed, and Rule 56 of the Federal Rules of Civil Procedure  
21 and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (party opposing summary judgment must come  
22 forward with evidence showing triable issues of material fact on every essential element of his  
23 claim). Plaintiff is cautioned that because he bears the burden of proving his allegations in this  
24 case, he must be prepared to produce evidence in support of those allegations when he files his  
25 opposition to Defendants' summary judgment motion. Such evidence may include sworn  
26 declarations from himself and other witnesses, and copies of documents authenticated by sworn  
27 declaration. Plaintiff will not be able to avoid summary judgment simply by repeating the  
28 allegations of his complaint.

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c. Defendants shall file a reply brief no later than fourteen days after the date Plaintiff's opposition is filed.

d. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless the Court so orders at a later date.

11. Discovery may be taken in this action in accordance with the Federal Rules of Civil Procedure. Leave of the Court pursuant to Rule 30(a)(2) is hereby granted to Defendants to depose Plaintiff and any other necessary witnesses confined in prison.

12. All communications by Plaintiff with the Court must be served on Defendants, or Defendants' counsel once counsel has been designated, by mailing a true copy of the document to Defendants or counsel.

13. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

14. Extensions of time are not favored, though reasonable extensions will be granted. Any motion for an extension of time must be filed no later than ten days prior to the deadline sought to be extended.

15. The motion for appointment of counsel is DENIED. Docket no. 2.

**IT IS SO ORDERED.**

Dated: June 5, 2014



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VINCE CHHABRIA  
United States District Judge