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

TOMAS LOPEZ MENEWEATHER	)	No. C 07-04204 SBA (PR)
	)	
Plaintiff,	)	<b><u>ORDER OF SERVICE</u></b>
	)	
v.	)	
	)	
B. POWELL, et al.,	)	
	)	
Defendants.	)	

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**INTRODUCTION**

Plaintiff Tomas Lopez Meneweather, a state prisoner currently incarcerated at Salinas Valley State Prison (SVSP), alleges a violation of his constitutional rights against the following Defendants: SVSP Correctional Officers B. Powell, D. Ferry, T.G. Miller, G. Bailey, A. Meyers, Rincon, Reyes, and J. Ippolito as well as SVSP Licenced Vocational Nurse O'Kelly. Plaintiff has since filed an amended complaint, which raises the same Eighth Amendment claim from his original complaint. He has been granted leave to proceed in forma pauperis.

Venue is proper because a substantial part of the events giving rise to the action occurred at SVSP in Soledad, California, which is located in this judicial district. See 28 U.S.C. § 1391(b). The Court now reviews the claims raised in Plaintiff's action.

**BACKGROUND**

The following allegations are taken from Plaintiff's original and amended complaints:

From July 18, 2006 to December 21, 2006 and from January 6, 2007 to July 12, 2007, Plaintiff was housed in administrative segregation and "unable to clean his cell." (Compl. at 3.) He alleges that he is an "A.D.A. inmate" because he is confined to a wheelchair. (Am. Compl. at 3.) Inmate workers are not allowed in administrative segregation, and "floor staff prison guards are supposed to clean Plaintiff's cell." (Compl. at 3.) Other inmates "often flooded their cells by overflowing their toilets," thus, "water, waste and human feces came into Plaintiff's cell and was left there until the air from the vent dried it up which sometimes took several days." (Id.) Plaintiff requested Defendants to

1 "clean [his] cell at numerous times over the days, weeks, and months of [his] administrative  
2 segregation confinement, and they refused, causing Plaintiff to catch a[n] incurable sinus infection  
3 and pneumonia [sic]." (Am. Compl. at 3.) Plaintiff further claims that on November 23, 2006 and  
4 November 27, 2006, he asked Defendant O'Kelly, who was part of the SVSP medical staff, to draft a  
5 "report on the conditions of [his] cell and [his] health problems caused by the filthy condition of [his]  
6 cell, but [Defendant O'Kelly] refused . . . ." (Pl.'s Ex. A, Attach. to 602 Inmate Appeal at 2.)

7 Plaintiff seeks monetary damages. (Am. Compl. at 3-4.)

## 8 DISCUSSION

### 9 **I. Standard of Review**

10 A federal court must conduct a preliminary screening in any case in which a prisoner seeks  
11 redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.  
12 § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that  
13 are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief  
14 from a defendant who is immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must,  
15 however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
16 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
17 (1) that a right secured by the Constitution or laws of the United States was violated; and (2) that the  
18 alleged violation was committed by a person acting under color of state law. See West v. Atkins, 487  
19 U.S. 42, 48 (1988).

20 A supervisor may be liable under § 1983 upon a showing of personal involvement in the  
21 constitutional deprivation or a sufficient causal connection between the supervisor's wrongful conduct  
22 and the constitutional violation. Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir.  
23 1991) (en banc) (citation omitted). A supervisor therefore generally "is only liable for constitutional  
24 violations of his subordinates if the supervisor participated in or directed the violations, or knew of  
25 the violations and failed to act to prevent them." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).  
26 A supervisor may be liable for implementing "a policy so deficient that the policy itself is a  
27 repudiation of constitutional rights and is the moving force of the constitutional violation." Redman,  
28 942 F.2d at 1446; see Jeffers v. Gomez, 267 F.3d 895, 917 (9th Cir. 2001).

1 **II. Eighth Amendment Claim**

2 The Constitution does not mandate comfortable prisons, but neither does it permit inhumane  
3 ones. See Farmer v. Brennan, 511 U.S. 825, 832 (1994). The treatment a prisoner receives in prison  
4 and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment.  
5 See Helling v. McKinney, 509 U.S. 25, 31 (1993).

6 In determining whether a deprivation of a basic necessity is sufficiently serious to satisfy the  
7 objective component of an Eighth Amendment claim, a court must consider the circumstances, nature,  
8 and duration of the deprivation. The more basic the need, the shorter the time it can be withheld. See  
9 Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000). Substantial deprivations of shelter, food,  
10 drinking water or sanitation for four days, for example, are sufficiently serious to satisfy the objective  
11 component of an Eighth Amendment claim. See id. at 732-73. The requisite state of mind to  
12 establish an Eighth Amendment violation depends on the nature of the claim. In prison-conditions  
13 cases, the necessary state of mind is one of "deliberate indifference." See, e.g., Farmer, 511 U.S. at  
14 834 (inmate safety); Helling, 509 U.S. at 32-33 (inmate health); Estelle v. Gamble, 429 U.S. 97, 104  
15 (1976) (inmate health).

16 Neither negligence nor gross negligence will constitute deliberate indifference. See Farmer,  
17 511 U.S. at 835-36 & n.4; see also Estelle, 429 U.S. at 106 (establishing that deliberate indifference  
18 requires more than negligence). A prison official cannot be held liable under the Eighth Amendment  
19 for denying an inmate humane conditions of confinement unless the standard for criminal  
20 recklessness is met, i.e., the official knows of and disregards an excessive risk to inmate health or  
21 safety. See Farmer, 511 U.S. at 837. The official must both be aware of facts from which the  
22 inference could be drawn that a substantial risk of serious harm exists, and he must also draw the  
23 inference. See id. An Eighth Amendment claimant need not show, however, that a prison official  
24 acted or failed to act believing that harm actually would befall an inmate; it is enough that the official  
25 acted or failed to act despite his knowledge of a substantial risk of serious harm. See id. at 842. This  
26 is a question of fact. See Farmer, 511 U.S. at 842. A heightened pleading standard applies to the  
27 subjective prong of Eighth Amendment claims: the plaintiff must make nonconclusory allegations  
28 supporting an inference of unlawful intent. Alfrey v. United States, 276 F.3d 557, 567-68 (9th Cir.

1 2002) (applying standard to Bivens Eighth Amendment claim).

2 Although the Eighth Amendment protects against cruel and unusual punishment, this does not  
3 mean that federal courts can or should interfere whenever prisoners are inconvenienced or suffer de  
4 minimis injuries. See, e.g., Holloway v. Gunnell, 685 F.2d 150 (5th Cir. 1985) (no claim stated  
5 where prisoner forced to spend two days in hot dirty cell with no water); Evans v. Fogg, 466 F. Supp.  
6 949 (S.D.N.Y. 1979) (no claim stated by prisoner confined for twenty-four hours in refuse strewn cell  
7 and for two days in flooded cell). Federal courts instead should avoid enmeshing themselves in the  
8 minutiae of prison operations in the name of the Eighth Amendment. See Wright v. Rushen, 642 F.2d  
9 1129, 1132 (9th Cir. 1981).

10 Plaintiff alleges that the named Defendants, who are mostly SVSP correctional officers, were  
11 responsible for cleaning his cell; however, they "refused" Plaintiff's requests to have his cell cleaned.  
12 (Am. Compl. at 3.) Plaintiff alleges that he is disabled and cannot adequately clean his own cell. He  
13 claims that "waste and human feces" from neighboring cells flooded into his cell, and Defendants  
14 refused to clean his cell for up to "several days." (Compl. at 3.) Plaintiff also alleges that Defendant  
15 O'Kelly acted with deliberate indifference by refusing to file a report about the "filthy" conditions in  
16 Plaintiff's cell. Plaintiff alleges that Defendants' actions caused him to become ill.

17 Liberally construed, Plaintiff states a COGNIZABLE Eighth Amendment claim that  
18 Defendants Powell, Ferry, Miller, Bailey, Meyers, Rincon, Reyes, Ippolito and O'Kelly acted with  
19 deliberate indifference to his health and safety needs.

20 **CONCLUSION**

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

- 22 1. The Court finds COGNIZABLE Plaintiff's Eighth Amendment deliberate indifference  
23 claim against Defendants Powell, Ferry, Miller, Bailey, Meyers, Rincon, Reyes, Ippolito and O'Kelly.
- 24 2. The Clerk of the Court shall issue summons and the United States Marshal shall serve,  
25 without prepayment of fees, copies of: (1) the complaint and amended complaint as well as copies of  
26 all attachments thereto (docket nos. 1, 4); and (2) a copy of this Order upon **SVSP Correctional**  
27 **Officers B. Powell, D. Ferry, T.G. Miller, G. Bailey, A. Meyers, J. Ippolito, Reyes and Rincon as**  
28 **well as SVSP Licensed Vocational Nurse O'Kelly.** The Clerk shall also mail copies of these

1 documents to the Attorney General of the State of California. Additionally, the Clerk shall serve a  
2 copy of this Order on Plaintiff.

3 3. In order to expedite the resolution of this case, the Court orders as follows:

4 a. Defendants shall answer the complaint in accordance with the Federal Rules of  
5 Civil Procedure. In addition, no later than **thirty (30) days** from the date their answer is due,  
6 Defendants shall file a motion for summary judgment or other dispositive motion. The motion shall  
7 be supported by adequate factual documentation and shall conform in all respects to Federal Rule of  
8 Civil Procedure 56. If Defendants are of the opinion that this case cannot be resolved by summary  
9 judgment, they shall so inform the Court prior to the date their summary judgment motion is due. All  
10 papers filed with the Court shall be promptly served on Plaintiff.

11 b. Plaintiff's opposition to the dispositive motion shall be filed with the Court and  
12 served on Defendants no later than **forty-five (45) days** after the date on which Defendants' motion is  
13 filed. The Ninth Circuit has held that the following notice should be given to plaintiffs:

14 The defendants have made a motion for summary  
15 judgment by which they seek to have your case dismissed.  
16 A motion for summary judgment under Rule 56 of the  
Federal Rules of Civil Procedure will, if granted, end your  
case.

17 Rule 56 tells you what you must do in order to  
18 oppose a motion for summary judgment. Generally,  
summary judgment must be granted when there is no  
19 genuine issue of material fact -- that is, if there is no real  
dispute about any fact that would affect the result of your  
20 case, the party who asked for summary judgment is entitled  
to judgment as a matter of law, which will end your case.  
21 When a party you are suing makes a motion for summary  
judgment that is properly supported by declarations (or  
22 other sworn testimony), you cannot simply rely on what  
your complaint says. Instead, you must set out specific  
23 facts in declarations, depositions, answers to  
interrogatories, or authenticated documents, as provided in  
24 Rule 56(e), that contradict the facts shown in the  
defendant's declarations and documents and show that there  
25 is a genuine issue of material fact for trial. If you do not  
submit your own evidence in opposition, summary  
26 judgment, if appropriate, may be entered against you. If  
summary judgment is granted [in favor of the defendants],  
27 your case will be dismissed and there will be no trial.

28 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc). Plaintiff is advised to read

1 Rule 56 of the Federal Rules of Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)  
2 (party opposing summary judgment must come forward with evidence showing triable issues of  
3 material fact on every essential element of his claim). Plaintiff is cautioned that because he bears the  
4 burden of proving his allegations in this case, he must be prepared to produce evidence in support of  
5 those allegations when he files his opposition to Defendants' dispositive motion. Such evidence may  
6 include sworn declarations from himself and other witnesses to the incident, and copies of documents  
7 authenticated by sworn declaration. Plaintiff is advised that if he fails to submit declarations  
8 contesting the version of the facts contained in Defendants' declarations, Defendants' version may be  
9 taken as true and the case may be decided in Defendants' favor without a trial. Plaintiff will not be  
10 able to avoid summary judgment simply by repeating the allegations of his complaint.

11 c. If Defendants wish to file a reply brief, they shall do so no later than **fifteen**  
12 **(15) days** after the date Plaintiff's opposition is filed.

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

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

18 5. All communications by Plaintiff with the Court must be served on Defendants, or their  
19 counsel once counsel has been designated, by mailing a true copy of the document to Defendants or  
20 their counsel.  
21

22 6. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court  
23 informed of any change of address and must comply with the Court's orders in a timely fashion.  
24 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal  
25 Rule of Civil Procedure 41(b).

26 7. Extensions of time are not favored, though reasonable extensions will be granted. The  
27 party making the motion must still meet the deadlines set by the Court until an order addressing the  
28 motion for an extension of time is issued. Any motion for an extension of time must be filed no later

1 than **fifteen (15) days** prior to the deadline sought to be extended.

2 IT IS SO ORDERED.

3 DATED: 10/2/08

*Saundra B. Armstrong*  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 TOMAS L MENEWEATHER,  
5 Plaintiff,

Case Number: CV07-04204 SBA

**CERTIFICATE OF SERVICE**

6 v.

7 B POWELL et al,  
8 Defendant.

9  
10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
11 Court, Northern District of California.

12 That on October 3, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
15 in the Clerk's office.

16 Tomas Lopez Meneweather D35219  
17 Salinas Valley State Prison  
18 P.O. Box 1050  
19 Soledad, CA 93960

20 Dated: October 3, 2008

21 Richard W. Wieking, Clerk  
22 By: LISA R CLARK, Deputy Clerk  
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