

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

3 DEMETRIUS AHMED WRIGHT,

No. C 10-0064 CW (PR)

4 Plaintiff,

ORDER GRANTING IN PART
DEFENDANTS' MOTION TO DISMISS;
GRANTING IN PART DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT;
AND REFERRING CASE TO PRO SE
PRISONER SETTLEMENT PROGRAM

5 v.

6 R. CARRASCO, et al.,

7 Defendants.

(Docket nos. 29, 40)

8
9 _____/

10 Plaintiff Demetrius Ahmed Wright, a prisoner at Salinas Valley
11 State Prison (SVSP), filed this pro se civil rights action under
12 42 U.S.C. § 1983. Plaintiff alleges that prison officials at SVSP
13 were deliberately indifferent to his serious medical needs and used
14 excessive force against him in violation of the Eighth Amendment.
15 The Court found cognizable Plaintiff's Eighth Amendment claims and
16 exercised supplemental jurisdiction over Plaintiff's state law
17 claims of negligence, assault and battery. Defendants R. Carrasco,
18 D. Ferry and E. West now move to dismiss and for summary judgment.
19 Having considered all the papers filed by the parties, the Court
20 GRANTS in part the motion to dismiss, and GRANTS in part the motion
21 for summary judgment.

22 BACKGROUND

23 The following facts are taken from the allegations in
24 Plaintiff's verified complaint.

25 On August 31, 2008, Plaintiff was incarcerated at SVSP.
26 Carrasco and Ferry were correctional officers at SVSP. West was a
27 licensed vocational nurse at SVSP.

28

1 After Plaintiff requested escort to the medical clinic to
2 receive his prescription medication for pain and nausea, Ferry
3 placed Plaintiff in restraints and escorted him from his housing
4 unit to the medical clinic. Compl. ¶ 7. Carrasco accompanied
5 them. Id. ¶ 8.

6 When Plaintiff approached the medical clinic window, nurse
7 Hernandez alerted West to Plaintiff's presence. West replied: "He
8 can go to the cage and wait. I'll be another hour." Compl. ¶ 10.
9 Hernandez directed Ferry to return Plaintiff to his housing unit
10 because the medical staff was not ready for him. Id.

11 Plaintiff was in great pain because he did not receive his
12 medication; he asked to speak with a supervisor. Compl. ¶ 11.
13 Ferry and Carrasco then took hold of Plaintiff's right and left
14 forearms, respectively. Id. They refused to call a supervisor and
15 ignored Plaintiff's complaints of pain and nausea. Id. ¶ 12.
16 Plaintiff began to vomit blood. Id.

17 While walking back to the housing unit, Carrasco forcefully
18 pulled Plaintiff and put him off balance. Compl. ¶ 13. Plaintiff
19 asked Carrasco three times to stop pulling him because he was in
20 pain. Id. Carrasco grasped the back of Plaintiff's neck with his
21 right hand and struck Plaintiff in the face and head with his knee.
22 Id. ¶ 14. "These defendants" then slammed Plaintiff to the ground,
23 and Carrasco kned Plaintiff in the face and head and held
24 Plaintiff's head down by placing his knee on it. Id.

25 Approximately fifteen minutes after Plaintiff returned to the
26 holding cage, West visited him for a medical assessment. Compl.
27 ¶ 15. West noted injuries to both sides of Plaintiff's face. Id.

1 She also gave Plaintiff the medication he had requested almost two
2 hours earlier. Id.

3 A few hours later, Correctional Lieutenant S. Hatton and
4 Sergeant Ingle interviewed Plaintiff about his allegation of
5 excessive force. Compl. ¶ 16. The interview was videotaped. Id.

6 On September 1, 2008, Plaintiff submitted an inmate appeal
7 (SVSP A-08-04056) regarding excessive force. Compl. ¶ 16; Decl. E.
8 Medina Supp. Mot. Summ J. (Medina Decl.) Ex. B. The appeal was
9 exhausted and denied. Id.

10 Additionally, Plaintiff's request for an interview with D.
11 Lewis, a nursing supervisor, led to an informal resolution that
12 Plaintiff's medication would be dispensed properly. Compl. ¶ 19.

13 On January 1, 2010, Plaintiff filed the present action for
14 damages and injunctive relief. Plaintiff claims that West's delay
15 in providing him his prescribed medication resulted in his
16 suffering pain and nausea for two hours and constitutes deliberate
17 indifference to his serious medical needs in violation of the
18 Eighth Amendment, and negligence under California law. Compl.
19 ¶¶ 22-23. Further, Plaintiff claims that Carrasco and Ferry's use
20 of unnecessary physical force constitutes cruel and unusual
21 punishment in violation of the Eighth Amendment, and assault and
22 battery under California law. Id. ¶¶ 20-21.

23 DISCUSSION

24 I. Motion to Dismiss

25 Defendants move to dismiss Plaintiff's Eighth Amendment
26 deliberate indifference and state law negligence claims against
27
28

1 West¹ pursuant to the unenumerated portion of Federal Rule of Civil
2 Procedure 12(b). Defendants argue that Plaintiff failed to exhaust
3 his administrative remedies as required by the Prison Litigation
4 Reform Act (PLRA), 42 U.S.C. § 1997e(a).²

5 A. Legal Standard

6 The PLRA provides, "No action shall be brought with respect to
7 prison conditions under [42 U.S.C. § 1983], or any other Federal
8 law, by a prisoner confined in any jail, prison, or other
9 correctional facility until such administrative remedies as are
10 available are exhausted." 42 U.S.C. § 1997e(a). The PLRA's
11 exhaustion requirement is mandatory and not subject to the
12 discretion of the court. Woodford v. Ngo, 548 U.S. 81, 85 (2006).
13 A complaint must be dismissed if the prisoner did not exhaust all
14 available administrative remedies before filing suit. Booth v.
15 Churner, 532 U.S. 731, 738 (2001); McKinney v. Carey, 311 F.3d
16 1198, 1199 (9th Cir. 2002).

17 The PLRA requires "proper exhaustion" of administrative
18 remedies. Woodford, 548 U.S. at 93. To meet this exacting
19 standard, prisoners not only must lodge a formal administrative
20 grievance, but also pursue it through each stage of the

21 _____
22 ¹ Defendants' motion to dismiss and Plaintiff's opposition
23 suggest that Plaintiff's Eighth Amendment claim of deliberate
24 indifference was made against all three Defendants. Further,
25 Defendants' motion to dismiss suggests that Plaintiff's state law
26 claim of negligence was made against all three Defendants.
However, the Court finds that the language of the complaint
indicates clearly that Plaintiff directed the Eighth Amendment
claim of deliberate indifference and the state law claim of
negligence against only West. See Compl. ¶¶ 22-23.

27 ² Defendants also move to dismiss Plaintiff's excessive force
28 and assault and battery claims against Ferry. This argument is
addressed below, in section II, subsection D of this Order.

1 administrative process in "compliance with an agency's deadlines
2 and other critical procedural rules." Id. at 90. A prisoner must
3 exhaust even when the remedy he or she seeks is unavailable through
4 the grievance process, notably money damages. Id. at 85-86 (citing
5 Booth, 532 U.S. at 734); see also Morton v. Hall, 599 F.3d 942, 945
6 (9th Cir. 2010).

7 State prison regulations define the contours of proper
8 exhaustion. Jones v. Bock, 549 U.S. 199, 218 (2007). Under
9 California law, inmates have a right to an administrative appeal of
10 "any departmental decision, action, condition, or policy which they
11 can demonstrate as having an adverse effect upon their welfare."
12 Cal. Code Regs. (CCR) tit. 15, § 3084.1(a). Inmates also have a
13 right to file administrative appeals alleging misconduct by
14 correctional officers. Id. § 3084.1(e).

15 To exhaust all available administrative remedies, a prisoner
16 in California must complete a Form 602 and proceed through the
17 following four levels of administrative review: (1) an informal
18 level grievance filed directly with the prison staff member against
19 whom the grievance is brought; (2) a first formal level appeal
20 filed with one of the institution's appeal coordinators; (3) a
21 second formal level appeal filed with the institution head or
22 designee; and (4) a third formal level appeal filed with the
23 Director of the California Department of Corrections and
24 Rehabilitation (CDCR) or designee. Id. § 3084.5; see Brodheim v.
25 Cry, 584 F.3d 1262, 1264-65 (9th Cir. 2009). This satisfies the
26 administrative remedies exhaustion requirement under § 1997e(a).
27 Barry v. Ratelle, 985 F. Supp. 1235, 1237-38 (S.D. Cal. 1997).
28

1 Non-exhaustion under § 1997e(a) is an affirmative defense that
2 must be raised and proved by a defendant in an unenumerated motion
3 to dismiss under Federal Rule of Civil Procedure 12(b). Jones, 549
4 U.S. at 216; Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003).
5 In deciding such a motion, the court may look beyond the pleadings
6 and decide disputed issues of fact. Wyatt, 315 F.3d at 1119-20.

7 B. Eighth Amendment Claim Against West

8 Defendants argue that Plaintiff never submitted a grievance
9 regarding West's alleged deliberate indifference to Plaintiff's
10 serious medical needs and thus deprived prison officials of a full
11 and fair opportunity to adjudicate this claim before Plaintiff
12 filed this action.

13 In response, Plaintiff argues he satisfied the exhaustion
14 requirement by submitting an informal "Request for Interview" with
15 nursing supervisor D. Lewis and, as a result, he was interviewed by
16 Lewis and informed by her that the nursing staff would dispense his
17 medication properly in the future. Plaintiff maintains that
18 because he encountered no further problems during the time he was
19 receiving medication, there was no need for further administrative
20 review.

21 The Court finds Plaintiff's argument unpersuasive. As noted
22 above, the correct avenue to exhaust administrative remedies is by
23 filing a Form 602 and proceeding through four levels of appeal.
24 Here, Plaintiff did not follow these procedures with respect to his
25 complaints against West. Rather, the resolution Plaintiff secured
26 from Lewis at the informal level concerned only the issue of the
27 dispensation of his medication. It did not address the issue of
28

1 West's alleged failure to attend to Plaintiff's serious medical
2 needs and his resulting injury. Neither did Plaintiff raise the
3 issue of West's inadequate medical care in the grievance he
4 submitted on September 1, 2008 (SVSP A-08-04056), which addressed
5 his excessive force claims. Thus, Plaintiff never offered prison
6 officials a full and fair opportunity to address the issue of
7 West's actions before he filed this lawsuit.

8 Because Plaintiff failed to exhaust his administrative
9 remedies with respect to his Eighth Amendment claim of deliberate
10 indifference against West, the Court GRANTS, without prejudice, the
11 motion to dismiss this claim. Plaintiff may refile this claim in a
12 new action if he is able to exhaust his administrative remedies in
13 compliance with the California Code of Regulations.

14 C. State Law Claim Against West

15 Defendants argue that Plaintiff failed to exhaust his
16 administrative remedies under the PLRA with respect to his
17 supplemental state law negligence claim against West. The PLRA
18 exhaustion requirement does not apply to state law claims and
19 Defendants have not argued that Plaintiff failed to meet the
20 applicable state law exhaustion requirement. See Tapia v.
21 Alameida, 2006 WL 3457214, at *3 (E.D. Cal.) (holding that section
22 1997e(a) does not apply to state law claims); see also Martinez v.
23 California, 2009 WL 649892, at *3 (E.D. Cal.) (discussing the
24 application of California's Tort Claims Act to a prisoner's state
25 tort claims of negligence, assault and battery).

26 Nevertheless, because the Court has dismissed Plaintiff's
27 Eighth Amendment deliberate indifference claim against West,
28

1 Plaintiff's supplemental state law negligence claim against West is
2 also DISMISSED without prejudice. See 28 U.S.C. § 1367(c)(3);
3 Acri v. Varian Associates, Inc., 114 F.3d 999, 1000 (9th Cir. 1997)
4 (holding district court correctly exercises discretionary authority
5 to dismiss state law claims when associated federal claims
6 dismissed before trial). Plaintiff may refile this claim as
7 supplemental to a new federal claim against West if he is able
8 properly to exhaust his administrative remedies. He may instead
9 file it in state court, but, again, only if he is able properly to
10 exhaust the appropriate state administrative remedies.

11 II. Motion for Summary Judgment

12 Defendants argue that they are entitled to summary judgment
13 concerning Plaintiff's claims alleging excessive force, assault and
14 battery against Ferry and Carrasco. Defendants contend that they
15 used reasonable force to regain control of Plaintiff and that the
16 force used was for the sole purpose of restoring or maintaining
17 order. Further, Defendants argue that, even if the use of force
18 was excessive, Ferry and Carrasco are entitled to qualified
19 immunity because reasonable officers would not have known that
20 their actions were unlawful.

21 A. Legal Standard

22 Summary judgment is only proper where the pleadings, discovery
23 and affidavits show there is "no genuine issue as to any material
24 fact and that the moving party is entitled to judgment as a matter
25 of law." Fed. R. Civ. P. 56(c). The court will grant summary
26 judgment "against a party who fails to make a showing sufficient to
27 establish the existence of an element essential to that party's
28 case, and on which that party will bear the burden of proof at

1 trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

2 The moving party bears the initial burden of identifying those
3 portions of the record that demonstrate the absence of a genuine
4 issue of material fact. The burden then shifts to the non-moving
5 party to "go beyond the pleadings, and by his own affidavits, or by
6 the 'depositions, answers to interrogatories, or admissions on
7 file,' designate 'specific facts showing that there is a genuine
8 issue for trial.'" Id. at 324 (citing Fed. R. Civ. P. 56(e)).

9 B. Motion to Exclude Videotape

10 In support of their motion for summary judgment, Defendants
11 rely on statements made by Plaintiff and Plaintiff's physical
12 appearance, as captured in a videotaped interview of Plaintiff by
13 Correctional Lieutenant S. Hatton and Sergeant Ingle about the
14 incident on the day it occurred. See Hatton Decl. Ex. D
15 (videotape).

16 Plaintiff alleges that he has been unable to view the
17 videotape even though he followed the instructions of Defendants'
18 counsel and requested the videotape from the Litigation
19 Coordinator's office. Consequently, he moves to exclude the
20 videotape as evidence in support of the motion for summary judgment
21 and to deny the motion for summary judgment until he has had the
22 opportunity to view the videotape.

23 The Court will not consider the videotape on this motion but
24 will consider only the interview transcript as quoted in
25 Defendants' brief. The Court will review the videotape only to
26 ensure that the transcript is accurate. Plaintiff's motion to
27 exclude the videotape is GRANTED.

1 C. Excessive Force

2 The treatment a prisoner receives in prison and the conditions
3 under which he is confined are subject to scrutiny under the Eighth
4 Amendment. Helling v. McKinney, 509 U.S. 25, 31 (1993). "After
5 incarceration, only the unnecessary and wanton infliction of pain
6 . . . constitutes cruel and unusual punishment forbidden by the
7 Eighth Amendment." Whitley v. Albers, 475 U.S. 312, 319 (1986)
8 (ellipsis in original). A prison official violates the Eighth
9 Amendment when two requirements are met: (1) the deprivation
10 alleged must be objectively, sufficiently serious, Farmer v.
11 Brennan, 511 U.S. 825, 834 (1994) (citing Wilson v. Seiter, 501
12 U.S. 294, 298 (1991)), and (2) the prison official must possess a
13 sufficiently culpable state of mind, i.e., the offending conduct
14 must be wanton. Id. (citing Wilson, 501 U.S. at 297); LeMaire v.
15 Maass, 12 F.3d 1444, 1451 (9th Cir. 1993).

16 Whenever prison officials stand accused of using excessive
17 force in violation of the Eighth Amendment, the core judicial
18 inquiry is whether force was applied in a good-faith effort to
19 maintain or restore discipline, or maliciously and sadistically to
20 cause harm. Hudson v. McMillian, 503 U.S. 1, 6-7 (1992).

21 In determining whether the use of force was for the purpose of
22 maintaining or restoring discipline, or for the malicious and
23 sadistic purpose of causing harm, a court may evaluate the need for
24 application of force, the relationship between that need and the
25 amount of force used, the extent of any injury inflicted, the
26 threat reasonably perceived by the responsible officials, and any
27 efforts made to temper the severity of a forceful response.
28 Hudson, 503 U.S. at 7; LeMaire, 12 F.3d at 1454; see also Spain v.

1 Procunier, 600 F.2d 189, 195 (9th Cir. 1979) (guards may use force
2 only in proportion to need in each situation).

3 Although the extent of injury suffered by a prisoner is one of
4 the factors to be considered in determining whether the use of
5 force is wanton and unnecessary, the absence of serious injury does
6 not end the Eighth Amendment inquiry. Hudson, 503 U.S. at 7.
7 Whether the alleged wrongdoing is objectively "harmful enough" to
8 establish a constitutional violation is contextual and responsive
9 to contemporary standards of decency. Id. at 8 (citing Estelle v.
10 Gamble, 429 U.S. 97, 103 (1976)). Such standards are always
11 violated when prison officials maliciously and sadistically use
12 force to cause harm, whether or not significant injury is evident.
13 Id.; see Felix v. McCarthy, 939 F.2d 699, 701-02 (9th Cir. 1991)
14 (it is not degree of injury which makes out violation of Eighth
15 Amendment but use of official force or authority that is
16 intentional, unjustified, brutal and offensive to human dignity).

17 This is not to say that the "absence of serious injury" is not
18 relevant to the Eighth Amendment inquiry. Hudson, 503 U.S. at 7.
19 The extent of injury suffered by an inmate is one factor that may
20 suggest whether the use of force could possibly have been thought
21 necessary in a particular situation. Id. The extent of injury may
22 also provide some indication of the amount of force applied.
23 Wilkins v. Gaddy, 130 S. Ct. 1175, 1178 (2010). But not every
24 malevolent touch by a prison guard gives rise to a federal cause of
25 action. Hudson, 503 U.S. at 9. The Eighth Amendment's prohibition
26 of cruel and unusual punishment necessarily excludes from
27 constitutional recognition de minimis uses of physical force,
28 provided that the use of force is not of a sort repugnant to the

1 conscience. Id. An inmate who complains of a push or shove that
2 causes no discernable injury almost certainly fails to state a
3 valid excessive force claim. Id.

4 D. Eighth Amendment Claim Against Ferry³

5 Defendants argue that the undisputed evidence shows that
6 Plaintiff has admitted that Ferry did not use force against him.
7 Defendants are correct.

8 Plaintiff offers inconsistent accounts of Ferry's involvement.
9 In his complaint, Plaintiff suggests that Ferry used force against
10 him when he states that "these defendants" slammed him to the
11 ground. See Compl. ¶ 14. On Plaintiff's Form 602 and in
12 Plaintiff's interview with Lieutenant Hatton and Sergeant Ingle,
13 however, Plaintiff admitted that Ferry did not use force against
14 him. On his Form 602, Plaintiff stated that Ferry was already
15 holding his left arm when Carrasco approached and took hold of his
16 right arm. Medina Decl. Ex. B. When Carrasco pulled him
17 forcefully, Plaintiff continued, Plaintiff asked Carrasco to allow
18 Ferry to escort him. Id. Plaintiff then described how Carrasco
19 grasped the back of Plaintiff's neck with his right hand, struck
20 Plaintiff twice before he hit the ground and again struck Plaintiff
21 multiple times while he was on the ground. Id.

22 Plaintiff offered a similar account in his interview. He
23 described Ferry's involvement as follows: Ferry was merely standing
24 on Plaintiff's left side; Plaintiff told Carrasco to let Ferry
25

26 ³Defendants move to dismiss Plaintiff's Eighth Amendment
27 excessive force and state law assault and battery claims against
28 Ferry as unexhausted. Plaintiff presents evidence he argues shows
exhaustion. The Court DENIES this motion as moot because, even if
the claims are exhausted, Ferry is entitled to summary judgment.

1 escort him; while Carrasco pulled Plaintiff in one direction, Ferry
2 pulled him in another direction. Carrasco put his arm around
3 Plaintiff's neck, pushed his head down towards waist level and
4 kned him in the face twice before he hit the ground. When Hatton
5 asked Plaintiff if he was "saying it was all Officer Carrasco,"
6 Plaintiff said, "Yes." Hatton Decl. Ex. D.

7 Based on the above facts, the Court determines that Plaintiff
8 has not presented evidence that Ferry used excessive force against
9 him. Plaintiff cannot defeat summary judgment by creating a
10 dispute of fact based on his own contradictory statements.

11 Plaintiff's evidence shows only that Ferry was holding one of his
12 arms because Ferry, along with Carrasco, was escorting Plaintiff
13 back to his housing unit. Further, even if Ferry used force,
14 Plaintiff's evidence shows that Ferry did not maliciously and
15 sadistically use such force to cause Plaintiff harm, and that his
16 use of force was de minimis and did not amount to a violation of
17 Plaintiff's Eighth Amendment rights. See Hudson, 503 U.S. at 9.

18 Because Plaintiff has not raised a genuine dispute of material
19 fact as to whether Ferry's actions amount to excessive force,
20 summary judgment is GRANTED to Ferry on this claim. Further,
21 because the Court concludes that Ferry did not violate Plaintiff's
22 Eighth Amendment rights, it does not reach the merits of Ferry's
23 qualified immunity claim.

24 E. State Law Claims Against Ferry

25 Plaintiff's state law assault and battery claims against Ferry
26 fail for the same reason his Eighth Amendment excessive force claim
27 failed. Causes of action for California law torts of assault and
28 battery require showing that the use of force was unreasonable.

1 Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 922 (9th
2 Cir. 2001). As previously set forth, Plaintiff's evidence shows
3 that Ferry did not use force against him. Further, even if Ferry
4 used force, Plaintiff's evidence demonstrates that the force was
5 minimal and not unreasonable.

6 Because Plaintiff has not raised a genuine dispute of material
7 fact as to whether Ferry's actions amount to assault and battery,
8 summary judgment is GRANTED to Ferry on these claims.

9 F. Eighth Amendment Claim Against Carrasco

10 Defendants argue that Carrasco's use of force was not
11 excessive and, therefore, did not violate Plaintiff's Eighth
12 Amendment rights. For the reasons discussed below, the Court finds
13 that Plaintiff has raised genuine issues of material fact as to
14 whether Carrasco used excessive force against him.

15 Defendants argue that Carrasco used reasonable force in a
16 good-faith effort to maintain or restore order and, further, that
17 Plaintiff cannot demonstrate that Carrasco used force maliciously
18 and sadistically to cause harm. Defendants argue that any injury
19 Plaintiff suffered was minimal and that the force used was
20 proportional and necessary due to Plaintiff's refusal to comply
21 with orders. Even if the Court admitted the videotape, and the
22 videotape showed no visible injury, summary judgment would be
23 denied because the absence of serious injury does not end the
24 Eighth Amendment inquiry. See Hudson, 503 U.S. at 7. Based on
25 Plaintiff's evidence, a reasonable jury could find that Carrasco
26 acted wantonly, maliciously and for the express purpose of causing
27 harm. Direct evidence of malice and sadism is not required.
28

1 Accordingly, summary judgment is DENIED on this claim, and the
2 Court will retain supplemental jurisdiction over Plaintiff's state
3 law assault and battery claims against Carrasco.

4 CONCLUSION

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

6 1. Defendants' motion to dismiss the Eighth Amendment
7 deliberate indifference claim against West is GRANTED without
8 prejudice to refiling if Plaintiff is able properly to exhaust his
9 prison grievance remedies.

10 2. Plaintiff's supplemental state law negligence claim against
11 West is DISMISSED without prejudice to Plaintiff's raising such a
12 claim supplemental to a new federal complaint, or in state court,
13 if he is able to exhaust his state administrative remedies.

14 3. Defendants' motion to dismiss the Eighth Amendment excessive
15 force and state law assault and battery claims against Ferry is
16 DENIED as moot.

17 4. Plaintiff's motion to exclude the videotape is GRANTED.

18 5. Defendants' motion for summary judgment is GRANTED in part
19 and DENIED in part, as follows:

20 a. Summary judgment is GRANTED as to Plaintiff's Eighth
21 Amendment excessive force and state law assault and battery claims
22 against Ferry.

23 b. Summary judgment is DENIED as to Plaintiff's Eighth
24 Amendment excessive force claim against Carrasco. The Court
25 retains supplemental jurisdiction over Plaintiff's state law
26 assault and battery claims against Carrasco.

27 6. The Northern District of California has established a Pro
28 Se Prisoner Settlement Program. Certain prisoner civil rights

1 cases may be referred to a magistrate judge for a settlement
2 conference. The Court finds that a referral is in order now that
3 Plaintiff's excessive force claim against Carrasco has survived
4 summary judgment. Thus, this case is REFERRED to Magistrate Judge
5 Vadas for a settlement conference.

6 The conference shall take place within one-hundred-twenty (120)
7 days of the date of this Order, or as soon thereafter as is
8 convenient to the magistrate judge's calendar. Magistrate Judge
9 Vadas shall coordinate a time and date for the conference with all
10 interested parties and/or their representatives and, within ten
11 (10) days after the conclusion of the conference, file with the
12 Court a report regarding the conference.

13 The Clerk shall provide a copy of this Order, and copies of
14 documents from the court file that are not accessible
15 electronically, to Magistrate Judge Vadas.

16 7. The Clerk shall send a copy of this Order to Plaintiff.

17 This Order terminates Docket nos. 29 and 40.

18 IT IS SO ORDERED.

19 Dated: 3/30/2012



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE