

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DEMETRIUS A. WRIGHT,  
Plaintiff,

No. C 10-00064 CW (PR)  
ORDER OF SERVICE

v.

R. CARRASCO, et al.,  
Defendants.

\_\_\_\_\_ /

INTRODUCTION

Plaintiff, a state prisoner, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that Defendants used excessive force against him and were deliberately indifferent to his serious medical needs. Plaintiff also raises state law claims.

His motion for leave to proceed in forma pauperis has been granted.

Venue is proper because the events giving rise to the claim are alleged to have occurred at Salinas Valley State Prison (SVSP), which is located in this judicial district. See 28 U.S.C. § 1391(b).

In his complaint, Plaintiff names the following Defendants: SVSP Correctional Officers R. Carrasco and D. Ferry as well as SVSP Licensed Vocational Nurses L. West and Hernandez. Plaintiff seeks monetary damages.

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity

1 or officer or employee of a governmental entity. 28 U.S.C.  
2 § 1915A(a). In its review, the court must identify any cognizable  
3 claims and dismiss any claims that are frivolous, malicious, fail  
4 to state a claim upon which relief may be granted or seek monetary  
5 relief from a defendant who is immune from such relief. Id.  
6 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.  
7 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
8 1988).

9 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
10 allege two essential elements: (1) that a right secured by the  
11 Constitution or laws of the United States was violated, and  
12 (2) that the alleged violation was committed by a person acting  
13 under the color of state law. West v. Atkins, 487 U.S. 42, 48  
14 (1988).

15 II. Factual Background

16 The Court briefly summarizes the factual allegations which are  
17 set forth in greater detail in Plaintiff's complaint. The  
18 allegations are taken as true and construed in the light most  
19 favorable to Plaintiff for purposes of the Court's initial review  
20 of the complaint. See Parks School of Business, Inc., v.  
21 Symington, 51 F.3d 1480, 1484 (9th Cir. 1995).

22 Plaintiff has an "extensive history of severe abdominal  
23 problems." (Compl. ¶ 23.) In August, 2008, he "requested an  
24 escort to medical, on A-Facility of [SVSP], to receive medication  
25 for pain and nausea," which was "prescribed by a physician to be  
26 given when the plaintiff needed and requested it." (Id. ¶ 7.) An  
27 hour later, he was placed in restraints and escorted by Defendants  
28 Carrasco and Ferry to A-Facility. (Id. ¶ 8.)

1 Plaintiff waited two hours before he was "finally face to face  
2 with medical staff in the person of Defendant Hernandez." (Id.  
3 ¶ 10.) Defendant Hernandez "asked Defendant West what did she want  
4 to do, to which West replied, 'he can go to the cage and wait.  
5 I'll be another hour.'" (Id.) Defendant Hernandez told Defendant  
6 Ferry "to return [Plaintiff] to [his] housing unit as they were not  
7 ready for [him]." (Id.)

8 Plaintiff asked to speak with a supervisor because he was "in  
9 a great deal of pain and the Defendant nurses were failing to  
10 dispense medication as prescribed." (Id. ¶ 11.) Instead,  
11 Defendants Carrasco and Ferry began to escort Plaintiff back to his  
12 cell, ignoring his "complaints of pain and problems with nausea to  
13 the point when [he began] to vomit blood." (Id. ¶ 12.)

14 On the way back to the housing unit, Plaintiff continued to  
15 complain about his condition. (Id. ¶ 13.) Defendant Carrasco  
16 "began to forcefully pull the Plaintiff, putting him off balance,"  
17 and Plaintiff asked him to stop because he was in pain. (Id.)  
18 Defendant Carrasco then struck Plaintiff "in the face and head area  
19 with his knee." (Id. ¶ 14.) Defendants Carrasco and Ferry  
20 "slammed the plaintiff to the ground, where Defendant Carrasco  
21 kned him in the face and head area again, then [Defendant  
22 Carrasco] held [Plaintiff's] head down by placing his knee on it."  
23 (Id.) During this incident, Plaintiff was "in restraints, behind  
24 his back, on both hands." (Id.)

25 After the incident, Defendant West "came to the cage for a  
26 medical assessment," and she noted "injuries to both sides of [his]  
27 face." (Id. ¶ 15.) Defendant West also gave Plaintiff the  
28 medication he requested for his pain and nausea. (Id.)

1 Plaintiff claims that he sustained injuries as a result of  
2 this incident, including "swelling, abrasions and bruising on both  
3 sides of his face, [and] sore wrists . . . ." (Id. ¶ 17.)

4 III. Legal Claims

5 A. Deliberate Indifference Claim

6 Deliberate indifference to serious medical needs violates the  
7 Eighth Amendment's proscription against cruel and unusual  
8 punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976);  
9 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled  
10 on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133,  
11 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781 F.2d 769, 771  
12 (9th Cir. 1986). A determination of "deliberate indifference"  
13 involves an examination of two elements: the seriousness of the  
14 prisoner's medical need and the nature of the defendant's response  
15 to that need. See McGuckin, 974 F.2d at 1059. A "serious" medical  
16 need exists if the failure to treat a prisoner's condition could  
17 result in further significant injury or the "unnecessary and wanton  
18 infliction of pain." Id. (citing Estelle, 429 U.S. at 104). A  
19 prison official is deliberately indifferent if he or she knows that  
20 a prisoner faces a substantial risk of serious harm and disregards  
21 that risk by failing to take reasonable steps to abate it. Farmer  
22 v. Brennan, 511 U.S. 825, 837 (1994).

23 Assuming Plaintiff's medical needs were "serious," Plaintiff  
24 must allege facts which support a finding of deliberate  
25 indifference to those needs by Defendants West, Hernandez, Ferry  
26 and Carrasco. Such indifference may appear when prison officials  
27 deny, delay or intentionally interfere with medical treatment, or  
28 it may be shown in the way in which prison officials provide

1 medical care. See McGuckin, 974 at 1062. Here, Defendants West  
2 and Hernandez delayed treatment by sending Plaintiff back to his  
3 housing unit without examining him even though he was displaying  
4 the symptoms mentioned above. Defendants Carrasco and Ferry  
5 ignored Plaintiff's requests to speak with a supervisor; instead,  
6 they used excessive force against him even though he was in severe  
7 pain. It was only when Plaintiff was examined for injuries after  
8 the alleged excessive force incident that he was finally given the  
9 medicine he requested to alleviate his symptoms. Plaintiff's  
10 allegations present a cognizable deliberate indifference claim  
11 against Defendants West, Hernandez, Ferry and Carrasco for their  
12 initial failure to provide him with medical care in response to his  
13 symptoms. See Lolli v. County of Orange, 351 F.3d 410, 420-21 (9th  
14 Cir. 2003) (holding that a jury could infer that correctional  
15 officers' failure to provide medical care in response to detainee's  
16 extreme behavior, sickly appearance and statements that he was  
17 diabetic and needed food demonstrated deliberate indifference).

18 B. Excessive Force

19 A prisoner has the right to be free from cruel and unusual  
20 punishment, including physical abuse by guards. Whenever prison  
21 officials stand accused of using excessive physical force in  
22 violation of the Eighth Amendment, the core judicial inquiry is  
23 whether force was applied in a good-faith effort to maintain or  
24 restore discipline, or maliciously and sadistically to cause harm.  
25 Hudson v. McMillian, 503 U.S. 1, 6 (1992) (citing Whitley v.  
26 Albers, 475 U.S. 312, 317 (1986)).

27 Liberally construed, Plaintiff's complaint also states a  
28 cognizable Eighth Amendment claim for the use of excessive force

1 against Defendants Carrasco and Ferry.

2 C. State Law Claims

3 Plaintiff alleges that Defendants' actions violate various  
4 provisions of California constitutional, statutory and tort law.  
5 The federal supplemental jurisdiction statute provides that  
6 "'district courts shall have supplemental jurisdiction over all  
7 other claims that are so related to claims in the action within  
8 such original jurisdiction that they form part of the same case or  
9 controversy under Article III of the United States Constitution.'"   
10 28 U.S.C. § 1367(a).

11 Plaintiff claims that Defendants Carrasco and Ferry are liable  
12 for assault and battery for "using physical force against [him]."  
13 (Compl. ¶ 21.) Plaintiff also claims that Defendants West,  
14 Hernandez, Ferry and Carrasco were negligent due to their failure  
15 to "heed [Plaintiff's] complaints of pain and nausea, despite  
16 familiarity with his extensive history of severe abdominal  
17 problems." (Id. ¶ 23.) Liberally construed, Plaintiff's  
18 allegations satisfy the statutory requirement. Accordingly, the  
19 Court will exercise supplemental jurisdiction over the  
20 aforementioned state law claims.

21 CONCLUSION

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

23 1. Plaintiff states a cognizable Eighth Amendment claim  
24 against Defendants Carrasco and Ferry for the use of excessive  
25 force.

26 2. Plaintiff's allegations present a cognizable Eighth  
27 Amendment deliberate indifference claim against Defendants West,  
28 Hernandez, Ferry and Carrasco.

1           3.     The Court will exercise supplemental jurisdiction over  
2 Plaintiff's state law claims that the actions of Defendants were  
3 negligent and constituted assault and battery.

4           4.     The Clerk of the Court shall mail a Notice of Lawsuit and  
5 Request for Waiver of Service of Summons, two copies of the Waiver  
6 of Service of Summons, a copy of the complaint and all attachments  
7 thereto (docket no. 1) and a copy of this Order to SVSP  
8 Correctional Officers R. Carrasco and D. Ferry as well as SVSP  
9 Licensed Vocational Nurses L. West and Hernandez. The Clerk of the  
10 Court shall also mail a copy of the complaint and a copy of this  
11 Order to the State Attorney General's Office in San Francisco.  
12 Additionally, the Clerk shall mail a copy of this Order to  
13 Plaintiff.

14           5.     Defendants are cautioned that Rule 4 of the Federal Rules  
15 of Civil Procedure requires them to cooperate in saving unnecessary  
16 costs of service of the summons and complaint. Pursuant to Rule 4,  
17 if Defendants, after being notified of this action and asked by the  
18 Court, on behalf of Plaintiff, to waive service of the summons,  
19 fail to do so, they will be required to bear the cost of such  
20 service unless good cause be shown for their failure to sign and  
21 return the waiver form. If service is waived, this action will  
22 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),  
24 Defendants will not be required to serve and file an answer before  
25 sixty (60) days from the date on which the request for waiver was  
26 sent. (This allows a longer time to respond than would be required  
27 if formal service of summons is necessary.) Defendants are asked  
28 to read the statement set forth at the foot of the waiver form that

1 more completely describes the duties of the parties with regard to  
2 waiver of service of the summons. If service is waived after the  
3 date provided in the Notice but before Defendants have been  
4 personally served, the Answer shall be due sixty (60) days from the  
5 date on which the request for waiver was sent or twenty (20) days  
6 from the date the waiver form is filed, whichever is later.

7 6. Defendants shall answer the complaint in accordance with  
8 the Federal Rules of Civil Procedure. The following briefing  
9 schedule shall govern dispositive motions in this action:

10 a. No later than ninety (90) days from the date their  
11 answer is due, Defendants shall file a motion for summary judgment  
12 or other dispositive motion. The motion shall be supported by  
13 adequate factual documentation and shall conform in all respects to  
14 Federal Rule of Civil Procedure 56. If Defendants are of the  
15 opinion that this case cannot be resolved by summary judgment, they  
16 shall so inform the Court prior to the date the summary judgment  
17 motion is due. All papers filed with the Court shall be promptly  
18 served on Plaintiff.

19 b. Plaintiff's opposition to the dispositive motion  
20 shall be filed with the Court and served on Defendants no later  
21 than sixty (60) days after the date on which Defendants' motion is  
22 filed. The Ninth Circuit has held that the following notice should  
23 be given to pro se plaintiffs facing a summary judgment motion:

24 The defendant has made a motion for summary  
25 judgment by which they seek to have your case dismissed.  
26 A motion for summary judgment under Rule 56 of the  
Federal Rules of Civil Procedure will, if granted, end  
your case.

27 Rule 56 tells you what you must do in order to  
28 oppose a motion for summary judgment. Generally, summary  
judgment must be granted when there is no genuine issue  
of material fact -- that is, if there is no real dispute



1 about any fact that would affect the result of your case,  
2 the party who asked for summary judgment is entitled to  
3 judgment as a matter of law, which will end your case.  
4 When a party you are suing makes a motion for summary  
5 judgment that is properly supported by declarations (or  
6 other sworn testimony), you cannot simply rely on what  
7 your complaint says. Instead, you must set out specific  
8 facts in declarations, depositions, answers to  
9 interrogatories, or authenticated documents, as provided  
10 in Rule 56(e), that contradict the facts shown in the  
11 defendant's declarations and documents and show that  
12 there is a genuine issue of material fact for trial. If  
13 you do not submit your own evidence in opposition,  
14 summary judgment, if appropriate, may be entered against  
15 you. If summary judgment is granted [in favor of the  
16 defendants], your case will be dismissed and there will  
17 be no trial.

18 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en  
19 banc).

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

c. If Defendants wish to file a reply brief, they shall  
do so no later than thirty (30) 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

1 unless the Court so orders at a later date.

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

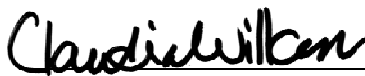
6 8. All communications by Plaintiff with the Court must be  
7 served on Defendants, or Defendants' counsel once counsel has been  
8 designated, by mailing a true copy of the document to Defendants or  
9 Defendants' counsel.

10 9. It is Plaintiff's responsibility to prosecute this case.  
11 Plaintiff must keep the Court informed of any change of address and  
12 must comply with the Court's orders in a timely fashion.

13 10. Extensions of time are not favored, though reasonable  
14 extensions will be granted. Any motion for an extension of time  
15 must be filed no later than fifteen (15) days prior to the deadline  
16 sought to be extended.

17 IT IS SO ORDERED.

18 DATED: 11/24/2010



CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

4 DEMETRIUS A. WRIGHT,  
5 Plaintiff,

Case Number: CV10-00064 CW

**CERTIFICATE OF SERVICE**

6 v.

7 R. CARASCO et al,  
8 Defendant.

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

11 That on November 24, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Demetrius Ahmed Wright T65802  
16 Salinas Valley State Prison  
17 P.O. Box 1050  
18 Soledad, CA 93960

Dated: November 24, 2010

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk

United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28