

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

3 CEDRIC LYNN STRUGGS,

No. C 11-02191 CW (PR)

4                                    Plaintiff,

ORDER OF SERVICE

5                                    v.

6 MIKE EVANS, Warden, et al.,

7                                    Defendants.  
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10                                    INTRODUCTION

11                                    Plaintiff, a state prisoner currently incarcerated at Salinas  
12 Valley State Prison (SVSP), has filed a pro se civil rights action  
13 pursuant to 42 U.S.C. § 1983 alleging the violation of his federal  
14 constitutional rights. His motion for leave to proceed in forma  
15 pauperis has been granted.

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

19                                    PROCEDURAL BACKGROUND

20                                    On March 18, 2008, Plaintiff filed in this court a civil  
21 rights action under 42 U.S.C. § 1983. See Struggs v. Evans, et  
22 al., Case No. C 08-1495 MMC (PR). In that action, Plaintiff  
23 claimed that, in connection with a June 11, 2006 cell search and  
24 extraction at SVSP, he was subjected to the use of excessive  
25 force, deliberate indifference to his serious medical needs and  
26 retaliation by SVSP Defendants Correctional Officers J.  
27 Rodriguez, R. Reynoso, T. Woolf and E. Camarena.

28                                    Additionally, Plaintiff raised claims related to a

1 disciplinary hearing held on December 2, 2006, regarding a rules  
2 violation for drug possession with which Plaintiff was charged in  
3 connection with the June 11, 2006 cell search.

4 By Order filed August 6, 2010, the Court granted Defendants'  
5 motion to dismiss as improperly joined the claims concerning  
6 Plaintiff's disciplinary hearing. In so doing, the Court granted  
7 Plaintiff leave to file a new and separate action raising such  
8 claims. When Plaintiff erroneously filed his new complaint as a  
9 second amended complaint in Case No. C 08-1495 MMC (PR), the Court  
10 ordered the complaint filed as a new and separate action.

11 Accordingly, the Court now reviews Plaintiff's claims in  
12 Struggs v. Hedgpeth, Case No. C 11-02191 CW (PR).

#### 13 DISCUSSION

##### 14 I. Standard of Review

15 A federal court must conduct a preliminary screening in any  
16 case in which a prisoner seeks redress from a governmental entity  
17 or officer or employee of a governmental entity. 28 U.S.C.  
18 § 1915A(a). In its review, the court must identify any cognizable  
19 claims and dismiss any claims that are frivolous, malicious, fail  
20 to state a claim upon which relief may be granted or seek monetary  
21 relief from a defendant who is immune from such relief. Id.  
22 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.  
23 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
24 1988).

25 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
26 allege two essential elements: (1) that a right secured by the  
27 Constitution or laws of the United States was violated, and  
28

1 (2) that the alleged violation was committed by a person acting  
2 under the color of state law. West v. Atkins, 487 U.S. 42, 48  
3 (1988).

4 II. Plaintiff's Claims

5 According to the allegations in the complaint, following a  
6 search of Plaintiff's cell in June 2006, Captain G. Ponder, a  
7 member of the SVSP classification committee, acted in retaliation  
8 for Plaintiff's having filed administrative grievances against  
9 prison officials and held Plaintiff in administrative segregation  
10 for sixty days pending an investigation into Plaintiff's  
11 participation in a conspiracy to introduce a controlled substance  
12 into the prison.

13 Thereafter, Plaintiff was charged with a serious rules  
14 violation for participating in such a conspiracy. Plaintiff  
15 requested an investigative employee to assist him with his defense  
16 to the charge. On July 22, 2006, R. Basso, an investigative  
17 employee, arrived to interview Plaintiff, but Plaintiff refused,  
18 telling Basso he had postponed his disciplinary hearing pending  
19 the results of the referral of charges against him to the District  
20 Attorney. Basso, in retaliation for Plaintiff's assertion of his  
21 right to postpone his hearing and prepare a defense, ignored  
22 Plaintiff's directions and proceeded to interview witnesses and  
23 prepare an investigative report.

24 On December 2, 2006, Plaintiff attended a hearing on the rules  
25 violation. Plaintiff informed the Senior Hearing Officer, Lt. E.  
26 Moore, that he would not proceed with the hearing because he  
27 objected to the use of the information in Basso's investigative  
28 report and he was still waiting for other evidence and to talk to

1 witnesses. When Plaintiff attempted to leave the hearing, Moore  
2 told Plaintiff that if he didn't sit down he'd be pepper sprayed.  
3 At that point, Plaintiff asked to return to his cell to get his  
4 legal papers. After being granted permission to do so, Plaintiff  
5 returned to his cell and refused to leave. Moore found Plaintiff  
6 guilty, in absentia, of possession of a controlled substance.

7 After Plaintiff was found guilty, Captain Ponder, again acting  
8 in retaliation for Plaintiff's having filed administrative  
9 grievances against prison officials, made the decision to hold  
10 Plaintiff in administrative segregation. Additionally, Ponder  
11 recommended that Plaintiff be moved to the D-yard where, on  
12 November 25, 2007, Plaintiff was cut on his upper back by another  
13 inmate.

14 Based on the above allegations, the Court finds Plaintiff has  
15 stated cognizable claims for relief against Defendants Basso,  
16 Moore and Ponder for retaliation, in violation of the First  
17 Amendment, and for the denial of due process at Plaintiff's  
18 disciplinary hearing, in violation of the Fourteenth Amendment.

19 CONCLUSION

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

21 1. The Clerk of the Court shall mail a Notice of Lawsuit and  
22 Request for Waiver of Service of Summons, two copies of the Waiver  
23 of Service of Summons, a copy of the complaint and all attachments  
24 thereto (docket no. 1) and a copy of this Order to SVSP Defendants  
25 R. Basso, E. Moore and G. Ponder.

26 The Clerk of the Court shall also mail a copy of the complaint  
27 and a copy of this Order to the State Attorney General's Office in  
28 San Francisco. Additionally, the Clerk shall mail a copy of this

1 Order to Plaintiff.

2 2. Defendants are cautioned that Rule 4 of the Federal Rules  
3 of Civil Procedure requires them to cooperate in saving  
4 unnecessary costs of service of the summons and complaint.

5 Pursuant to Rule 4, if Defendants, after being notified of this  
6 action and asked by the Court, on behalf of Plaintiff, to waive  
7 service of the summons, fail to do so, they will be required to  
8 bear the cost of such service unless good cause be shown for their  
9 failure to sign and return the waiver form. If service is waived,  
10 this action will proceed as if Defendants had been served on the  
11 date that the waiver is filed, except that pursuant to Rule  
12 12(a)(1)(B), Defendants will not be required to serve and file an  
13 answer before sixty (60) days from the date on which the request  
14 for waiver was sent. (This allows a longer time to respond than  
15 would be required if formal service of summons is necessary.)

16 Defendants are asked to read the statement set forth at the foot  
17 of the waiver form that more completely describes the duties of  
18 the parties with regard to waiver of service of the summons. If  
19 service is waived after the date provided in the Notice but before  
20 Defendants have been personally served, the Answer shall be due  
21 sixty (60) days from the date on which the request for waiver was  
22 sent or twenty (20) days from the date the waiver form is filed,  
23 whichever is later.

24 3. Defendants shall answer the complaint in accordance with  
25 the Federal Rules of Civil Procedure. The following briefing  
26 schedule shall govern dispositive motions in this action:

27 a. No later than ninety (90) days from the date their  
28 answer is due, Defendants shall file a motion for summary judgment

1 or other dispositive motion. The motion shall be supported by  
2 adequate factual documentation and shall conform in all respects  
3 to Federal Rule of Civil Procedure 56. If Defendants are of the  
4 opinion that this case cannot be resolved by summary judgment,  
5 they shall so inform the Court prior to the date the summary  
6 judgment motion is due. All papers filed with the Court shall be  
7 promptly served on Plaintiff.

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

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

1 banc).

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

14 c. Defendants shall file a reply brief no later than  
15 thirty (30) days after the date Plaintiff's opposition is filed.

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

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

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

27 6. It is Plaintiff's responsibility to prosecute this case.  
28 Plaintiff must keep the Court informed of any change of address


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and must comply with the Court's orders in a timely fashion.

7. 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 fifteen (15) days prior to the deadline sought to be extended.

IT IS SO ORDERED.

DATED: 10/7/2011



\_\_\_\_\_  
CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE



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

4 CEDRIC LYNN STRUGGS,

5 Plaintiff,

6 v.

7 A. HEDGPETH et al,

8 Defendant.

Case Number: CV11-02191 CW

**CERTIFICATE OF SERVICE**

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 October 7, 2011, 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 Cedric Lynn Struggs  
16 Salinas Valley State Prison  
17 C-28615  
18 P.O. Box 1050  
19 D7-130  
20 Soledad, CA 93960-1050

21 Dated: October 7, 2011

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