

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

3 WILLIE LEE ALEXANDER,

No. C 13-4228 SBA (PR)

4 Plaintiff,

**ORDER OF SERVICE**

5 vs.

6 KRISTI N. KNUCLES, et al.,

7 Defendants.

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8 **INTRODUCTION**

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10 Plaintiff, a state prisoner who is currently incarcerated at Kern Valley State Prison,  
11 filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging various constitutional  
12 violations that occurred in 2012 while he was incarcerated at Salinas Valley State Prison  
13 (“SVSP”). Plaintiff also seeks leave to proceed in forma pauperis, which will be granted in a  
14 separate Order. Venue is proper because the events giving rise to the claim are alleged to  
15 have occurred at SVSP, which is located in this judicial district. See 28 U.S.C. § 1391(b).  
16 In his complaint, Plaintiff names the following Defendants at SVSP: Warden A. Hedgpath;  
17 Lieutenant R. Parin; Sergeant M. Thomas; Captains D. Asuncion and N. Walker; and  
18 Correctional Officers Kristi N. Knuckles and M. Barroso. Plaintiff seeks monetary damages.

19 **DISCUSSION**

20 **I. Standard of Review**

21 A federal court must conduct a preliminary screening in any case in which a prisoner  
22 seeks redress from a governmental entity or officer or employee of a governmental entity.  
23 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and  
24 dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may  
25 be granted or seek monetary relief from a defendant who is immune from such relief. Id.  
26 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica  
27 Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

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

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

3 **II. Legal Claims**

4 **A. Deliberate Indifference to Safety**

5 A prison official is deliberately indifferent if he or she knows that a prisoner faces a  
6 substantial risk of serious harm and disregards that risk by failing to take reasonable steps to  
7 abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994). The testt for deliberate indifference  
8 consists of two parts, an objective prong and a subjective prong. Clement v. Gomez, 298  
9 F.3d 898, 904 (9th Cir. 2002). First, the alleged deprivation must be, in objective terms,  
10 “sufficiently serious . . . .” Farmer, 511 U.S. at 834. Second, the subjective component  
11 requires that the prison official must “know [ ] of and disregard[ ] an excessive risk to inmate  
12 health or safety . . . .” Id. at 837.

13 Plaintiff claims that on June 1, 2012, he was informed by Defendant Thomas that  
14 “[his] life was in jeopardy if he were to remain[] on B-Yard facility” of SVSP. Compl. at 3b.  
15 Plaintiff was removed from B-Yard facility and placed in administrative segregation. Id.  
16 Plaintiff was then housed in C-Yard facility “while the investigation continued on the  
17 allege[d] threat on [his] life from B-Yard facility.” Id.

18 Plaintiff alleges that on July 19, 2012, Defendants Knucles and Barroso “submitted a  
19 [CDC-]154<sup>1</sup> (bedmove) from C-Yard facility back to B-Yard facility [despite] 'knowing of  
20 [his] situation,' [and] once [he was] returned back to B-Yard [Plaintiff] was assaulted within  
21 minuets [sic] and received stitches and a concussion.” Id. (footnote added). Liberally  
22 construed, the allegations of the complaint state a claim under § 1983 for deliberate  
23 indifference to Plaintiff's safety in violation of his Eighth Amendment rights. Plaintiff has  
24 alleged facts sufficient to link the following Defendants to his claim: Thomas, Knucles and  
25 Barroso.

26 **B. Supervisory Liability**

27 Certain of the Defendants named by Plaintiff are supervisors; namely Defendants  
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<sup>1</sup> A “CDC-154” is a medical transport form.

1 Hedgpeth, Parin, Asuncion and Walker. Plaintiff does not claim that these particular  
2 Defendants personally violated his constitutional rights. Rather, Plaintiff contends that these  
3 Defendants are liable based on the conduct of their subordinates, Defendants Thomas,  
4 Knuckles and Barroso. However, there is no respondeat superior liability under § 1983. See  
5 Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, Plaintiff must allege that each  
6 Defendant, as a supervisor, “participated in or directed the violations, or knew of the  
7 violations and failed to act to prevent them.” Id. Here, no facts are alleged to establish  
8 supervisory liability on the part of these Defendants. Accordingly, Plaintiff’s supervisory  
9 liability claim against Defendants Hedgpeth, Parin, Asuncion and Walker is DISMISSED  
10 without prejudice.

### 11 CONCLUSION

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

- 13 1. Plaintiff’s complaint states a cognizable Eighth Amendment claim of  
14 deliberate indifference to his safety against Defendants Thomas, Knuckles and Barroso.
- 15 2. Plaintiff’s supervisory liability claim against Defendants Hedgpeth, Parin,  
16 Asuncion and Walker is DISMISSED without prejudice.
- 17 3. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver  
18 of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the  
19 complaint and all attachments thereto (docket no. 1) and a copy of this Order to **SVSP**  
20 **Sergeant M. Thomas; and Correctional Officers Kristi N. Knuckles and M. Barroso.**  
21 The Clerk of the Court shall also mail a copy of the complaint and a copy of this Order to the  
22 State Attorney General’s Office in San Francisco. Additionally, the Clerk shall mail a copy  
23 of this Order to Plaintiff.
- 24 4. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure  
25 requires them to cooperate in saving unnecessary costs of service of the summons and  
26 complaint. Pursuant to Rule 4, if Defendants, after being notified of this action and asked by  
27 the Court, on behalf of Plaintiff, to waive service of the summons, fail to do so, they will be  
28 required to bear the cost of such service unless good cause be shown for their failure to sign

1 and return the waiver form. If service is waived, this action will proceed as if Defendants  
2 had been served on the date that the waiver is filed, except that pursuant to Rule 12(a)(1)(B),  
3 Defendants will not be required to serve and file an answer before **sixty (60) days** from the  
4 date on which the request for waiver was sent. (This allows a longer time to respond than  
5 would be required if formal service of summons is necessary.) Defendants are asked to read  
6 the statement set forth at the foot of the waiver form that more completely describes the  
7 duties of the parties with regard to waiver of service of the summons. If service is waived  
8 after the date provided in the Notice but before Defendants have been personally served, the  
9 Answer shall be due **sixty (60) days** from the date on which the request for waiver was sent  
10 or **twenty (20) days** from the date the waiver form is filed, whichever is later.

11 5. Defendants shall answer the complaint in accordance with the Federal Rules of  
12 Civil Procedure. The following briefing schedule shall govern dispositive motions in this  
13 action:

14 a. No later than **sixty (60) days** from the date their answer is due,  
15 Defendants shall file a motion for summary judgment or other dispositive motion. The  
16 motion must be supported by adequate factual documentation, must conform in all respects  
17 to Federal Rule of Civil Procedure 56, and must include as exhibits all records and incident  
18 reports stemming from the events at issue. A motion for summary judgment also must be  
19 accompanied by a Rand<sup>2</sup> notice so that Plaintiff will have fair, timely and adequate notice of  
20 what is required of him in order to oppose the motion. Woods v. Carey, 684 F.3d 934, 935  
21 (9th Cir. 2012) (notice requirement set out in Rand must be served concurrently with motion  
22 for summary judgment). A motion to dismiss for failure to exhaust available administrative  
23 remedies must be accompanied by a similar notice. However, the Court notes that under the  
24 *new* law of the circuit, in the rare event that a failure to exhaust is clear on the face of the  
25 complaint, Defendants may move for dismissal under Rule 12(b)(6) as opposed to the  
26 previous practice of moving under an unenumerated Rule 12(b) motion. Albino v. Baca, No.  
27 10-55702, slip op. at 4 (9th Cir. Apr. 3, 2014) (en banc) (overruling Wyatt v. Terhune, 315

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<sup>2</sup> Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998).

1 F.3d 1108, 1119 (9th Cir. 2003), which held that failure to exhaust available administrative  
2 remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) (PLRA), should be  
3 raised by a defendant as an unenumerated Rule 12(b) motion). Otherwise if a failure to  
4 exhaust is not clear on the face of the complaint, Defendants must produce evidence proving  
5 failure to exhaust in a motion for summary judgment under Rule 56. Id. If undisputed  
6 evidence viewed in the light most favorable to Plaintiff shows a failure to exhaust,  
7 Defendants are entitled to summary judgment under Rule 56. Id. at 4-5. But if material facts  
8 are disputed, summary judgment should be denied and the district judge rather than a jury  
9 should determine the facts in a preliminary proceeding. Id. at 5, 10.

10 If Defendants are of the opinion that this case cannot be resolved by summary  
11 judgment, they shall so inform the Court prior to the date the summary judgment motion is  
12 due. All papers filed with the Court shall be promptly served on Plaintiff.

13 b. Plaintiff's opposition to the dispositive motion shall be filed with the  
14 Court and served on Defendants no later than **twenty-eight (28) days** after the date on which  
15 Defendants' motion is filed.

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

1 granted, your case will be dismissed and there will be no trial. Rand, 154 F.3d at 962-63.

2 Plaintiff also is advised that -- in the rare event that Defendants argue that the failure  
3 to exhaust is clear on the face of the complaint -- a motion to dismiss for failure to exhaust  
4 available administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case,  
5 albeit without prejudice. To avoid dismissal, you have the right to present any evidence to  
6 show that you did exhaust your available administrative remedies before coming to federal  
7 court. Such evidence may include: (1) declarations, which are statements signed under  
8 penalty of perjury by you or others who have personal knowledge of relevant matters;  
9 (2) authenticated documents -- documents accompanied by a declaration showing where they  
10 came from and why they are authentic, or other sworn papers such as answers to  
11 interrogatories or depositions; (3) statements in your complaint insofar as they were made  
12 under penalty of perjury and they show that you have personal knowledge of the matters  
13 state therein. As mentioned above, in considering a motion to dismiss for failure to exhaust  
14 under Rule 12(b)(6) or failure to exhaust in a summary judgment motion under Rule 56, the  
15 district judge may hold a preliminary proceeding and decide disputed issues of fact with  
16 regard to this portion of the case. Albino, slip op. at 5, 10.

17 (The notices above do not excuse Defendants' obligation to serve similar notices  
18 again concurrently with motions to dismiss for failure to exhaust available administrative  
19 remedies and motions for summary judgment. Woods, 684 F.3d at 935.)

20 d. Defendants shall file a reply brief no later than **fourteen (14) days** after  
21 the date Plaintiff's opposition is filed.

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

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

27 7. All communications by Plaintiff with the Court must be served on Defendants  
28 or their counsel (once designated) by mailing them a true copy of the document.

1           8.       It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
2 Court informed of any change of address and must comply with the Court's orders in a  
3 timely fashion. Pursuant to Northern District Local Rule 3-11 a party proceeding pro se  
4 whose address changes while an action is pending must promptly file a notice of change of  
5 address specifying the new address. See L.R. 3-11(a). The Court may dismiss without  
6 prejudice a complaint when: (1) mail directed to the pro se party by the Court has been  
7 returned to the Court as not deliverable, and (2) the Court fails to receive within sixty days of  
8 this return a written communication from the pro se party indicating a current address. See  
9 L.R. 3-11(b).

10           9.       Extensions of time are not favored, though reasonable extensions will be  
11 granted. Any motion for an extension of time must be filed no later than **fourteen (14) days**  
12 prior to the deadline sought to be extended.

13           IT IS SO ORDERED.

14           DATED: 5/5/14

  
FAUNDR BROWN ARMSTRONG  
United States District Judge

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