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2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 ISAAC RIGGS,  
6 Plaintiff,  
7 v.  
8 R.T.C. GROUNDS, Warden, et al.,  
9 Defendants.  
10

Case No. C 13-5864 KAW (PR)

**ORDER OF SERVICE OF  
COGNIZABLE CLAIM; DISMISSING  
WITH LEAVE TO AMEND NON-  
COGNIZABLE CLAIM**

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12 Plaintiff Isaac Riggs, a state prisoner incarcerated at Salinas Valley State Prison (“SVSP”),  
13 has filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983, alleging the violation of his  
14 constitutional rights by staff at SVSP. Plaintiff has consented to the jurisdiction of the  
15 undersigned United States Magistrate Judge over this action. Plaintiff has filed a motion for leave  
16 to proceed *in forma pauperis* (“IFP”) with a completed IFP application, which is granted in a  
17 separate order. The Court now addresses the claims asserted in Plaintiff’s complaint.

18 DISCUSSION

19 I. Standard of Review

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

27 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
28 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that

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

3 Liability may be imposed on an individual defendant under 42 U.S.C. § 1983 if the  
4 plaintiff can show that the defendant's actions both actually and proximately caused the  
5 deprivation of a federally protected right. *Lemire v. California Dep't of Corrections &*  
6 *Rehabilitation*, 726 F.3d 1062, 1074 (9th Cir. 2013); *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir.  
7 1988); *Harris v. City of Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives  
8 another of a constitutional right within the meaning of § 1983 if he does an affirmative act,  
9 participates in another's affirmative act or omits to perform an act which he is legally required to  
10 do, that causes the deprivation of which the plaintiff complains. *Leer*, 844 F.2d at 633. Under no  
11 circumstances is there respondeat superior liability under § 1983. *Lemire*, 726 F.3d at 1074. Or,  
12 in layman's terms, under no circumstances is there liability under § 1983 solely because one is  
13 responsible for the actions or omissions of another. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.  
14 1989); *Ybarra v. Reno Thunderbird Mobile Home Village*, 723 F.2d 675, 680-81 (9th Cir. 1984).  
15 A supervisor may be liable under § 1983 upon a showing of (1) personal involvement in the  
16 constitutional deprivation or (2) a sufficient causal connection between the supervisor's wrongful  
17 conduct and the constitutional violation. *Henry A. v. Willden*, 678 F.3d 991, 1003-04 (9th Cir.  
18 2012). It is insufficient for a plaintiff only to allege that supervisors knew about the constitutional  
19 violation and that they generally created policies and procedures that led to the violation, without  
20 alleging "a specific policy" or "a specific event" instigated by them that led to the constitutional  
21 violation. *Hydrick v. Hunter*, 669 F.3d 937, 942 (9th Cir. 2012).

22 II. Plaintiff's Claims

23 Plaintiff sues Warden Grounds, Captain D. Asuncion, Lt. R. Parin, Lt. J. Stevenson and  
24 Officer L. Cahlander. Plaintiff alleges the following. At approximately 12:24 pm on February 7,  
25 2012, Plaintiff was released from his cell to shower. Plaintiff approached the tower to talk to  
26 Officer P. Guzman about the fact that he was always released last to shower. On his way back to  
27 his cell, Plaintiff stopped at the podium to exchange two old razors for two new ones. Officer  
28 Cahlander stated that Plaintiff did not respect him and that Plaintiff could not exchange the razors.

1 As Plaintiff was bending over to place the razors in the bucket, Officer Cahlander sprayed Plaintiff  
2 in the face with pepper spray and pushed him to the ground, causing Plaintiff to strike his head on  
3 the ground. While Plaintiff was on the ground, Officer Cahlander proceeded to kick and hit  
4 Plaintiff with what seemed like a flashlight, injuring Plaintiff's head, neck and back.

5 Plaintiff was placed in a holding cage in the health annex. Approximately fifteen minutes  
6 later, Capt. Asuncion and Lt. Parin came to see Plaintiff and decided to place him in  
7 Administrative Segregation ("Ad Seg") pending the hearing on Plaintiff's rules violation report  
8 ("RVR").

9 On March 7, 2012, Plaintiff filed a complaint against Officer Cahlander for excessive  
10 force. On April 23, 2012, Lt. Stevenson heard Plaintiff's RVR even though Plaintiff had asked for  
11 a different officer to preside at the hearing on the ground that Lt. Stevenson was biased against  
12 him. Lt. Stevenson found Plaintiff guilty at this RVR and assessed him 150 days loss of good  
13 time credits. Later, Plaintiff also was assessed a six-month term in the Secured Housing Unit  
14 ("SHU"). However, two hours later, Plaintiff was informed that the SHU term was suspended and  
15 that the RVR violation was reduced from A(B) to A(D) and the credit loss was reduced from 150  
16 days to 90 days. This was done before the Internal Affairs investigation was completed, which  
17 found that Officer Cahlander had violated California Department of Corrections and  
18 Rehabilitation ("CDCR") policy. Plaintiff received a memorandum dated March 14, 2013 stating  
19 that Officer Cahlander had violated policy by using excessive force on Plaintiff and by lying on  
20 state documents.

21 The Eighth Amendment's prohibition of cruel and unusual punishments protects an inmate  
22 from force used maliciously and sadistically for the very purpose of causing harm. *Hudson v.*  
23 *McMillian*, 503 U.S. 1, 6 (1992). A prison official violates the Eighth Amendment only when two  
24 requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious, and (2) the  
25 official is, subjectively, deliberately indifferent to the inmate's safety. *Farmer v. Brennan*, 511  
26 U.S. 825, 834 (1994). Liberally construed, the complaint states a cognizable § 1983 claim against  
27 Officer Cahlander for applying excessive force against Plaintiff by allegedly spraying him with  
28 pepper spray and then kicking and hitting Plaintiff with a flashlight while he was on the floor.



1 Plaintiff, to waive service of the summons, fails to do so, he will be required to bear the cost of  
2 such service unless good cause be shown for his failure to sign and return the waiver forms. If  
3 service is waived, this action will proceed as if Defendant had been served on the date that the  
4 waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendant will not be required to serve  
5 and file an answer before sixty days from the date on which the request for waiver was sent. (This  
6 allows a longer time to respond than would be required if formal service of summons is  
7 necessary.)

8 Defendant is advised to read the statement set forth at the foot of the waiver form that more  
9 completely describes the duties of the parties with regard to waiver of service of the summons. If  
10 service is waived after the date provided in the Notice but before Defendant has been personally  
11 served, the answer shall be due sixty days from the date on which the request for waiver was sent  
12 or twenty days from the date the waiver form is filed, whichever is later.

13 5. Defendant shall file his Consent or Declination to Magistrate Judge Jurisdiction on or  
14 before the date his answer is due.

15 6. Defendant shall answer the complaint in accordance with the Federal Rules of Civil  
16 Procedure. The following briefing schedule shall govern dispositive motions in this action:

17 a. No later than thirty days from the date his answer is due, Defendant shall file a  
18 motion for summary judgment or other dispositive motion. If Defendant files a motion for  
19 summary judgment, it shall be supported by adequate factual documentation and shall conform in  
20 all respects to Federal Rule of Civil Procedure 56. If Defendant is of the opinion that this case  
21 cannot be resolved by summary judgment, he shall so inform the Court prior to the date the  
22 summary judgment motion is due. All papers filed with the Court shall be promptly served on  
23 Plaintiff.

24 At the time of filing the motion for summary judgment or other dispositive motion,  
25 Defendant shall comply with the Ninth Circuit's decisions in *Woods v. Carey*, 684 F.3d 934 (9th  
26 Cir. 2012), and *Stratton v. Buck*, 697 F.3d 1004 (9th Cir. 2012), and provide Plaintiff with notice  
27 of what is required of him to oppose a summary judgment motion or a motion to dismiss for  
28 failure to exhaust administrative remedies.

1                   b. Plaintiff’s opposition to the motion for summary judgment or other dispositive  
2 motion shall be filed with the Court and served on Defendant no later than twenty-eight days after  
3 the date on which Defendant’s motion is filed.

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

14                   c. Defendant shall file a reply brief no later than fourteen days after the date  
15 Plaintiff’s opposition is filed.

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

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

21                   8. All communications by Plaintiff with the Court must be served on Defendant, or  
22 Defendant’s counsel once counsel has been designated, by mailing a true copy of the document to  
23 Defendant or his counsel.

24                   9. It is Plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court  
25 informed of any change of address by filing a separate paper with the clerk headed “Notice of  
26 Change of Address,” and must comply with the Court’s orders in a timely fashion. Failure to do so  
27 may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil  
28 Procedure 41(b).

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10. 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 fourteen days prior to the deadline sought to be extended.

IT IS SO ORDERED.

Dated: 3/19/14

  
KANDIS A. WESTMORE  
UNITED STATES MAGISTRATE JUDGE