

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 SOUTHERN DISTRICT OF CALIFORNIA  
8

9 FRAYNO CRUMB,  
10 CDCR #H-20376,

11 Plaintiff,

12 vs.

13 MARK HASSELBLAD, Correctional  
14 Officer; DAVID STRAYHORN,  
15 Correctional Officer,

16 Defendants.  
17

Case No.: 3:16-cv-00581-BTM-NLS

**ORDER DIRECTING DEFENDANTS  
HASSELBLAD AND STRAYHORN  
TO FILE A RESPONSE AS TO  
PLAINTIFF'S SECOND  
AMENDED COMPLAINT**

**[ECF No. 31]**

18 Frayno Crumb (“Plaintiff”) is currently incarcerated at Richard J. Donovan  
19 Correctional Facility (“RJDCF”), and is proceeding pro se and in forma pauperis in this  
20 case filed pursuant to 42 U.S.C. § 1983.

21 On May 22, 2017, the Court granted Plaintiff leave to file a Second Amended  
22 Complaint (“SAC”) “alleging Eighth Amendment excessive force claims arising on  
23 January 27, 2015, at RJDCF against Defendants D. Strayhorn and M. Hasselblad only,  
24 and to serve it upon their counsel of record, no later than Monday, July 10, 2017.” (ECF  
25 No. 27 at 6.)<sup>1</sup>  
26

27  
28 <sup>1</sup> At the same time and in the same Order, the Court dismissed Defendants R. Olson and J.  
Ramero as parties to this case. (ECF No. 27 at 5.)

1 On June 23, 2017, Plaintiff filed his SAC by mailing it to the Clerk of the Court  
2 (ECF No. 31); but he did not attach a proof of service by mail upon Defendants' counsel  
3 of record. *See* FED. R. CIV. P. 5(a)(1), (d). The Clerk of Court nevertheless issued  
4 Defendant Strayhorn and Hasselblad's counsel a Notice of Electronic Filing ("NEF") as  
5 to Plaintiff's SAC, on the same day—June 23, 2017. *See* S.D. CAL. CIVLR 5.4.c, d; ECF  
6 No. 31 ([https://ecf.casd.circ9.dcn/cgi-bin/DisplayReceipt.pl?114159199404839-L\\_1\\_0-](https://ecf.casd.circ9.dcn/cgi-bin/DisplayReceipt.pl?114159199404839-L_1_0-1)  
7 [1](https://ecf.casd.circ9.dcn/cgi-bin/DisplayReceipt.pl?114159199404839-L_1_0-1)).

8 Plaintiff's SAC contains the same excessive force allegations against Defendants  
9 Strayhorn and Hasselblad as his original Complaint, and the Court has already found  
10 them sufficient to state a plausible claim for relief under the Eighth Amendment. *See*  
11 ECF No. 8 at 5 (citing 28 U.S.C. § 1915(e)(2), § 1915A(b)(1); *Wilhelm v. Rotman*, 680  
12 F.3d 1113, 1123 (9th Cir. 2012); *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992) (noting  
13 that when prison officials stand accused of using excessive force, the core judicial inquiry  
14 is "whether force was applied in a good-faith effort to maintain or restore discipline, or  
15 maliciously and sadistically to cause harm.")).

16 While Defendants may occasionally be permitted to "waive the right to reply to  
17 any action brought by a prisoner confined in any jail, prison, or other correctional facility  
18 under section 1983," 42 U.S.C. § 1997e(g)(2), once the Court has conducted its sua  
19 sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made  
20 a preliminary determination based on the face on the pleading alone that Plaintiff has a  
21 "reasonable opportunity to prevail on the merits," Defendants properly served with  
22 summons and the original complaint pursuant to FED. R. CIV. P. 4 are required to respond.  
23 *See* ECF Nos. 11, 12 (waivers of service returned executed on behalf of Defendants  
24 Hasselblad and Strayhorn by U.S. Marshal on January 31, 2017).

25 ///

26 ///

27 ///

28 ///

