

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Bustamonte v. Castillon

Bustamonte v. Castillon · No. 22-cv-04725-VKD (PR) · Decided June 6, 2025

SUMMARY

The United States District Court for the Northern District of California granted defendants’ motion for summary judgment in a prisoner’s 42 U.S.C. § 1983 action arising from an alleged use of excessive force and deliberate indifference to serious medical needs. The court held that the plaintiff failed to exhaust administrative remedies for his deliberate-indifference claims against three defendants and that the evidence did not support a finding that the correctional officer used force maliciously and sadistically. The medical-care claims were dismissed without prejudice, while the excessive-force claim was dismissed with prejudice.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Virginia K. DeMarchi
JURISDICTION	United States District Court for the Northern District of California
DECIDED	June 6, 2025
DOCKET	22-cv-04725-VKD (PR)
DISPOSITION	other
PROCEDURAL POSTURE	Prisoner civil-rights action under 42 U.S.C. § 1983; defendants moved for summary judgment on claims for excessive force and deliberate indifference to serious medical needs.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. The evidence was viewed in the light most favorable to plaintiff, and the court assessed whether a reasonable jury could find for him.
PRECEDENTIAL VALUE	district court opinion; precedential status not stated

TOPICS

- section 1983
- prisoners rights
- summary judgment
- civil rights
- cruel and unusual punishment

PRACTICE AREAS

prisoner civil rights

constitutional litigation

federal civil procedure

QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment on plaintiff's Eighth Amendment deliberate-indifference claims because he failed to properly exhaust available administrative remedies under the PLRA.
2. Whether Officer Castillon used excessive force in violation of the Eighth Amendment by firing a 40-millimeter launcher during the prison riot.
3. Whether defendants were entitled to qualified immunity.

HOLDINGS

1. Plaintiff failed to properly exhaust available administrative remedies because he did not appeal the adverse institutional-level health-care grievance disposition to the headquarters level as required by California prison grievance procedures.
2. Officer Castillon did not use excessive force because the undisputed evidence showed that he applied force in a good-faith effort to restore order during a prison riot, rather than maliciously and sadistically to cause harm.

KEY QUOTATIONS

"There is no question that exhaustion is mandatory under the PLRA and that unexhausted claims cannot be brought in court." (III.A)

"In excessive force cases brought under the Eighth Amendment, the relevant inquiry is 'whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.'" (III.B)

FACTUAL BACKGROUND

During a prison riot at Salinas Valley State Prison, Officer Castillon observed inmates fighting and issued repeated commands to stop. After the inmates continued fighting, he fired seven rounds from a less-than-lethal 40-millimeter launcher while aiming at authorized target zones, and ceased firing after the inmates complied. Plaintiff was struck in the face and suffered significant injuries requiring medical treatment, but he did not complete the required headquarters-level appeal of his health-care grievance concerning subsequent medical care.

PROCEDURAL HISTORY

The court previously found the verified amended complaint stated cognizable claims and ordered service. Defendants Castillon, Ssempebwa, Le, and Muriithi moved for summary judgment; plaintiff did not oppose, although the verified amended complaint was treated as an opposing affidavit. The court granted the motion,

dismissing the deliberate-indifference claims without prejudice for failure to exhaust administrative remedies and the excessive-force claim with prejudice.

DISPOSITION

other

CASES CITED

- Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)
- Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
- Nissan Fire & Marine Insurance Co. v. Fritz Companies, Inc., 210 F.3d 1099 (9th Cir. 2000)
- Woodford v. Ngo, 548 U.S. 81 (2006)
- Booth v. Churner, 532 U.S. 731 (2001)
- Jones v. Bock, 549 U.S. 199 (2007)
- Fordley v. Lizarraga, 18 F.4th 344 (9th Cir. 2021)
- Hudson v. McMillian, 503 U.S. 1 (1992)
- Whitley v. Albers, 475 U.S. 312 (1986)
- Robins v. Meecham, 60 F.3d 1436 (9th Cir. 1995)

OPINION

Bustamonte v. Castillon

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 SAN JOSE DIVISION

7 8 ISRAEL BUSTAMONTE, Case No. 22-cv-04725-VKD (PR) 9 Plaintiff, ORDER
GRANTING DEFENDANTS'

MOTION FOR SUMMARY

10 v. JUDGMENT

11 T. CASTILLON, et al., Re: Dkt. No. 70 Defendants. 12 13 14 Pro se plaintiff Israel
Bustamonte, a state prisoner, asserts claims under 42 U.S.C. § 1983 15 against defendants T.
Castillon, F. Ssempebwa, P. Le, F. Montegrando, L. Muriithi, and Dr. 16 Michael Moeller1 for use
of excessive force and deliberate indifference to serious medical needs at 17 Salinas Valley State
Prison (“SVSP”). Dkt. No. 11. Mr. Bustamonte seeks declaratory relief and 18 damages. Id. at 23-
24. The Court found the amended complaint (Dkt. No. 11), liberally 19 construed, stated
cognizable claims and ordered service on named defendants. Dkt. No. 14 at 5-6. 20 All parties
have consented to magistrate judge jurisdiction. Dkt. Nos. 4, 24, 38, 84. 21 Defendants Castillon,

Ssempebwa, Le, and Muriithi (for purposes of this motion, 22 “Defendants”) move for summary judgment. Dkt. Nos. 70, 70-1. Mr. Bustamonte did not file an 23 opposition to the motion. See Dkt. No. 77. However, the amended complaint is verified and 24 therefore may be treated as an opposing affidavit.² Dkt. No. 11 at 23. 25 1 Defendant Dr. Moeller filed a separate motion for summary judgment which was granted. Dkt. 26 Nos. 54, 76. 27 2 The Court may rely on statements of fact in the amended complaint that Mr. Bustamonte is 1 The Court finds this matter suitable for resolution without oral argument. See Civil L.R. 7- 2 1(b). For the reasons explained below, the Court grants Defendants’ motion for summary 3 judgment.

4 I. BACKGROUND

5 The following facts are undisputed unless otherwise noted. 6 A. Parties 7 Mr. Bustamonte is a state prisoner currently incarcerated at SVSP in Soledad, California, 8 where the underlying events at issue in this action took place. 9 P. Le is and was a registered nurse at SVSP at the time of the underlying events in this 10 action. Dkt. No. 11 at 3; Dkt. No. 70-2 ¶¶ 2, 8-9 (Le Decl.). L. Muriithi is and was a registered 11 nurse at SVSP at the time of the underlying events. Dkt. No. 11 at 3; Dkt. No. 70-3 ¶¶ 2, 5 12 (Muriithi Decl.). F. Ssempebwa is and was a registered nurse at SVSP at the time of the 13 underlying events. Dkt. No. 11; Dkt. No. 70-5 at ¶¶ 2, 8 (Ssempebwa Decl.). 14 T. Castellon is and was a correctional officer at SVSP at the time of the underlying events 15 in this action. Dkt. No. 11 at 3; Dkt. No. 70-6 ¶ 1 (Castillon Decl.). 16 Mr. Bustamonte alleges that F. Montegrando was a nurse at SVSP at the time of the 17 underlying events in this action; however, there is some indication in the record that she was a 18 physician, not a nurse. Dkt. No. 11 at 5, 11-12; see also Dkt. No. 70-2 ¶¶ 5, 10-16 (Le Decl.). F. 19 Montegrando only recently appeared in this action, see Dkt. No. 80, and she has not joined in 20 Defendants’ summary judgment motion. 21 B. Use of Force Incident 22 According to the verified amended complaint, on September 28, 2021, at approximately 23 10:50 a.m., Mr. Bustamonte learned from another SVSP inmate that “something is going to go 24 down right now between the Blacks and the Mexicans,” at which point a “riot/melee” broke out on 25 the D-upper yard basketball court in the prison. Dkt. No. 11 ¶ 20. Mr. Bustamonte states that he 26 attempted to walk away from the riot while prison officials were ordering inmates to “get down” 27 1 and throwing pepper smoke grenades. Id. ¶ 21. He states that the pepper smoke was thick and 2 obscured his vision, and that he heard loud bangs from the “building towers’ officers discharging 3 their state issued 40 mm gun.” Id. ¶ 22. 4 Officer Castellon attests that at about 11:00 a.m. on the same date he heard a report of a

5 Code 2 Riot over his institutional radio. Dkt. No. 70-6 ¶ 2. Officer Castellon was the control 6 booth operator in Facility D, Building 5 at the time. Id. He responded to the Code 2 Riot call by 7 moving to the control booth yard window and observed multiple inmates striking each other with 8 their fists. Id. ¶¶ 3-4. Officer Castellon gave verbal commands for the combative inmates to “get 9 down,” but they continued fighting each other. Id. ¶ 5. Office Castellon says he assessed that the 10 rioting inmates would be seriously injured or killed if they continued to fight and believed,

based 11 on his training and experience, that it was reasonable under these circumstances to use the less- 12 than-lethal 40-millimeter-direct-impact launcher to stop the rioting. Id. ¶¶ 6-7. The 40 mm 13 launcher is a “less-than-lethal” weapon designed to be fired at violent subjects in crowd control 14 situations, such as the one before Officer Castellon at that time, “for disabling inmates engaged in 15 physical confrontations when they refuse to comply with orders to stop and are endangering other 16 inmates or staff.” Id. ¶ 8. 17 From approximately 80 feet away, Officer Castellon fired a foam round from his 40 mm 18 launcher towards one inmate’s lower left thigh to gain compliance with his order to get down and 19 to minimize the risk of inmate and staff serious injury or death. Id. ¶ 9. He did not see if the 20 round struck his intended target. Id. ¶ 10. All of the inmates continued to fight. Id. 21 Officer Castellon reloaded his launcher and monitored the rioting inmates. He again 22 ordered the combative inmates to get down; they refused and continued to fight. Id. ¶ 11. He 23 fired another round from approximately 80 feet away, aiming at a second inmate’s lower right 24 thigh. Id. ¶ 12. He again did not see if the round struck his intended target; the inmates continued 25 to fight. Id. ¶ 13. 26 Officer Castellon repeated this process numerous times to gain compliance with his 27 commands, ultimately firing seven rounds from his launcher. Id. ¶ 14. According to Officer 1 their refusal to comply with his order. Id. ¶ 15. He aimed each round at an authorized target zone, 2 either the legs or buttocks, avoiding the groin, or on the ground in front of the target. Id. ¶ 16. 3 According to Officer Castellon, he did not see if any projectiles struck his intended targets. Id. 4 ¶ 17. Officer Castellon observed responding ground staff deploy multiple OC [pepper] blast 5 grenades that resulted in combative inmates complying with orders to assume a prone position. Id. 6 ¶ 18. After observing inmates’ compliance, Officer Castellon did not use any additional force. Id. 7 ¶ 19. 8 According to the verified amended complaint, when Mr. Bustamonte heard an officer close 9 by yell, “get down,” he turned his back to the officer to comply while keeping both arms up in the 10 air. Dkt. No. 11 ¶ 23. He then states that “out of nowhere [he] lost conscious[ness] and all went 11 dark.” Id. ¶ 24. The next thing he recalls is being placed in the back of an ambulance. Id. Mr. 12 Bustamonte states that Officer Castellon, “deliberately and without a reason, shot him on the right 13 side of his head (face) with a state issue[d] 40mm gun (block gun)” from “approximately 30 to 40 14 feet away.” Id.; see also id. ¶ 57. An unidentified officer noticed the wound on Mr. Bustamonte’s 15 face and called for medical attention. Id. ¶ 26. 16 C. Medical Treatment 17 According to the verified amended complaint, after being assessed at the prison’s “TTA” 18 (triage and treatment area), Mr. Bustamonte was transferred to Natividad Medical Center for 19 medical treatment. Dkt. No. 11 ¶¶ 28-29. He received a CT scan and x-rays which showed he 20 suffered head injuries, including bruising, several fractures, and a laceration. Id. ¶¶ 32-34; see 21 also Dkt. No. 70-4 at 23, Ex. 3 (Nichols Decl.). After several hours at the medical center, he was 22 transported back to SVSP. Dkt. No. 11 ¶ 34. In the days that followed, Mr. Bustamonte 23 experienced severe pain, vomiting, dizziness, and disorientation. Id. ¶ 36. 24 The parties dispute several facts regarding the follow-up treatment Mr. Bustamonte 25 received for his injuries at SVSP, including whether Mr. Bustamonte

received adequate pain medication, whether he received a prescribed soft food diet, whether he timely received necessary surgery or whether surgery was delayed because he failed to comply with pre-surgery procedures, 1 D. Prison Administrative Remedies 2 In his verified amended complaint, Mr. Bustamonte asserts that he exhausted 3 administrative remedies for the claims in this action by filing an inmate grievance under Log No. 4 180867 and a health care grievance (Form 602 HC) under Log No. SVSP HC 21002095. Dkt. No. 5 11 at 3. Defendants do not dispute that Mr. Bustamonte exhausted his excessive force claim 6 against Officer Castillon by pursuing the grievance under Log No. 180867. Dkt. No. 81 ¶ 8. 7 Defendants submit a copy of Mr. Bustamonte's health care grievance, Log No. SVSP HC 8 21002095, with their motion. Dkt. No. 70-4 ¶¶ 7-8, Ex. 3 (Nichols Decl.). 9 Mr. Bustamonte filed a health care grievance, Log No. SVSP HC 21002095, on December 10 30, 2021. Dkt. No. 70-4 at 17. In the grievance, Mr. Bustamonte describes the September 28, 11 2021 incident and being transferred to Natividad Medical Center. Id. He describes Dr. Moeller 12 recommending a referral to a specialist and surgery within five days, stitches to be removed, and a 13 soft food diet. Id. at 19. Mr. Bustamonte states that he requested a follow-up several times, he 14 was in severe pain, he received no soft food diet, and the stitches were not removed for over three 15 weeks. Id. He also claims that he had yet to receive surgery or be seen by a specialist. Id. He 16 mentions defendants Montegrande, Muriithi, and Ssempebwa accusing him of "just trying to get 17 high" and refusing to provide him with "minimal of medical care" for his severe injuries. Id. The 18 grievance does not mention defendant Le. Id. Mr. Bustamonte states that he continues to 19 experience pain and suffering due to Defendants' deliberate indifference to his medical needs. Id. 20 On March 1, 2022, SVSP provided an institutional level response which determined that 21 "no intervention" was necessary. Id. at 14. The response instructed Mr. Bustamonte that if he was 22 dissatisfied with the response, he could submit his entire health care grievance package for 23 headquarters' level review, which would constitute the final disposition of the grievance and 24 exhaust his administrative remedies. Id. at 16. According to Defendants, the Health Care Services 25 Appeal History report indicates that Mr. Bustamonte did not submit grievance Log No. SVSP HC 26 21002095, or any other grievance, for headquarters' level review. Dkt. No. 70-4 ¶ 14, Ex. 3 27 (Nichols Decl.).

1 II. LEGAL STANDARD

2 A motion for summary judgment should be granted if there is no genuine issue of material 3 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); 4 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). The moving party bears the initial 5 burden of informing the court of the basis for the motion, and identifying portions of the 6 pleadings, depositions, answers to interrogatories, admissions, or affidavits which demonstrate the 7 absence of a triable issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). In 8 order to meet its burden, "the moving party must either produce evidence negating an essential 9 element of the nonmoving party's claim or defense or show that the nonmoving party does not 10 have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." 11

Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc., 210 F.3d 1099, 1102 (9th Cir. 2000).
12 If the moving party meets its initial burden, the burden shifts to the non-moving party to 13
produce evidence supporting its claims or defenses. See *id.* at 1102. The non-moving party may 14
not rest upon mere allegations or denials of the adverse party's evidence, but instead must produce
15 admissible evidence that shows there is a genuine issue of material fact for trial. See *id.* A 16
genuine issue of fact is one that could reasonably be resolved in favor of either party. A dispute is
17 "material" only if it could affect the outcome of the suit under the governing law. *Anderson*,
477 18 U.S. at 248-49.

19 III. DISCUSSION

20 Defendants move for summary judgment on the following grounds: (1) Mr. Bustamonte 21
failed to administratively exhaust his remedies as to defendants Ssempebwa, Le, and Muriithi; (2)
22 Officer Castillon did not subject Mr. Bustamonte to excessive force; (3) defendants
Ssempebwa, 23 Le, and Muriithi did not act with deliberate indifference to Mr. Bustamonte's
medical needs; and 24 (4) Defendants are entitled to qualified immunity. Dkt. No. 70-1 at 7. 25
Because the undisputed evidence shows that Mr. Bustamonte did not exhaust his 26 administrative
remedies and that, on the record presented, Officer Castillon did not use excessive 27 force, as
discussed below, the Court does not address Defendants' third and fourth grounds for 1 A. Failure
to Exhaust re Deliberative Indifference Claim 2 The Prison Litigation Reform Act of 1995
("PLRA") amended 42 U.S.C. § 1997e to 3 provide that "[n]o action shall be brought with respect
to prison conditions under [42 U.S.C. 4 § 1983], or any other Federal law, by a prisoner confined
in any jail, prison, or other correctional 5 facility until such administrative remedies as are
available are exhausted." 42 U.S.C. § 1997e(a). 6 Exhaustion is mandatory. *Woodford v. Ngo*, 548
U.S. 81, 84 (2006) (citing *Booth v. Churner*, 532 7 U.S. 731, 739 (2001)). "Prisoners must now
exhaust all 'available' remedies, not just those that 8 meet federal standards." *Id.* at 85. 9 The
PLRA's exhaustion requirement cannot be satisfied "by filing an untimely or 10 otherwise
procedurally defective administrative grievance or appeal." *Id.* at 84. "Proper 11 exhaustion"
requires compliance with prison grievance procedures. *Id.* at 90-91 (footnote 12 omitted); *Jones v.*
Bock, 549 U.S. 199, 217-18 (2007). Procedures may vary from system to 13 system and claim to
claim, but it is the prison's requirements, and not the PLRA, that define the 14 boundaries of
proper exhaustion. *Jones*, 549 U.S. at 218. 15 Nonexhaustion under § 1997e(a) is an affirmative
defense. *Id.* at 211. Defendants have 16 the burden of raising and proving the absence of
exhaustion, and prisoners are not required to 17 specifically plead or demonstrate exhaustion in
their complaints. *Id.* at 215-17. Defendants must 18 produce evidence showing failure to exhaust
in a motion for summary judgment under Rule 56 of 19 the Federal Rules of Civil Procedure. *Id.* If
the undisputed evidence viewed in the light most 20 favorable to the prisoner shows a failure to
exhaust, Defendants are entitled to summary judgment 21 under Rule 56. *Id.* at 1166. But if
material facts are disputed, summary judgment should be 22 denied. *Id.* 23 During the period
applicable to this action, prisoners incarcerated in the California prison 24 system have the right to

administratively grieve and appeal “applied health care policies, 25 decisions, actions, conditions, or omissions that have a material adverse effect on their health or 26 welfare.” Cal. Code Regs. tit. 15, § 3999.226(a).³ First, “[t]he grievant shall complete Section A 27 1 of the CDCR 602 HC and submit to the HCGO [Health Care Grievance Office] where the grievant 2 is housed within 30 calendar days of: (1) The action or decision being grieved, or; (2) Initial 3 knowledge of the action or decision being grieved.” Cal. Code Regs. tit. 15, § 3999.227(b); see 4 also id., § 3999.225(n) (defining HCGO). “The grievant shall document clearly and coherently all 5 information known and available to him or her regarding the issue . . . includ[ing] any involved 6 staff member’s last name, first initial, title or position, and the date(s) and description of their 7 involvement. If the grievant does not have information to identify involved staff member(s), the 8 grievant shall provide any other available information that may assist in processing the health care 9 grievance.” Id., § 3999.227(g). Second, “[i]f dissatisfied with the institutional level health care 10 grievance disposition, the grievant may appeal the disposition . . . to HCCAB [Health Care 11 Correspondence and Appeals Branch] . . . within 30 calendar days plus five calendar days for 12 mailing. . . .” Cal. Code Regs. tit. 15, § 3999.229(a); see also id., § 3999.225(l) (defining 13 HCCAB). “The headquarters’ level review constitutes the final disposition on a health care 14 grievance and exhausts administrative remedies. . . .” Id., § 3999.230(h); see also id. 15 § 3999.226(g) (“Health care grievances are subject to a headquarters’ level disposition before 16 administrative remedies are deemed exhausted pursuant to section 3999.230.”). 17 Having carefully reviewed the evidence presented, including the verified amended 18 complaint and Defendants’ summary judgment papers, and considering the evidence in the light 19 most favorable to Mr. Bustamonte, the Court finds that it is undisputed that the administrative 20 remedies provided in Title 15 of the California Code of Regulations, sections 3999.226-3999.230, 21 were available to Mr. Bustamonte with respect to the claim at issue in this action. Mr. Bustamonte 22 does not allege that he was effectively prevented from submitting grievances or appeals; he did not 23 submit any contrary evidence on this point; and nothing in the record suggests that he was 24 prevented from submitting grievances or appeals. See, e.g., *Fordley v. Lizarraga*, 18 F.4th 344, 25 351–52 (9th Cir. 2021) (summarizing circumstances in which administrative remedies are deemed 26 27 renumbered without substantive change and are now found at sections 3999.226 through 3999.237 1 unavailable). Rather, the undisputed record reflects that Mr. Bustamonte did not appeal the 2 adverse institutional level decision to the HCCAB for the headquarters’ level review as required 3 by section 3999.229(a). The institutional level response instructed Mr. Bustamonte that he must 4 appeal in order to exhaust the claims, but he did not. See *supra*, sec. I.D. 5 Accordingly, the Court concludes that there is no genuine dispute of material fact, and that 6 Defendants are entitled to summary judgment on their affirmative defense of failure to exhaust 7 administrative remedies with respect to Mr. Bustamonte’s Eighth Amendment claim for deliberate 8 indifference to serious medical needs against defendants Ssempebwa, Le, and Muriithi. Because 9 Mr. Bustamonte’s failure to exhaust bars this matter from proceeding on

the merits of his 10 deliberate indifference claim, the Court does not address Defendants' other grounds for summary 11 judgment as to that claim. See *Jones*, 549 U.S. at 212 ("There is no question that exhaustion is 12 mandatory under the PLRA and that unexhausted claims cannot be brought in court."). 13 B. Excessive Force Claim 14 "In excessive force cases brought under the Eighth Amendment, the relevant inquiry is 15 'whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously 16 and sadistically to cause harm.'" *Hudson v. McMillian*, 503 U.S. 1, 7 (1992) (quoting *Whitley v. 17 Albers*, 475 U.S. 312, 320–21 (1986)). The Eighth Amendment does not require a specific intent 18 to punish a specific individual. *Robins v. Meecham*, 60 F.3d 1436, 1439 (9th Cir. 1995). Rather, 19 the standard for determining whether excessive force has been used in violation of the Eighth 20 Amendment is "whether the defendants applied force 'maliciously and sadistically for the very 21 purpose of causing harm,'—that is any harm." *Id.* at 1441 (emphasis in original). This means, for 22 example, that prison officials violate the Eighth Amendment when they exert excessive force 23 against one inmate which results in injury to another inmate as well. *Id.* at 1439–41. 24 The Ninth Circuit has adopted a five-factor test to guide the determination of whether a use 25 of force was malicious and sadistic: "(1) the extent of injury suffered by an inmate; (2) the need 26 for application of force; (3) the relationship between that need and the amount of force used; (4) 27 the threat reasonably perceived by the responsible officials; and (5) any efforts made to temper the 1 (quotation omitted). Here, the question on summary judgment is whether a trier of fact, viewing 2 the evidence in the light most favorable to Mr. Bustamonte, could find in his favor that Officer 3 Castillon used excessive force in violation of the Eighth Amendment. *Anderson*, 477 U.S. at 252. 4 As Mr. Bustamonte has filed no opposition to Defendants' motion, in making this assessment, the 5 Court considers the declaration of Officer Castillon describing his actions on September 28, 2021, 6 and the factual statements in Mr. Bustamonte's verified amended complaint. See *supra*, sec. I.B.

7 Factor 1. With respect to the first Hudson factor, i.e., the extent of any injury inflicted, it 8 is undisputed that Mr. Bustamonte was injured by the use of force as he was struck in the face by 9 the projectile launched by Officer Castillon. He received injuries that caused pain and required 10 treatment, including surgery. While the parties dispute many aspects of Mr. Bustamonte's 11 subsequent treatment, condition, and prognosis, there appears to be no question that Mr. 12 Bustamonte suffered a significant injury as a result of Officer Castillon's use of force.

13 Factor 2. With respect to the second Hudson factor, i.e., the need for the application of 14 force, it is undisputed that a riot broke out among SVSP inmates on the morning of September 28, 15 2021. It is also undisputed that prison officials attempted to stop the riot by using, among other 16 things, verbal commands, pepper grenades, and a 40 mm launcher. Additionally, it is undisputed 17 that inmates continued to fight or riot even after verbal warnings were provided and some force 18 was used. Finally, it is undisputed that repeated verbal commands were ineffective. On this 19 record, there is no genuine dispute of material fact that there was a need for application

of force to attempt to quell the riot, prevent injuries to inmates and staff, and restore order.

Factor 3. With respect to the third Hudson factor, i.e., the relationship between the need for application of force and the amount of force used, Mr. Bustamonte does not dispute that prison officials, including Officer Castillon, were justified in using force, including the 40 mm launcher, to quell the riot. Officer Castillon attests, without contradiction, that he chose a “less-than-lethal” weapon designed to be fired at subjects in crowd control situations, like the one before him on

September 28, 2021. See *supra*, sec. I.B. He further attests that his use of the 40 mm launcher was methodical and deliberate; that he used this force only after giving verbal commands for the 1 towards inmates’ lower thigh or buttocks; that he repeated verbal commands to “get down” and 2 observed inmates’ noncompliance before firing any additional rounds from the launcher; and that 3 he ceased use of the launcher as soon as he observed compliance. *Id.* While Mr. Bustamonte 4 asserts in the verified amended complaint that Officer Castillon shot him in the face “deliberately 5 and without a reason,” this assertion is entirely conclusory and is unsupported by any admissible 6 evidence. Thus, the undisputed evidence shows a reasonable relationship between the need for the 7 application of force and the amount of force applied by Officer Castillon.

Factor 4. With respect to the fourth Hudson factor, i.e., the threat reasonably perceived by 9 prison officials, the evidence is undisputed that there was a “riot” involving several inmates, 10 possibly including Mr. Bustamonte, which was regarded by prison officials as posing a serious 11 threat to the safety of inmates and the ability of prison officials to maintain order. See *supra*, sec. 12 I.B. It is also undisputed that despite repeated verbal commands to desist and the firing of several 13 rounds from launchers located in the tower, the inmates continued to fight and stopped only after 14 ground staff deployed multiple OC blast grenades. *Id.* On this record, there is no genuine dispute 15 of material fact that prison officials reasonably perceived that the riot posed a serious threat.

Factor 5. With respect to the fifth Hudson factor, i.e., efforts made to temper the severity 17 of the forceful response, it is undisputed that Officer Castillon first gave verbal commands before 18 using the 40 mm launcher; that he fired one round at a time, as he continued to assess the 19 situation; that he gave repeated verbal commands for the inmates to stop fighting before firing a 20 next round; and that he ceased use of the launcher as soon as he observed compliance. Mr. 21 Bustamonte has produced no admissible evidence to the contrary or otherwise suggesting that 22 Officer Castillon failed to temper the severity of his use of force. 23 Having carefully reviewed the evidence presented, including the verified amended 24 complaint and Defendants’ summary judgment papers, and considering the evidence in the light 25 most favorable to Mr. Bustamonte, the Court concludes that there is insufficient evidence in the 26 record from which a reasonable jury could find that Officer Castillon used force in an effort to 27 maliciously and sadistically cause harm, rather than in a good-faith effort to restore order and 1 Castillon is entitled

to summary judgment on the excessive force claim against him.

2 ||} IV. CONCLUSION

3 For the foregoing reasons, Defendants' motion for summary judgment is granted. Mr. 4 ||
Bustamonte's claim for deliberate indifference to serious medical needs against defendants 5
Ssempebwa, Le, and Muriithi is dismissed without prejudice for failure to exhaust administrative 6
|| remedies, and his claim for excessive force against Officer Castillon is dismissed with prejudice.
7 Defendants Castillon, Ssemebwa, Le, and Muriithi shall be terminated from this action. 8 This
order terminates Docket No. 70. 9 IT IS SO ORDERED. 10 Dated: June 6, 2025 11 12 Virginia K.
DeMarchi 13 United States Magistrate Judge © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28