

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Larvester J. Johnson v. Ebenezer Espinoza

Case No. 22-cv-09197-WHO (PR) · No. 22-cv-09197-WHO (PR) · Decided December 22, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
LARVESTER J. JOHNSON, Case No. 22-cv-09197-WHO (PR) Plaintiff, 8 ORDER DENYING
PLAINTIFF'S MOTIONS FOR SUMMARY v. 9 JUDGMENT; 10 EBENEZER ESPINOZA,
ORDER DIRECTING PLAINTIFF TO COMPLY WITH DISCOVERY Defendant. 11
REQUESTS AND SIT FOR A DEPOSITION; 12 13 SETTING CASE MANAGEMENT
CONFERENCE 14 Dkt.

Nos. 48, 56, and 58 15 16 INTRODUCTION 17 Plaintiff Larvester J. Johnson alleges in this 42
U.S.C. § 1983 action that one of his 18 jailors, Sergeant Ebenezer Espinoza, retaliated against him
in violation of his First 19 Amendment right to access the courts. He lists a series of incidents in
his First Amended 20 Complaint, but that is the only evidence of his perspective on his claims.

He refused to sit 21 for a deposition or comply with discovery requests from defendant. 22
Johnson has filed two motions for summary judgment, in response to which 23 Espinoza has filed
oppositions. It is clear that there are at a minimum facts in dispute that 24 require denial of
Johnson's motions for summary judgment.¹ 25 Espinoza has filed a motion for summary
judgment, to which Johnson has not 26 responded.

It is unclear whether Johnson's allegations in the FAC, made under penalty of 27 1 perjury, are
sufficient to create a material dispute of fact that would defeat Espinoza's 2 motion. The FAC
offers only speculation that Espinoza's actions, however objectionable, 3 were motivated by
retaliation for Johnson's exercising his right of access. Johnson's 4 failure to sit for a deposition or
produce documents works against him.

5 I will defer ruling on defendant Espinoza's motion for summary judgment until 6 after Johnson
has responded appropriately and fully to defendant's discovery requests and 7 has sat for a
deposition. This should be done within 105 days as outlined at the end of this 8 Order. Johnson's
failure to comply with the instructions in this Order likely will result in 9 the dismissal of this
action under Federal Rule of Civil Procedure 41(b) for failure to 10 prosecute.

11 BACKGROUND 12 i. Procedural Background 13 Johnson's original complaint, which
contained cognizable First Amendment access- 14 to-court and retaliation claims, was served on

Sergeant Espinoza, a correctional officer at 15 the San Francisco County Jail. (Order of Service, Dkt. No. 10.)

The access-to-court 16 claims have been dismissed with prejudice upon defendant's motion because Johnson had 17 not met the requirement to show that he suffered an actual injury from the alleged denial of 18 court access. (Order Granting Dismissal Motion in Part, Dkt. No. 38 at 4.) His retaliation 19 claims remain. 20 Johnson has filed a motion for summary judgment, to which defendant Espinoza 21 has filed an opposition.

(Dkt. Nos. 48 and 52.) Espinoza has filed a motion for summary 22 judgment; Johnson has not filed an opposition. (Dkt. No. 53.) He did file a motion for 23 default judgment in which he contends defendant failed to defend against this suit. (Dkt. 24 No. 56.)

After Espinoza filed an opposition to the default judgment motion, Johnson filed 25 another motion for summary judgment, in response to which Espinoza filed an opposition. 26 (Dkt. Nos. 57, 58, 59.) 27 ii. Factual Allegations 1 searched his legal papers when he went to court. (First Am. Compl., Dkt. No. 23 at 2.) 2 Defendant allegedly "took plaintiff discovery and evidence of a video and picture of 3 someone else as the suspect," confiscated it and put it in the trash.

(Id.) Johnson also 4 alleges that Espinoza had handcuffed him in the holding cell and (along with unnamed 5 others) beat him up "because plaintiff was yelling to them about his right to have access to 6 the court and his First Amendment rights." (Id. at 3.) 7 Johnson also alleges that Espinoza wrote a "false" rules violation report against him 8 so that he would remain "in the hold" for two weeks.

(Id.) He alleges that on September 9 20, 2022, Johnson and defendant were yelling at each other and then defendant and others 10 beat him up and confiscated a "statement that the victim and witness said that I was not the 11 suspect." (Id.) He alleges that Espinoza instructed other officers not to take plaintiff to 12 court that day. (Id.) Johnson alleges that on some date in September, defendant told 13 Johnson that if he did as he was told, Espinoza wouldn't have to tell other officers to beat 14 him up.

(Id.) 15 Johnson also alleges that in October 2022, he went to court and obtained a "court 16 order to let Defendant's search Plaintiff legal document" in front of him. (Id. at 4.) 17 Espinoza also allegedly handcuffed and beat up Plaintiff. (Id.) It is alleged that on 18 October 17, 2022, a state judge ordered Espinoza to explain why he took Johnson's 19 documents.

(Id.) It is alleged that on October 18, 2022, the judge concluded that the 20 documents were legal documents. (Id.) 21 Johnson also claims that on April 16, 2024, which is the day he signed the first 22 amended complaint, unnamed officers searched his cell, found a complaint, put it in the 23 trash, and beat him up. He does not allege that Espinoza was involved.

(Id. at 5.) 24 Espinoza points out that Johnson has not complied with discovery requests: 25 On April 1, 2025, Defendant served Requests for Production and 26 Interrogatories on Plaintiff, requesting information regarding Plaintiff’s claims in this action... Defendant specifically asked for discovery regarding 27 Plaintiff’s retaliation claims, in anticipation of taking Plaintiff’s deposition period, Plaintiff contacted counsel for Defendant multiple times, requesting 1 copies of documents filed in this case, which Defendant’s counsel provided.

2 (Def.’s Mot. for Summ. J., Dkt. No. 53 at 13-14.) 3 STANDARD OF REVIEW 4 Summary judgment is proper where the pleadings, discovery and affidavits 5 demonstrate that there is “no genuine dispute as to any material fact and [that] the movant 6 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those 7 which may affect the outcome of the case.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 8 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a 9 reasonable jury to return a verdict for the nonmoving party. Id. 10 The party moving for summary judgment bears the initial burden of identifying 11 those portions of the pleadings, discovery and affidavits which demonstrate the absence of 12 a genuine issue of material fact.

Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). 13 Where the moving party will have the burden of proof on an issue at trial, it must 14 affirmatively demonstrate that no reasonable trier of fact could find other than for the 15 moving party.

On an issue for which the opposing party by contrast will have the burden 16 of proof at trial, as is the case here, the moving party need only point out “that there is an 17 absence of evidence to support the nonmoving party’s case.” Id. at 325. 18 Once the moving party meets its initial burden, the nonmoving party must go 19 beyond the pleadings and, by its own affidavits or discovery, set forth specific facts 20 showing that there is a genuine issue for trial.

Fed. R. Civ. P. 56(c). The Court is 21 concerned only with disputes over material facts and “[f]actual disputes that are irrelevant 22 or unnecessary will not be counted.” Anderson, 477 U.S. at 248. It is not the task of the 23 court to scour the record in search of a genuine issue of triable fact. Keenan v. Allan, 91 24 F.3d 1275, 1279 (9th Cir. 1996).

The nonmoving party has the burden of identifying, with 25 reasonable particularity, the evidence that precludes summary judgment. Id. If the 26 nonmoving party fails to make this showing, “the moving party is entitled to a judgment as 27 a matter of law.” Celotex, 477 U.S. at 323 (internal quotations omitted). 1 DISCUSSION 2 i. Johnson’s First Motion for Summary Judgment 3 In his first motion for summary judgment, Johnson attempts to relitigate his access- 4 to-court claims, which have already been dismissed with prejudice.

To the extent he 5 moves for summary judgment on those claims, his motion is DENIED. 6 About his retaliation claims, he says only that “The defendant retaliate[d] on the 7 plaintiff by allow[ing]

other Deputy to beat up the plaintiff and to play a role by not 8 allowing the plaintiff to go to court.” (Pl.’s MSJ, Dkt. No. 48 at 4.) This is insufficient. 9 “Within the prison context, a viable claim of First Amendment retaliation entails 10 five basic elements: (1) An assertion that a state actor took some adverse action against an 11 inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled 12 the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably 13 advance a legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th 14 Cir.

2005) (footnote omitted). A plaintiff has the burden of showing that retaliation for the 15 exercise of protected conduct was the “substantial” or “motivating” factor behind the 16 defendant’s actions. *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 17 (1977); *Hines v. Gomez*, 108 F.3d 265, 267-68 (9th Cir. 1997). Retaliation is not 18 established simply by showing adverse activity by defendant after protected speech; rather, 19 plaintiff must show a nexus between the two.

See *Huskey v. City of San Jose*, 204 F.3d 20 893, 899 (9th Cir. 2000) (retaliation claim cannot rest on the logical fallacy of post hoc, 21 ergo propter hoc, i.e., “after this, therefore because of this”). Mere speculation that 22 defendants acted out of retaliation is not sufficient. *Wood v. Yordy*, 753 F.3d 899, 904 (9th 23 Cir. 2014) (citing cases) (affirming grant of summary judgment where no evidence that 24 defendants knew about plaintiff’s prior lawsuit, or that defendants’ disparaging remarks 25 were made in reference to prior lawsuit).

26 To raise a triable issue as to motive, plaintiff must offer evidence that defendants 27 knew about the protected conduct. *Corales v. Bennett*, 567 F.3d 554, 568 (9th Cir. 2009). 1 of three general types of circumstantial evidence [of that motive].” *McCollum v. 2 California Dept. of Corrections and Rehabilitation*, 647 F.3d 870, 882 (9th Cir. 2011) 3 (quoting *Allen v. Iranon*, 283 F.3d 1070, 1077 (9th Cir.

2002)). To survive summary 4 judgment without direct evidence, therefore, plaintiff must “present circumstantial 5 evidence of motive, which usually includes: (1) proximity in time between protected 6 speech and the alleged retaliation; (2) [that] the [defendant] expressed opposition to the 7 speech; [or] (3) other evidence that the reasons proffered by the [defendant] for the adverse 8... action were false and pretextual.” *McCollum*, 647 F.3d at 882 (internal quotation marks 9 and citation omitted).

10 What follows is taken from the allegations in the FAC. 11 a. August 2022 12 During the August 2022 incident, Espinoza allegedly searched Johnson’s legal 13 papers, took some of them, and placed some in the trash.

On the record presented by 14 Johnson, Espinoza said nothing and did nothing showing that retaliation for the exercise of 15 protected conduct was the “substantial” or “motivating” factor

behind Espinoza's actions. 16 It is speculative to infer that Espinoza's actions were in retaliation for exercising a 17 constitutional right. See *Ibrahim v. Biter*, No. 1:11-cv-01265 JLT (PC), 2011 WL 18 4709882, at *3 (E.D.

Cal. Oct. 4, 2011) (the district court concluded that "the mere fact 19 that Plaintiff's cell was searched does not state a claim for retaliation. First, there are no 20 facts alleged that the cell search was related to Plaintiff's filing of 620 inmate grievances. 21 The fact that Plaintiff thinks it is so, doesn't make it so. He must allege facts in this 22 regard, not his mere conclusions.").

23 Johnson's claim that Espinoza ordered other guards to beat him up "because 24 plaintiff was yelling to them about his right to have access to the court and his First 25 Amendment rights" is also speculative. Johnson makes the assumption that he was beaten 26 up because he was yelling about his rights but offers no evidence for the claim. He will 27 have the burden of proof at trial on this issue and as the moving party "bears the initial 1 complaint and must show that no reasonable jury could find other than for the moving 2 party." *Twitter Inc. v. Barr*, 445 F.Supp.3d 295, 302 (N.D.

Cal. 2020). More information 3 is needed about this incident. 4 b. September 2022 5 Johnson alleges that in September 2022: Espinoza wrote a "false" rules violation 6 report against him so that he would remain "in the hold" for two weeks; that he and 7 Espinoza had yelled at each other; that Espinoza beat him up, confiscated a statement from 8 a witness who said he wasn't the suspect, and instructed other officers not to take plaintiff 9 to court that day; and that Espinoza told Johnson that if he did as he was told, Espinoza 10 wouldn't have to tell other officers to beat him up.

This shows Espinoza's animosity but 11 does not retaliation for exercising first amendment rights. Retaliation for the exercise of 12 protected conduct must be the "substantial" or "motivating" factor behind Espinoza's 13 actions. 14 c. October 2022 15 Johnson alleges that in October 2022, Espinoza searched Johnson's legal documents 16 in front of him, handcuffed and beat up him up, and that a state judge ordered Espinoza to 17 explain why Espinoza took Johnson's documents.

The reasons for Espinoza's conduct are 18 not specified. This demonstrates hostility and aggression, not retaliation. for exercising 19 first amendment rights. 20 d. April 2024 21 Johnson alleges that on April 16, 2024, which is the day he signed the first amended 22 complaint, unnamed officers searched his cell, found a complaint and put it in the trash, 23 and beat him up.

There are no allegations that Espinoza was involved. 24 e. Summary 25 Johnson's allegations point to considerable animosity and bad behavior by Espinoza, but 26 not that it was retaliation motivated by Johnson's First Amendment concerns. At a minimum, that 27 is very much in dispute. This motion is DENIED. 1 ii. Johnson's Second Motion for Summary Judgment 2

Johnson's second motion for summary judgment is a repetition of his first motion 3 for summary judgment.

Accordingly, it is DENIED. (Dkt. No. 58.) 4 Johnson's motion for default judgment, in which he contends defendant failed to 5 respond to plead or otherwise defend against the action, is DENIED. (Dkt. No. 56.) As 6 Espinoza's opposition points out, the docket clearly shows that defendant has defended 7 against this action. 8 iii. Defendant Espinoza's Motion for Summary Judgment 9 I will defer ruling on Espinoza's motion for summary judgment until after Johnson 10 has complied with Espinoza's discovery requests and sits for a deposition.

Within 30 days 11 from the date of this Order, Espinoza shall serve on Johnson his Requests for Production 12 and Interrogatories and file a short notice on the docket that the requests have been served. 13 Within 45 days after being served with the requests, Johnson must fully comply fully with 14 defendant's discovery requests, answer all questions, and provide all documents requested.

15 During this time, he may also conduct discovery. All responses to defendant's requests 16 (and all requests for discovery from Johnson) must be sent to defendant, not to the Court. 17 Within 30 days after complying with defendant's discovery requests, Johnson must sit for 18 a deposition arranged by defendant's counsel. Failure to comply with these instructions 19 within the time period stated likely will result in the dismissal of this action under Federal 20 Rule of Civil Procedure 41(b) for failure to prosecute.

21 CONCLUSION 22 Johnson's two motions for summary judgment are DENIED. (Dkt. Nos. 48 and 23 58.) Johnson's motion for default judgment is DENIED. (Dkt. No. 56.) 24 Johnson must comply with the discovery requirements outlined above. Failure to 25 do so likely will result in the dismissal of this action under Rule 41(b) for failure to 26 prosecute. 27 A Case Management Conference is set for April 7, 2026, at 2:00 p.m. by Zoom 1 31, 2026.

2 IT IS SO ORDERED. 3 || Dated: December 22, 2025 = 4 AM H. ORRIC 5 United States District Judge 6 7 8 9 10 11 e 12 14 15 16 € 18 19 20 21 22 23 24 25 26 27 28