

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

King v. Leahy

No. 1:23-cv-00823-KES-SAB (PC) (E.D. Cal. May 16, 2025) · No. 1:23-cv-00823-KES-SAB (PC) · Decided
May 16, 2025

SUMMARY

The document contains Findings and Recommendations recommending that Defendant J. Leahy’s motion for summary judgment be granted in a 42 U.S.C. § 1983 action alleging that he failed to protect Plaintiff Paul King from an inmate assault in violation of the Eighth Amendment. The court concluded that King did not present evidence showing that Leahy knew of and deliberately disregarded a substantial risk of serious harm. The recommendation was issued to the assigned district judge, with objections permitted within fourteen days.

OPINION

(PC) King v. Leahy

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 PAUL KING, No. 1:23-cv-00823-KES-SAB (PC)

12 Plaintiff, FINDINGS AND RECOMMENDATIONS

RECOMMENDING DEFENDANT’S

13 v. MOTION FOR SUMMARY JUDGMENT BE

GRANTED

14 J. LEAHY,

(ECF No. 38) 15 Defendant. 16 17 Plaintiff is proceeding pro se and in forma pauperis in this civil rights action filed pursuant 18 to 42 U.S.C. § 1983. 19 Currently before the Court is Defendant Leahy’s motion for summary judgment, filed

20 January 7, 2025.

21 I.

22 PROCEDURAL BACKGROUND

23 This action is proceeding against Defendant Leahy for failure to protect in violation of the 24 Eighth Amendment. 25 Defendant filed an answer to the complaint on December 12, 2023. (ECF No. 25.) The 26 discovery and scheduling order was issued on January 4, 2024. (ECF No. 29.) 27

On January 7, 2025, Defendant filed the instant motion for summary judgment.¹ (ECF 28 1 Concurrently with the motion for summary judgment, Defendant served Plaintiff with the requisite notice of the

1 No. 38.) Plaintiff did not file an opposition and the time to do so has passed. Local Rule 230(l).

2 Accordingly, Defendant's motion for summary judgment is deemed submitted without oral 3 argument. Id. 4 II.

5 LEGAL STANDARD

6 A. Summary Judgment Standard 7 Any party may move for summary judgment, and the Court shall grant summary judgment 8 if the movant shows that there is no genuine dispute as to any material fact and the movant is 9 entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks omitted); 10 *Washington Mut. Inc. v. U.S.*, 636 F.3d 1207, 1216 (9th Cir. 2011). Each party's position, 11 whether it be that a fact is disputed or undisputed, must be supported by (1) citing to particular 12 parts of materials in the record, including but not limited to depositions, documents, declarations, 13 or discovery; or (2) showing that the materials cited do not establish the presence or absence of a 14 genuine dispute or that the opposing party cannot produce admissible evidence to support the fact. 15 Fed. R. Civ. P. 56(c)(1) (quotation marks omitted). The Court may consider other materials in the 16 record not cited to by the parties, but it is not required to do so. Fed. R. Civ. P. 56(c)(3); *Carmen 17 v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001); accord *Simmons v. 18 Navajo Cnty., Ariz.*, 609 F.3d 1011, 1017 (9th Cir. 2010). 19 In judging the evidence at the summary judgment stage, the Court does not make 20 credibility determinations or weigh conflicting evidence, *Soremekun v. Thrifty Payless, Inc.*, 509 21 F.3d 978, 984 (9th Cir. 2007) (quotation marks and citation omitted), and it must draw all 22 inferences in the light most favorable to the nonmoving party and determine whether a genuine 23 issue of material fact precludes entry of judgment, *Comite de Jornaleros de Redondo Beach v. 24 City of Redondo Beach*, 657 F.3d 936, 942 (9th Cir. 2011) (quotation marks and citation 25 omitted). 26 /// 27 requirements for opposing the motion. *Woods v. Carey*, 684 F.3d 934, 939-41 (9th Cir. 2012); *Rand v. Rowland*, 28 154 F.3d 952, 960-61 (9th Cir. 1998). 1 In arriving at these Findings and Recommendations, the Court carefully reviewed and 2 considered all arguments, points and authorities, declarations, exhibits, statements of undisputed 3 facts and responses thereto, if any, objections, and other papers filed by the parties. Omission of 4 reference to an argument, document, paper, or objection is not to be construed to the effect that 5 this Court did not consider the argument, document, paper, or objection. This Court thoroughly 6 reviewed and considered the evidence it deemed admissible, material, and appropriate. 7 III.

8 DISCUSSION

9 A. Summary of Plaintiff's Complaint 10 Sergeant J. Leahy did not guarantee Plaintiff's safety as a sergeant on the yard. Plaintiff 11 told Leahy that he could no longer program on the yard due to safety concerns. Plaintiff was 12 supposed to be handcuffed and placed in an isolated cage with his property brought to him. 13 However, Plaintiff was sent back and was assaulted. 14 B.

Statement of Undisputed Facts² 15 1. At all relevant times, Plaintiff was an inmate in the custody of the California 16 Department of Corrections and Rehabilitation (CDCR). (ECF No. 12.) 17 2. On May 17, 2022, Plaintiff got into a physical altercation with inmate Mays. 18 (Declaration of G. Nield (Nield Decl.), Ex. A (Pl. Dep.) at 17:12-17:18.) 19 3. After the altercation with Mays, other inmates, whose names Plaintiff does not 20 know, told him to take responsibility for the altercation with Mays. (Pl. Dep. at 17:23-18:17, 21 19:7-19:8, 27:1-27:6.) 22 4. After the altercation with Mays, Plaintiff felt fearful of staying in the facility that 23 he was in because of the requests from inmates that he take responsibility for the Mays' 24 altercation. (Pl. Dep. at 18:19-18:22, 27:1-27:14.) 25 5. None of the inmates that told him to take responsibility for the Mays' altercation 26 threatened him with physical violence. (Pl. Dep. at 27:25-28:5.) 27 2 Hereinafter referred to as "UF." 28 1 6. Between the Mays' altercation and May 27, 2022, Plaintiff did not receive any 2 specific threats. (Pl. Dep. at 18:25-19:3.) 3 7. On May 27, 2022, Plaintiff told Sgt. Leahy that he wanted to move to a different 4 facility because he had safety concerns. (Pl. Dep. at 18:25-19:3, 23:17-23:21.) 5 8. During his conversation with Sgt. Leahy on May 27, 2022, Plaintiff did not 6 identify any specific threats or specific inmates that he felt threatened by. (Pl. Dep. at 22:2-22:9.) 7 9. During his conversation with Sgt. Leahy on May 27, 2022, Plaintiff did not tell 8 Sgt. Leahy that there was an imminent threat to his safety. (Pl. Dep. at 22:2-22:9.) 9 10. Sgt. Leahy told Plaintiff that he would ask the Lieutenant to authorize the transfer 10 and directed Plaintiff to go get his personal property. (Declaration of Leahy (Leahy Decl.) ¶ 4.) 11 11. After Sgt. Leahy told Plaintiff to get his property, Plaintiff did not tell Sgt. Leahy 12 he was going to be attacked if he went to get his property. (Pl. Dep. at 27:15-28:5.) 13 12. When Plaintiff was collecting his personal property, he alleges that he was 14 attacked by another inmate named Acron. (ECF No. 12 at 3; Pl. Dep. at 24:3-24:18.) 15 13. Sgt. Leahy did not hold any ill will or malice towards Plaintiff and did not wish to 16 see him harmed. (Leahy Decl. ¶ 7; Pl. Dep. at 16:8-16:16.) 17 14. Prior to May 27, 2022, Sgt. Leahy and Plaintiff had not interacted. (Leahy Decl. ¶ 18 7; Pl. Dep. at 15:22-16:2.) 19 15. Plaintiff does not contend that Sgt. Leahy held any ill will or malice towards 20 Plaintiff or intended for Plaintiff to be harmed on May 27, 2022. (Pl. Dep. at 16:8-16:16.) 21 C. Requests for Admission to Plaintiff Deemed Admitted 22 Defendant requests that the requests for admission, set one, served on Plaintiff be deemed 23 admitted. (ECF No. 38 at 6-7.) 24 Defendant submits that on January 30, 2024, he served requests for admission, set one, on 25 Plaintiff. (Nield Decl., Ex. B.) The first page of the requests for admission instructed that 26 Plaintiff's responses were due within 45 days, i.e., on or before March 15, 2024. (Id. at 2.) 27 Plaintiff did not provide responses to the requests for admission by March 15, 2024. 28 Accordingly, on April 3, 2024, Defendant wrote Plaintiff and advised him that pursuant to 1 Federal Rule of Civil Procedure 36(a)(3) his responses were deemed admitted. (Nield Decl., Ex. 2 C.) 3 Federal Rule of Civil Procedure 36 provides that "[a] matter is admitted" if the party to 4 whom the request is directed does not timely service a "written answer or objection." Fed. R. 5 Civ. P. 36(a)(3). Plaintiff did not file a timely response to the requests for admission or request 6

that his admissions be withdrawn. (Nield Decl. ¶ 7.) Accordingly, all of the facts in Defendant's 7 requests for admission, set one, are deemed admitted when evaluating the instant motion for 8 summary judgment. 9 D. Analysis of Defendant's Motion 10 Defendant argues that Plaintiff cannot establish that he was aware of and intentionally 11 disregarded a risk of substantial harm to Plaintiff. 12 The Eighth Amendment requires that prison officials take reasonable measures to guarantee 13 the safety of prisoners. *Farmer v. Brennan*, 511 U.S. at 832. In particular, prison officials have a 14 duty to protect prisoners from violence at the hands of other prisoners. *Id.* at 833; *Cortez v. Skol*, 15 776 F.3d 1046, 1050 (9th Cir. 2015); *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005); 16 *Hoptowit v. Ray*, 682 F.2d 1237, 1250 (9th Cir. 1982); *Gillespie v. Civiletti*, 629 F.2d 637, 642 & 17 n.3 (9th Cir. 1980). 18 The failure of prison officials to protect inmates from attacks by other inmates or from 19 dangerous conditions at the prison violates the Eighth Amendment when two requirements are 20 met: (1) the deprivation alleged is, objectively, sufficiently serious; and (2) the prison official is, 21 subjectively, deliberately indifferent to inmate health or safety. *Farmer*, 511 U.S. at 834. A prison 22 official is deliberately indifferent if he knows of and disregards an excessive risk to inmate health 23 or safety by failing to take reasonable steps to abate it. *Id.* at 837. 24 A prisoner may state a § 1983 claim under the Eighth Amendment against prison officials 25 only where the officials acted with "deliberate indifference" to the threat of serious harm or injury 26 to an inmate by another prisoner, *Berg v. Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986); see also 27 *Valandingham v. Bojorquez*, 866 F.2d 1135, 1138 (9th Cir. 1989) (deliberately spreading rumor 28 that prisoner is snitch may state claim for violation of right to be protected from violence while in 1 state custody), or by physical conditions at the prison. The official must both be aware of facts 2 from which the inference could be drawn that a substantial risk of serious harm exists, and he 3 must also draw the inference. See *Farmer*, 511 U.S. at 837. Mere negligent failure to protect an 4 inmate from harm is not actionable under Section 1983. *Id.* at 835. 5 Here, it is undisputed that On May 17, 2022, Plaintiff got into a physical altercation with 6 inmate Mays. (UF 2.) After the altercation with Mays, other inmates, whose names Plaintiff 7 does not know, told him to take responsibility for the altercation with Mays. (UF 3.) Thereafter, 8 Plaintiff felt fearful of staying in the facility that he was in because of the requests from inmates 9 that he take responsibility for the Mays' altercation. (UF 4.) None of the inmates that told him to 10 take responsibility for the Mays' altercation threatened him with physical violence. (UF 5.) 11 Between the Mays' altercation and May 27, 2022, Plaintiff did not receive any specific threats. 12 (UF 6.) 13 On May 27, 2022, Plaintiff told Sgt. Leahy that he wanted to move to a different 14 facility because he had safety concerns. (UF 7.) During his conversation with Sgt. Leahy on 15 May 27, 2022, Plaintiff did not identify any specific threats or specific inmates that he felt 16 threatened by and did not tell him there was an imminent threat to his safety. (UF 8-9.) 17 Sgt. Leahy told Plaintiff that he would ask the Lieutenant to authorize the transfer and directed 18 Plaintiff to go get his personal property. (UF 10.) After Sgt. Leahy told Plaintiff to get his 19

property, Plaintiff did not tell Sgt. Leahy he was going to be attacked if he went to get his 20 property. (UF 11.) When Plaintiff was collecting his personal property, he alleges that he was 21 attacked by another inmate named Acron. (UF 12.) 22 Prior to May 27, 2022, Sgt. Leahy and Plaintiff had not interacted. (UF 14.) Plaintiff 23 does not contend that Sgt. Leahy held any ill will or malice towards Plaintiff or intended for 24 Plaintiff to be harmed on May 27, 2022. (UF 15.) Plaintiff has not produced any evidence to 25 demonstrate that Defendant Leahy acted with deliberate indifference to his safety in violation of 26 the Eighth Amendment. Plaintiff acknowledges that the only information he conveyed to Leahy 27 on May 27, 2022, was that he wanted a transfer because he had “safety concerns” and could no 28 longer be on the yard. (Pl. Dep. at 23-24.) This generalized fear consists of conclusory 1 statements that are insufficient to demonstrate that Defendant disregarded an excessive risk to 2 Plaintiff. Indeed, the threat that Plaintiff communicated to Leahy was nothing more than a mere 3 suspicion that harm might occur at some time. Plaintiff did not provide any details of a specific 4 threat, or identify or describe a specific inmate who may carry out the threat, or that there was a 5 threat of violence. Accord, *Thompson v. Lee*, No. 1:07-cv-01299-LJO-GSA-PC, 2015 WL 6 769683, at *7-8 (E.D. Cal. Feb. 23, 2015) (summary judgment granted where plaintiff-inmate did 7 not communicate a specific fear of harm in relation to his housing with a rival gang member); 8 *Schrubb v. Simmons*, No. 12-cv-00419-JSW, 2022 WL 3717254, at * 8-9 (N.D. Cal. Aug. 29, 9 2022) (same). 10 Further, Plaintiff acknowledged that he never indicated he faced an imminent threat of 11 physical harm on May 27, 2022: 12 Q. Okay. You didn’t tell officer Leahy—Sergeant Leahy when you were asking for a 13 transfer, you did not tell him, I know today I’m going to get assaulted; is that a true statement? 14 A. That is a true statement. I didn’t say I was going to be, but I went to Sergeant Leahy 15 and said, Sergeant Leahy, I can no longer be on this yard. I have safety concerns. 16 (Pl. Dep. at 22:2-9.). 17 There is insufficient evidence that Defendant had a subjective suspicion that Plaintiff 18 would be attacked, beyond “mere suspicion” that an attack could occur, and no reasonable jury 19 could conclude that Defendant Leahy was deliberately indifferent to Plaintiff’s safety needs by 20 sending him to get his property. See *Berg*, 794 F.2d at 460 (stating summary judgment 21 appropriate as to defendants when plaintiff “failed to come forward with facts showing that these 22 defendants had any reason to believe he would be attacked by the assailant”); see also *Shelton v. 23 Reinke*, No. 3:11-cv-00064-BLW, 2013 WL 1319630, at *9 (D. Idaho Mar. 28, 2013) (“Prison 24 officials cannot be deliberately indifferent toward a purported substantial risk of harm when 25 Plaintiff fails to inform them of the risk, despite having numerous opportunities to do so”), *aff’d*, 26 585 Fed.Appx. 359 (9th Cir. 2014) (unpublished). 27 /// 28 1 Moreover, Defendant Leahy could not have been aware of a substantial threat of serious 2 harm to Plaintiff because Plaintiff himself admitted at his deposition there had not been any 3 specific threats between May 17 and May 27, 2022, and he was not aware he would be assaulted 4 on May 27, 2022. (Pl. Dep. at 18:25-19:3; 21:16-25.) In addition, Defendant Leahy did not 5 ignore Plaintiff’s safety concerns and disregard any risk. After Plaintiff expressed the safety 6

concerns, Leahy told Plaintiff to pack up his belongings and agreed to ask the lieutenant to 7 authorize Plaintiff's transfer. (UF 10.) Plaintiff further acknowledged that he never believed that 8 Leahy had any ill-will or malice against him or intended for Plaintiff to be harmed on May 27, 9 2022. (Pl. Dep. at 15:22-16:2; 16:8-16:12.) 10 Lastly, Plaintiff's claim that Defendant Leahy is responsible (and was deliberately 11 indifferent) because he should have handcuffed and placed him in an isolated cage with his 12 property brought to him, is unavailing. At most, Plaintiff's claim amounts to negligence.³ As 13 stated above, there is no evidence from which a reasonable trier of fact could find that Defendant 14 Leahy was aware Plaintiff faced a specific threat of substantial harm if he retrieved his property on

15 May 27, 2022.⁴ Accordingly, Defendant Leahy is entitled to summary judgment.

16 IV.

17 RECOMMENDATION

18 Based on the foregoing, it is HEREBY RECOMMENDED that Defendant Leahy's 19 motion for summary judgment be granted. 20 This Findings and Recommendation will be submitted to the United States District Judge 21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) 22 days after being served with this Findings and Recommendation, the parties may file written 23 24 3 To the extent Plaintiff claims that Defendant Leahy violated prison rules and/or policies, such claim does not give rise to a cause of action under § 1983. Section 1983 provides a cause of action for the deprivation of federally 25 protected rights. "To the extent that the violation of a state law amounts to the deprivation of a state-created interest that reaches beyond that guaranteed by the federal Constitution, [s]ection 1983 offers no redress." *Sweaney v. Ada Cty., Idaho*, 119 F.3d 1385, 1391 (9th Cir. 1997) (quoting *Lovell v. Poway Unified Sch. Dist.*, 90 F.3d 367, 370 (9th 26 Cir. 1996)); *Cousins v. Lockyer*, 568 F.3d 1063, 1070 (9th Cir. 2009) (nor is there any liability under § 1983 for violating prison policy). 27 4 Because the Court finds that Defendant Leahy is entitled to summary judgment on the merits, the Court need not 28 and does not reach the argument for qualified immunity. 1 | objections with the Court, limited to 15 pages in length, including exhibits. The document should 2 | be captioned "Objections to Magistrate Judge's Findings and Recommendation." The parties are 3 | advised that failure to file objections within the specified time may result in the waiver of rights 4 | on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. 5 | Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 6 7

8 IT IS SO ORDERED. FA. ee

9 | Dated: _May 16, 2025

STANLEY A. BOONE

10 United States Magistrate Judge 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28