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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ERNESTO PASILLAS,

Plaintiff,

v.

C/O SOTO,

Defendant.

Case No.: 1:16-cv-00487-AWI-SAB (PC)

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING GRANTING  
DEFENDANT’S MOTION FOR SUMMARY  
JUDGMENT

(ECF No. 21)

**THIRTY (30) DAY DEADLINE**

Plaintiff Ernesto Pasillas is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Defendant’s motion for summary judgment, filed on February 23, 2018. (ECF No. 21.)

**I.**

**RELEVANT BACKGROUND**

This case proceeds on Plaintiff’s complaint against Defendant Soto for the failure to intervene while Plaintiff was assaulted by another inmate, in violation of the Eighth Amendment. (ECF No. 1.)

Defendant filed an answer to the complaint on May 8, 2017. (ECF No. 16.) On May 9, 2017, the Court issued the discovery and scheduling order. (ECF No. 17.)

1 As noted above, on February 23, 2018, Defendant filed a timely motion for summary  
2 judgment. (ECF No. 21.) Plaintiff filed an opposition, on extension, on April 19, 2018. (ECF  
3 No. 24.) Defendant filed a reply on May 1, 2018. (ECF No. 25.) The motion is now deemed  
4 submitted, without oral argument. Local Rule 230(l).

5 **II.**

6 **LEGAL STANDARD**

7 Any party may move for summary judgment, and the Court shall grant summary  
8 judgment if the movant shows that there is no genuine dispute as to any material fact and the  
9 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks  
10 omitted); Washington Mut. Inc. v. U.S., 636 F.3d 1207, 1216 (9th Cir. 2011). Each party's  
11 position, whether it be that a fact is disputed or undisputed, must be supported by (1) citing to  
12 particular parts of materials in the record, including but not limited to depositions, documents,  
13 declarations, or discovery; or (2) showing that the materials cited do not establish the presence or  
14 absence of a genuine dispute or that the opposing party cannot produce admissible evidence to  
15 support the fact. Fed. R. Civ. P. 56(c)(1) (quotation marks omitted). The Court may consider  
16 other materials in the record not cited to by the parties, but it is not required to do so. Fed. R.  
17 Civ. P. 56(c)(3); Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1031 (9th Cir.  
18 2001); accord Simmons v. 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).

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1 **III.**

2 **DISCUSSION**

3 **A. Summary of Plaintiff's Relevant Allegations**

4 At the time of the events at issue, Plaintiff was incarcerated at Golden State Modified  
5 Community Correctional Facility ("Golden State"), in McFarland, California. On February 20,  
6 2015, between 8:40 p.m. and 9:00 p.m., Plaintiff was assaulted by another inmate. (Compl., ECF  
7 No. 1, at 4.) The incident took place in front of Defendant, who was on duty at the time. (Id.)  
8 While playing Monopoly on the table in front of the podium, an inmate punched Plaintiff in the  
9 face. (Id.) Defendant noticed it right away and said, "Cut it out." (Id.)

10 Surprised, Plaintiff asked the inmate why he did it, but the inmate just punched Plaintiff  
11 again. (Compl. 4.) At that point, Plaintiff stood up and backed up towards Defendant, looking  
12 and hoping for assistance. (Id.) However, Defendant only radioed for backup once, and just  
13 "kept watching the assault in shock." (Id.) After Plaintiff backed up, the inmate came towards  
14 Plaintiff and punched him again. (Id.) Plaintiff was scared for his life, and hoped that someone  
15 would help, but no one came, even after Defendant radioed for help. (Id.)

16 After the inmate punched Plaintiff again, the inmate went back to his bed rack in the back  
17 of the dorm and Plaintiff thought that after the assault was over. (Compl. 4.) Plaintiff thought  
18 that Defendant would take Plaintiff out of the dorm, or get him some help, but she did nothing.  
19 (Id.) Defendant "just stood there completely frozen and nervously laughing." (Id.) A minute  
20 later, the inmate returned and continued to assault Plaintiff. (Id.) After the inmate punched  
21 Plaintiff a few more times, he left to go back to his bed. (Id.) Plaintiff was scared and stunned  
22 because no one was coming to help. (Id.)

23 A few minutes later, to Plaintiff's surprise, the inmate came back another time and  
24 continued the assault. (Compl. 4.) This time, the inmate did not stop punching until Plaintiff  
25 was knocked down and bleeding profusely above his left eye. (Id. 4-5.) The inmate returned to  
26 his bed, and Plaintiff finally received help from another inmate, who brought Plaintiff his shirt to  
27 stop the bleeding, and a chair to sit on. (Id. 5.)

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1 More than five minutes passed from the time the first punch was thrown, but no officer  
2 had arrived to help. (Id.) Defendant kept watching in shock as the other inmate helped Plaintiff  
3 and was preparing to clean up the blood. (Id.)

4 As Plaintiff got up from the chair, the attacking inmate came back and was ready to  
5 continue his assault. (Compl. 5.) By luck, Officer Castro was recalling the yard and noticed  
6 Plaintiff with blood on his face. (Id.) Officer Castro came in the dorm, asked what happened,  
7 and then radioed for help. (Id.) Plaintiff noticed the attacking inmate going back to his bed  
8 when he saw that Officer Castro was present. (Id.)

9 Finally, more officers came and Plaintiff was taken to a holding cell. (Compl. 5.) Before  
10 they took him away, Plaintiff heard one of the officers ask Defendant why she did not radio for  
11 help or backup. (Id.) Defendant told them that she did. (Id.) However, even after Defendant  
12 radioed for help, no officer was aware of the assault. (Id.)

13 After Defendant noticed that help did not arrive, she did absolutely nothing to help, or try  
14 to get help from another officer nearby. (Id.) If Officer Castro had not recalled the yard and  
15 noticed Plaintiff's face, Plaintiff would have been more seriously injured. (Id. 5-6.) When  
16 Plaintiff was taken to the holding cell, Lt. Hogan and other officers stayed in the pod to  
17 investigate the incident. (Id. at 6.)

18 Plaintiff was examined by medical staff that night, and was found to have suffered a deep  
19 laceration above his left eye and on his ear. (Compl. 6.) Plaintiff also had severe head trauma  
20 and swelling all over his face and head. (Id.) The medical staff gave Plaintiff some ice and a  
21 bandage, and suggested that Plaintiff be sent to another prison for stitches and further evaluation.  
22 (Id.) Plaintiff chose not to go, however, because he "just wanted the night over with and [to] go  
23 back to bed." (Id.) Plaintiff was permitted to return to his dorm around 12:15 a.m. (Id.)  
24 Plaintiff was notified that he would not receive a Rules Violation Report because he never threw  
25 a punch. (Id.) The inmate who attacked Plaintiff was moved from Golden State. (Id.)

26 **B. Statement of Material Undisputed Facts**

27 On February 20, 2015, Defendant was assigned to as a Dorm Officer for the A-4  
28 Dormitory. Defendant was responsible for overseeing approximately 100 inmates who were

1 housed in the A-4 Dormitory. (Soto Decl., ECF No. 21-2, Ex. A, ¶ 4.) On that day, Defendant  
2 observed inmate McAfee and Plaintiff playing board games at a table approximately five feet  
3 away from the podium where she was standing. (Id. at ¶ 5.)

4 At approximately 8:29 p.m., Defendant heard inmates McAfee and Plaintiff start arguing  
5 with each other, and inmate McAfee began to strike Plaintiff with his fist in his upper torso and  
6 head area. (Soto Decl. ¶ 6.) Pursuant to her training, Defendant gave a direct order for inmate  
7 McAfee and Plaintiff to stop fighting and get down. She then announced a Code One (1) via  
8 institutional radio, which is the code for a fight. Due to what Defendant later learned appeared to  
9 be a radio malfunction, no initial response arrived. (Id. at ¶ 7; Compl. at 4.)

10 Defendant continued to give direct orders for the inmates to stop fighting; however,  
11 inmate McAfee refused to comply with her direct orders and continued to strike Plaintiff in the  
12 head area. Plaintiff attempted to block the punches. Defendant heard Plaintiff say to Inmate  
13 McAfee, “What the f\*\*ck did I say?” (Soto Decl. ¶ 8.) Inmate McAfee at one point walked  
14 away and Defendant thought the incident was over. However, inmate McAfee immediately  
15 returned and punched Plaintiff another time, despite Defendant’s verbal commands to stop and  
16 get down. Defendant observed Plaintiff fall to the ground, and inmate McAfee walk away. (Id.  
17 at ¶ 9.)

18 The entire incident occurred very quickly and lasted approximately one minute. The  
19 incident is documented on surveillance video. (Soto Decl. ¶ 10; Exh. B, video surveillance  
20 footage of Feb. 20, 2015 incident, lodged in court records.)

21 Based on her training, Defendant is supposed to give verbal commands to the inmates to  
22 stop and get down to the ground and radio for back-up if she witnesses an altercation. Defendant  
23 is instructed not to intervene or use any type of force, as Correctional Officers at Golden State  
24 are not equipped with O.C. Spray, batons, or any other types of weapons. (Soto Decl. ¶ 11.)

25 During the February 20, 2014 incident, Defendant repeatedly instructed inmate McAfee  
26 and Plaintiff to get down to the ground and stop. She was unable to do anything else, such as  
27 physically intervene in the matter, because it would have been inconsistent with her training and  
28 unsafe for her to do so. Further, she could not leave the dormitory while the incident was

1 occurring to find back-up, because leaving the dayroom with no correctional officers could have  
2 allowed the situation to escalate and jeopardize the safety all inmates housed in the dormitory.  
3 (Soto Decl. ¶ 12.)

4 After the incident, Defendant made sure that Plaintiff was okay. Although Plaintiff had a  
5 small laceration on his forehead, he was coherent and was able to stand. Another inmate came  
6 up to the area to provide Plaintiff with a shirt to wipe his face. (Soto Decl. ¶ 13.) Once it  
7 appeared that inmate McAfee was not going to return to the area, Defendant had Plaintiff stand  
8 near her as Defendant opened the door of the A-4 dorm to look for assistance, while still  
9 maintaining a visual of the interior of the dorm to ensure that there were no other incidents.  
10 (Soto Decl. ¶ 14.)

11 Within a few minutes, Officer Santana arrived at the A-4 Dormitory. Officer Santana  
12 directed Plaintiff to the “A” side main hallway podium and handcuffed Plaintiff. Officer Santana  
13 then escorted him out of A-4 Dormitory to Receiving and Release, where he was placed in  
14 Transit Holding Cell #5, and where an unclothed body search was conducted. (Soto Decl. ¶ 15.)

15 Officers Plum and DeGuzman also responded to the A-4 Dormitory. Defendant also  
16 informed the officers about the incident. (Soto Decl. ¶ 16.) Officer Plum proceeded to inmate  
17 McAfee’s location at bed #16 and gave inmate McAfee a verbal command to turn around and  
18 cuff up, which Inmate McAfee complied with. Officer Plum and Officer DeGuzman then  
19 escorted inmate McAfee to Receiving and Release, where he was placed in Transit Holding Cell  
20 #1, and where an unclothed body search was conducted. (Soto Decl. ¶ 17.)

21 Officer Guinto took photographs of both inmates and their injuries, and Registered Nurse  
22 Simpao conducted a medical evaluation [Form 7219] on both inmates. (Soto Decl. ¶ 18.) Prior  
23 to the incident, Defendant had no reason to know that inmate McAfee would batter or harm  
24 Plaintiff in any way. Defendant was not aware of any problems specifically between these  
25 inmates. (Soto Decl. ¶ 19.) Defendant’s intention throughout the incident was always to  
26 preserve order, and protect the safety of all inmates, including Plaintiff, the staff, and herself.  
27 (Soto Decl. ¶ 20.)

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1           **C. Parties Arguments**

2           Defendant argues that there is no evidence that she knew of any excessive risk to  
3 Plaintiff's safety and disregarded that risk during the February 20, 2014 incident. Instead, the  
4 evidence demonstrates that she acted in accordance with her training, both to protect Plaintiff,  
5 herself, and the other inmates, and to regain control of the facility. As the incident only lasted  
6 about one minute in total, and because Defendant was alone, there was no more that she could  
7 do, such as physically intervene in the matter. This would have been inconsistent with her  
8 training and endangered the safety of staff and inmates.

9           In his opposition, Plaintiff admits that Defendant told the attacking inmate to stop, and  
10 radioed for help. Nevertheless, he argues that the officers did not come to assist after Defendant  
11 used her radio, and that Defendant should have ordered all inmates to "rack it up" once the attack  
12 began. (Pl.'s Opp'n, ECF No. 24, at 2.)

13           In reply, Defendant argues that she cannot be held liable for the failure of other officers  
14 to respond, particularly as the undisputed cause of the immediate failure to respond is that her  
15 radio had malfunctioned, through no fault of her own. Further, Plaintiff's unsupported  
16 speculations and disagreements about how Defendant should have responded do not show any  
17 violation of his Eighth Amendment rights.

18           **D. Analysis**

19           The Eighth Amendment protects prisoners from inhumane methods of punishment and  
20 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.  
21 2006). Although prison conditions may be restrictive and harsh, prison officials must provide  
22 prisoners with food, clothing, shelter, sanitation, medical care, and personal safety. Farmer v.  
23 Brennan, 511 U.S. 825, 832–33 (1994).

24           Prison officials have a duty "to take reasonable measures to guarantee the safety of  
25 inmates, which has been interpreted to include a duty to protect prisoners." Labatad v.  
26 Corrections Corp. of America, 714 F.3d 1155, 1160 (9th Cir. 2013) (citing Farmer, 511 U.S. at  
27 832–33; Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005)). Thus, prison officials are  
28 required to protect inmates from violence by other prisoners. Farmer, 511 U.S. at 833.

1 To establish a violation of this duty, a prisoner must “show that the officials acted with  
2 deliberate indifference to threat of serious harm or injury to an inmate.” Labatad, 714 F.3d at  
3 1160 (citing Gibson v. County of Washoe, 290 F.3d 1175, 1187 (9th Cir. 2002)). A failure to  
4 protect claim under the Eighth Amendment requires a showing that “the official [knew] of and  
5 disregard[ed] an excessive risk to inmate . . . safety.” Farmer, 511 U.S. at 837. Because “only  
6 the unnecessary and wanton infliction of pain implicates the Eighth Amendment,” a plaintiff  
7 must allege facts showing the defendant acted with a “sufficiently culpable state of mind.”  
8 Wilson v. Seiter, 501 U.S. 294, 297 (1991) (internal quotations marks, emphasis, and citations  
9 omitted).

10 In this case, there is no dispute that Defendant had no prior knowledge of any risk that  
11 inmate McAfee would attack Plaintiff on February 20, 2014, and Plaintiff does not claim that it  
12 was a planned attack of which Defendant had any prior knowledge. The risk to Plaintiff’s safety  
13 was from an assault that happened in an instant, and there is no dispute that Defendant gave  
14 verbal commands for it to stop, and attempted to radio for backup, as she had been trained to do.  
15 This does not show any deliberate indifference by Defendant. Instead, the undisputed facts show  
16 an attempt by Defendant to protect Plaintiff, and to gain control over the safety and security of  
17 the institution.

18 Plaintiff asserts that four minutes passed before other officers arrived at the scene after  
19 the attack, and that an officer asked Defendant whether she radioed for help. These facts are not  
20 sufficient to create a triable issue of fact as to whether Defendant was deliberately indifferent to a  
21 risk to Plaintiff. It is undisputed that Defendant did attempt to radio for help, and that it was not  
22 successful due to a radio malfunction, not through any failure to act by Defendant.

23 “What is reasonable depends on the circumstances, which normally constrain what  
24 actions a state official can take.” Peralta v. Dillard, 744 F.3d 1076, 1082 (9th Cir. 2014). Here,  
25 the circumstances of the assault on Plaintiff were that Defendant was the only officer in the area,  
26 and that she had no batons, O.C. pepper spray, or any other weapons or means to gain control of  
27 the fight other than to give verbal orders and radio for assistance. Plaintiff may speculate that  
28 Defendant could physically intervene, but the undisputed evidence is that Defendant took the



1 actions that she was trained to do in case of an inmate fight, that she was trained not to intervene  
2 when alone as doing so could risk the safety of herself and the other staff and inmates, and that  
3 she could not leave to get help because she was the only officer in the area. Further, the  
4 evidence is that once other officers showed up, the brief incident was over, and Plaintiff was  
5 medically treated.

6 Plaintiff also asserts that Defendant should have given a verbal order to “rack it up” to all  
7 inmates so that they could not be walking around and watching the events unfold. This  
8 speculation regarding possible alternative verbal orders Defendant might have given is not  
9 relevant, and does not show any deliberate indifference by Defendant. Plaintiff has not claimed,  
10 nor can he show, that other inmates watching the assault or going about their normal routine as  
11 he waited for help, caused him any harm. As noted above, the undisputed evidence is that within  
12 a few minutes, the assault ended, other officers arrived, Plaintiff and inmate McAfee were  
13 escorted to holding cells, and Plaintiff received medical treatment. That Defendant took no  
14 further action after giving orders to stop the fighting and radioing for help, including that she did  
15 not give orders to “rack it up,” does not show that she failed to protect Plaintiff or violated his  
16 constitutional rights.

17 Based on these findings, Defendant is entitled to judgment as a matter of law. Therefore,  
18 the Court will recommend that Defendant’s motion for summary judgment be granted.

#### 19 IV.

#### 20 RECOMMENDATIONS

21 Accordingly, it is HEREBY RECOMMENDED that:

- 22 1. Defendant’s motion for summary judgment be granted; and
- 23 2. Judgment be entered in favor of Defendant.

24 These Findings and Recommendations will be submitted to the United States District  
25 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty**  
26 **(30) days** after being served with these Findings and Recommendations, the parties may file  
27 written objections with the Court. The document should be captioned “Objections to Magistrate  
28 Judge’s Findings and Recommendations.”

1 The parties are advised that failure to file objections within the specified time may result  
2 in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)  
3 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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5 IT IS SO ORDERED.

6 Dated: July 12, 2018

  
UNITED STATES MAGISTRATE JUDGE

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