

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF CALIFORNIA

3 ELGAN BASTON,  
4 Plaintiff,  
5 v.  
6 EDWARD M. YETT, *et al.*,  
7 Defendants.  
8

Case No. 1:16-cv-01564-LJO-EPG  
FINDINGS AND RECOMMENDATIONS  
THAT DEFENDANTS' MOTION TO  
DISMISS BE DENIED  
(ECF No. 18)  
OBJECTIONS, IF ANY, TO BE FILED  
WITHIN 14 DAYS

9 **I. INTRODUCTION**

10 Elgan Baston ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in  
11 this civil rights action pursuant to 42 U.S.C. § 1983.

12 Now before the Court is Defendants Benjamin Arreguin, Kristofer R. Campbell, Eddie  
13 Ohaya, Michael A. Toscano, and Edward M. Yett's motion to dismiss Plaintiff's Complaint.  
14 (ECF No. 18.) Defendant D. Curry also filed a joinder in the motion to dismiss after he was  
15 served with process in this case. (ECF Nos. 26-27.)

16 For the following reasons, it is recommended that Defendants' motion to dismiss be  
17 denied.

18 **II. SUMMARY OF ALLEGATIONS IN COMPLAINT<sup>1</sup>**

19 Plaintiff alleges that Defendants failed to protect him from an attack while he was  
20 incarcerated at California Correctional Institution ("CCI") in Tehachapi, California.<sup>2</sup> Plaintiff  
21 was previously housed in segregated housing in the Substance Abuse Treatment Facility in  
22 California State Prison, Corcoran, ("SATF") because prison officials received confidential  
23 information that Plaintiff was going to be attacked for failing to pay an unpaid debt. Despite this  
24 knowledge, Defendant Curry transferred Plaintiff, a non-violent and non-gang-affiliated inmate,  
25 from SATF to CCI, an institution intended to house CDCR's most violent and disruptive

26  
27 <sup>1</sup> The Court hereby incorporates by reference the summary of the allegations into these Findings and  
Recommendations. (ECF No. 7, pp. 2-6.)

28 <sup>2</sup> Both SATF and CCI are correctional facilities under the authority of the California Department of  
Corrections and Rehabilitation ("CDCR").

1 inmates. Upon Plaintiff's arrival at CCI, it is alleged that Defendant Yett failed to properly  
2 classify Plaintiff's security level, which resulted in Plaintiff being placed among violent inmates.

3 On the day of the attack, December 30, 2015, it is alleged that Defendants Arreiguin,  
4 Ohaya, Campbell and Toscano were assigned to monitor the Building 4 rotunda area. However,  
5 these Defendants' view of area from which the rotunda area was monitored, the glass floor of the  
6 control booth, was obstructed by blankets. Defendants Arreiguin, Ohaya, Campbell and Toscano  
7 had knowledge of the obstruction, but in contravention of CCI policy, took no action to remove  
8 it.

9 On the same day, Plaintiff and other inmates in Building 4 were released to the recreation  
10 yard. While Plaintiff was in the recreation yard, a fight ensued between several other inmates,  
11 requiring the use of force to subdue the aggressors. After this incident, all inmates were recalled  
12 back into Building 4. During the controlled recall, Defendants Campbell, Toscano, and Arreiguin  
13 were aware that there were no staff present inside the Building 4 rotunda to provide direct and  
14 constant supervision, and were aware that Ohaya had placed blankets in the control booth,  
15 obstructing the supervision of the rotunda area.

16 As Plaintiff walked through the rotunda back to his assigned cell, he was attacked by two  
17 inmates, one or both of whom stabbed or sliced the left side of his neck.

### 18 **III. FAILURE TO STATE A CLAIM AND SUPPLEMENTAL JURISDICTION**

19 On April 26, 2017, Chief U.S. District Judge Lawrence O'Neill entered a screening order  
20 (the "screening order") pursuant to 28 U.S.C. § 1915A finding as follows:

- 21 1. Plaintiff stated a cognizable failure to protect claim under the Eighth  
22 Amendment of the U.S. Constitution;
- 23 2. Plaintiff stated a state law negligence claim to which he exhausted his  
24 administrative remedies; and
- 25 3. The exercise of supplemental jurisdiction under 28 U.S.C. § 1367 over the  
26 state law negligence claim was appropriate.

27 (ECF No. 7.)

28 In their motion to dismiss, Defendants contend that this action should be dismissed

1 because:

- 2 1. Plaintiff fails to state sufficient facts to support his failure to protect claim
- 3 under the Eighth Amendment;
- 4 2. Supplemental jurisdiction over Plaintiff's state law negligence claim should
- 5 be declined;
- 6 3. Defendants are immune to Plaintiff's negligence claim under Government
- 7 Code § 820.8; and
- 8 4. Defendants are entitled to qualified immunity.

9 (ECF No. 18.)

10 Judge O'Neill has already addressed the first two arguments in the screening order. (ECF  
11 No. 7.) A § 1915A screening order and an order resolving a Rule 12(b)(6) motion to dismiss  
12 utilize the same claim standard. *See Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012)  
13 ("Failure to state a claim under § 1915A incorporates the familiar standard applied in the context  
14 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). [citations]").

15 Defendants fail to reference, not to mention address, Judge O'Neill's screening order.  
16 Defendants do not point to any error in that decision. Instead, Defendants make arguments  
17 already considered and rejected in that order.

18 In any event, the undersigned judge reaches the same result as Judge O'Neill in the  
19 screening order after considering Defendants' motion to dismiss: Plaintiff has stated a claim for  
20 failure to protect and the exercise of supplemental jurisdiction over the negligence claim is  
21 appropriate. Accordingly, this Court recommends that the motion to dismiss be denied as to  
22 Defendants' first two arguments.

23 The only remaining arguments in the motion to dismiss are the third and fourth  
24 arguments concerning immunity, which the Court will now address.

#### 25 **IV. QUALIFIED IMMUNITY**

26 Defendants argue that they are entitled to qualified immunity because 1) they did not  
27 violate Plaintiff's constitutional rights, and 2) if they did, the right was not clearly established.

28 "To determine whether an individual officer is entitled to qualified immunity, we ask (1) whether

1 the official violated a constitutional right and (2) whether the constitutional right was clearly  
2 established.” *C.B. v. City of Sonora*, 769 F.3d 1005, 1022 (9th Cir. 2014) (citing *Pearson v.*  
3 *Callahan*, 555 U.S. 223, 232, 236, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009); *A.D. v. California*  
4 *Highway Patrol*, 712 F.3d 446, 453–54 (9th Cir. 2013)). At the motion to dismiss stage, the  
5 court treats the allegations in the complaint as true and dismissal on qualified immunity grounds  
6 is not appropriate unless the court can determine from the face of the complaint that qualified  
7 immunity applies. *Grotten v. California*, 251 F.3d 844, 851 (9th Cir. 2001).

8 In the screening order, Judge O’Neill found that Plaintiff sufficiently alleged a  
9 constitutional violation -- a failure to protect claim -- as follows:

10 As detailed above, Plaintiff has alleged that the failure to classify and house him  
11 properly and in accordance with CDCR policy by Curry and Yett resulted in him  
12 sustaining a serious injury after being attacked by two unknown inmates in the  
13 Building 4 rotunda area that should have been monitored by Ohaya, Arreguin,  
14 Toscano and Campbell. Plaintiff’s allegations regarding his history of owing a  
debt and previously being placed in protective housing and Defendants’  
awareness of his history and housing needs are sufficient at this stage of  
proceedings and satisfy the requirements set forth above.

15 (ECF No. 7, p. 9.) Thus, the Court will turn its analysis to the second prong of the qualified  
16 immunity inquiry; whether the constitutional right was clearly established.

17 With regard to the second prong of the qualified immunity analysis, the Supreme Court  
18 of the United States has stated:

19 A clearly established right is one that is “sufficiently clear that every  
20 reasonable official would have understood that what he is doing violates that  
21 right.” *Reichle v. Howards*, 566 U.S. —, —, 132 S.Ct. 2088, 2093, 182  
22 L.Ed.2d 985 (2012) (internal quotation marks and alteration omitted). “We do not  
23 require a case directly on point, but existing precedent must have placed the  
24 statutory or constitutional question beyond debate.” *Ashcroft v. al-Kidd*, 563 U.S.  
25 731, 741, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (2011). Put simply, qualified  
immunity protects “all but the plainly incompetent or those who knowingly  
violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed.2d  
271 (1986).

26 “We have repeatedly told courts ... not to define clearly established law at  
27 a high level of generality.” *al-Kidd, supra*, at 742, 131 S.Ct. 2074. The  
dispositive question is “whether the violative nature of particular conduct is  
28 clearly established.” *Ibid.* (emphasis added). This inquiry “ ‘must be undertaken  
in light of the specific context of the case, not as a broad general proposition.’ ”

1 *Brosseau v. Haugen*, 543 U.S. 194, 198, 125 S.Ct. 596, 160 L.Ed.2d 583 (2004)  
2 (per curiam) (quoting *Saucier v. Katz*, 533 U.S. 194, 201, 121 S.Ct. 2151, 150  
L.Ed.2d 272 (2001)).

3 *Mullenix v. Luna*, 136 S. Ct. 305, 308, 193 L. Ed. 2d 255 (2015).

4 In discussing the application of qualified immunity to a failure to protect claim in *Castro*  
5 *v. City of Los Angeles*, the U.S. Court of Appeals for the Ninth Circuit stated the following:

6 First, a right is clearly established when the “contours of the right [are]  
7 sufficiently clear that a reasonable official would understand that what he is doing  
8 violates that right.” *Serrano v. Francis*, 345 F.3d 1071, 1077 (9th Cir. 2003)  
9 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d  
10 523 (1987)). The “contours” of Castro's right were his right to be free from  
11 violence at the hands of other inmates. *Farmer*, 511 U.S. at 833, 114 S.Ct. 1970.  
12 The Supreme Court need not catalogue every way in which one inmate can harm  
13 another for us to conclude that a reasonable official would understand that his  
14 actions violated Castro's right. Nor do the official's actions, in this context, require  
15 some affirmative act. As we held months before Castro's arrest, “direct causation  
16 by affirmative action is not necessary: ‘a prison official may be held liable under  
17 the Eighth Amendment if he knows that inmates face a substantial risk of serious  
harm and disregards that risk by failing to take reasonable measures to abate it.’ ”

18 *Clem v. Lomeli*, 566 F.3d 1177, 1182 (9th Cir. 2009) (ellipsis omitted) (quoting  
19 *Farmer*, 511 U.S. at 847, 114 S.Ct. 1970). The contours of the right required only  
that the individual defendants take reasonable measures to mitigate the substantial  
risk to Castro. Accordingly, we reject the individual defendants’ argument that the  
law on which Castro bases his claim was not clearly established at the time of the  
incident. Therefore, qualified immunity does not bar the claim against them.

20 Here, construing all facts in favor of Plaintiff, a reasonable official in Defendant Curry  
21 and Yett’s position would have understood that the failure to classify and house Plaintiff  
22 properly and in accordance with CDCR policy would create an excessive risk to Plaintiff’s  
23 safety. Likewise, a reasonable official in Defendants Ohaya, Arreguin, Toscano and Campbell’s  
24 position would have understood that creating excessive risk to inmate safety by failing to  
25 properly monitor the rotunda area where Plaintiff was attacked would create a substantial risk to  
26 the safety of the inmates, including Plaintiff. As provided in *Castro*, “[t]he contours of the right  
27  
28

1 required only that the individual defendants take reasonable measures to mitigate the substantial  
2 risk...” *Castro*, 833 F.3d at 1067.

3 The Court must treat the allegations in the Complaint as true at this stage of the case. *See*  
4 *Grotten*, 251 F.3d at 851. Clearly, material issues of fact remain to be determined. At a later  
5 stage of the case, those facts might very well show that Defendants acted reasonably.

6 **V. IMMUNITY UNDER CALIFORNIA GOVERNMENT CODE § 820.8**

7 Defendants claim that they are entitled to immunity under California Government Code §  
8 820.8 because Plaintiff has not alleged any facts that show the acts or omissions of any of the  
9 Defendants caused his injuries. The statute relied upon by Defendants provides as follows:

10 Except as otherwise provided by statute, a public employee is not liable for an  
11 injury caused by the act or omission of another person. Nothing in this section  
12 exonerates a public employee from liability for injury proximately caused by his  
own negligent or wrongful act or omission.

13 Cal. Gov't Code § 820.8.

14 “To establish liability in negligence, it is a fundamental principle of tort law that there  
15 must be a legal duty owed to the person injured and a breach of that duty which is the proximate  
16 cause of the resulting injury.” *Ileto v. Glock Inc.*, 349 F.3d 1191, 1206 (9th Cir. 2003) (quoting  
17 *Jacoves v. United Merchandising Corp.*, 9 Cal.App.4th 88, 11 Cal.Rptr.2d 468, 484 (1992)).  
18 California law recognizes a special relationship between jailer and prisoner giving rise to such a  
19 duty of care. *See Giraldo v. California Dep't of Corr. & Rehab.*, 168 Cal. App. 4th 231, 250, 85  
20 Cal. Rptr. 3d 371, 386 (Cal.App., 1st Dist. 2008) (providing that it is “manifestly foreseeable that  
21 an inmate may be at risk of harm” so as to give rise to the special relationship as prisoners are  
22 vulnerable and dependent upon the jailer for protection). “Proximate cause ‘limits the  
23 defendant's liability to those foreseeable consequences that the defendant's negligence was a  
24 substantial factor in producing.’” *Ileto*, 349 F.3d at 1206 (quoting *Mendoza v. City of Los*  
25 *Angeles*, 66 Cal.App.4th 1333, 78 Cal.Rptr.2d 525, 530 (1998)). “Whether an act is the  
26 proximate cause of injury is generally a question of fact; it ‘is a question of law where the facts  
27 are uncontroverted and only one deduction or inference may reasonably be drawn from those  
28 facts.’” *Id.* (quoting *Garman v. Magic Chef, Inc.*, 117 Cal.App.3d 634, 173 Cal.Rptr. 20, 22

1 (1981)).

2 The immunity statute relied upon Defendants, Cal. Gov't Code § 820.8, provides that  
3 “[n]othing in this section exonerates a public employee from liability for injury proximately  
4 caused by his own negligent or wrongful act or omission.” Under a plain reading of this text, the  
5 application of § 820.8 immunity would be not be permitted at the motion to dismiss stage where  
6 a plaintiff properly alleges a negligence claim because negligence includes the element of  
7 proximate causation.

8 In the screening order, the Court summarized the negligence allegations as follows:

9 Plaintiff has alleged negligence, under California state law, against all  
10 Defendants. Compl. at 12. Specifically, Plaintiff alleges that: Yett owed him a  
11 duty to properly classify and house him, and was negligent when he failed to  
12 remove Plaintiff from an improper facility; that Campbell, Toscano, and Arreguin  
13 owed him a duty to maintain direct and constant supervision of inmates known to  
14 be violent, failed to perform this duty, and directly and proximately caused him to  
15 be attacked; that Ohaya owed Plaintiff a duty to supervise the control booth, and  
16 that he failed in this duty when he placed blankets in a manner that improperly  
17 obstructed the view of the rotunda area from the control booth; and that Curry  
18 owed Plaintiff a duty to ensure he was properly housed in an institution  
19 appropriate with his placement score and case factors, and that Curry failed in this  
20 duty when he/she caused Plaintiff to be transferred to a facility designed for  
21 CDCR’s most violent inmates. *Id.* at 12-13. Plaintiff alleges that each Defendant’s  
22 breach of their respective duties directly and proximately caused him to suffer the  
23 attack and sustain general damages. *Id.*

24 (ECF No. 7, p. 10.) Thus, the Court found in the screening order that Plaintiff had properly  
25 alleged that each Defendant had proximately caused his injuries. Accordingly, the Court cannot  
26 conclude at the motion to dismiss stage that Defendants are entitled to immunity under Cal.  
27 Gov't Code § 820.8.<sup>3</sup>

## 28 **VI. CONCLUSION**

Based on the foregoing, it is **HEREBY RECOMMENDED** that Defendants’ motion to  
dismiss (ECF No. 18) be denied.

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<sup>3</sup> However, like the qualified immunity discussion above, this conclusion does not prevent Defendants from raising the argument again at a later stage of this litigation.

1           These findings and recommendations are submitted to the district judge assigned to the  
2 case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen days after being  
3 served with these findings and recommendations, Plaintiff may file written objections with the  
4 court. Such a document should be captioned "Objections to Magistrate Judge's Findings and  
5 Recommendations." Plaintiff is advised that failure to file objections within the specified time  
6 may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.  
7 2014) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

8  
9 IT IS SO ORDERED.

10  
11 Dated: December 4, 2017

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE