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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MATTHEW G. JENNINGS,
Plaintiff,
v.
A. MORELAND, et al.,
Defendants.

No. 2:08-cv-1305 LKK CKD P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 6, 2013 and August 9, 2013 the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to both sets of findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. For the reasons set forth herein, the findings and recommendations are adopted in part.

This action is proceeding on the following Eighth Amendment claims. First, plaintiff claims that defendants Vance and Walker failed to protect him from a substantial risk of harm

1 when they decided to house him in the A-Facility Enhanced Outpatient Program (EOP) at
2 California State Prison-Sacramento (CSP-SAC) rather than on a sensitive needs yard (SNY) as
3 required by his document safety concerns. Second, plaintiff claims that defendants Moreland and
4 Bartell failed to protect him from a substantial risk of harm from assault after they overheard two
5 inmates threaten plaintiff on July 31, 2007. Finally, plaintiff claims that defendants B. Brown,
6 Valente, Pereira, Vance, Mansaray, Flores, Steward, Goldman, Craddock, Scicluna, Walker, W.
7 Brown, Bal, and Moreland acted with deliberate indifference to plaintiff's serious medical needs
8 for adequate treatment of injuries he suffered in an altercation with two other inmates on August
9 1, 2007.

10 The matter is before the court on defendants' July 5, 2012 motion for summary judgment,
11 which addresses plaintiff's failure to protect claims against defendants Moreland and Bartell and
12 plaintiff's deliberate indifference claims against defendants B. Brown, Valente, Pereira, Vance,
13 Mansaray, Flores, Steward, Goldman, Craddock, Scicluna, Walker, W. Brown, and Bal, and on
14 defendants' March 8, 2013 supplemental motion for summary judgment, which addresses
15 plaintiff's failure to protect claims against defendants Vance and Walker and plaintiff's deliberate
16 indifference claim against defendant Moreland. As to the first motion, the magistrate judge
17 recommends that summary judgment be granted as to all claims and all defendants except
18 plaintiff's Eighth Amendment failure to protect claim against defendant Moreland.¹ As to the
19 second motion, the magistrate judge recommends that it be granted in its entirety.

20 The following facts relevant to plaintiff's claims are undisputed.

21 In May 2005, plaintiff was transferred to CSP-SAC and assigned to the A-Facility EOP.
22 See Ex. E to Pl's. Opp., filed March 28, 2013 (ECF No. 217). Prior to this placement, plaintiff
23 was classified as a sensitive needs yard (SNY) inmate; CSP-SAC did not have a sensitive needs
24 yard. On May 19, 2006, plaintiff was "retained" in the administrative segregation unit at CSP-
25 SAC for both "safety concerns" and "referral to DRB for Indeterminate SHU." Ex. F to Pl's.

26
27 ¹ The court notes that the citations to Fed. R. Civ. P. 56 in the February 6, 2013 findings and
28 recommendations apparently refer to the version of Rule 56 that existed prior to the 2010
amendments to said rule.

1 Opp. (ECF No. 217). On May 25, 2006, plaintiff appeared before an Institution Classification
2 Committee (ICC) that included Defendant Vance as a member of that committee. Id. At that
3 hearing, the ICC rescinded a prior ICC action of April 6, 2006 “relative to transfer” of plaintiff to
4 the Psychiatric Services Unit at CSP-SAC “for Indeterminate SHU.” Id. The chrono from the
5 May 25, 2006 ICC meeting notes that plaintiff “was retained” in administrative segregation
6 because of his prior sensitive needs yard placement and his “documented enemies at SAC-IV A-
7 FAC, MCSP-IV EOP SNY and MCSP-III EOP SNY.” Id. The committee noted that plaintiff
8 would “not suspend his SNY concerns to be housed in a general population EOP and MCSP is
9 the only EOP SNY Level-IV and III institution. Confidential reports have been reviewed and
10 attempts have been made to clear specific enemy concerns but have had negative results.” Id.

11 On June 1, 2006, at another ICC meeting, the committee released plaintiff to the A-
12 Facility EOP and rescinded another ICC action of May 25, 2006 “based upon resolution of
13 Enemy Concerns at CSP-SAC’s EOP.” Ex. G to Pls. Opp. (ECF No. 217). A chrono dated June
14 19, 2006, entitled Resolution of Enemy Concerns, reflects resolution of an enemy situation
15 between plaintiff and Inmate Barrus, one of the inmates involved in the August 1, 2007 incident.
16 Ex. I to Pl’s. Opp. (ECF No. 217). That chrono, signed by both plaintiff and Inmate Barrus,
17 states in relevant part:

18 Jennings and Barrus both acknowledge that a potential enemy
19 situation existed; however, both stated that they do not consider the
20 other as an enemy and feel comfortable programming in the same
21 general population together. After considering the input from these
22 inmates and other information available regarding their potential
23 enemy situation, it is my recommendation that Jennings and Barrus
24 should not be considered enemies and their respective CDC 812’s
25 should reflect this.

23 Id.

24 Additional relevant undisputed facts are set forth in the magistrate judge’s May 6, 2013
25 findings and recommendations, as follows:

26 On July 31, 2007, while plaintiff was performing cleaning
27 duties as a third watch porter in the hallway of Building 4 of CSP-
28 SAC’s A-Facility, inmate Benjamin approached the door between
the dayroom and the hallway; inmate Barrus was nearby. (Dkt. No.
100 at 6; DUF #3.) Benjamin demanded angrily that plaintiff seek

1 to have the door between them opened. (*Id.*) Plaintiff understood
2 Benjamin's statements to him to be a threat of physical assault.
3 (Dkt. No. 100 at 6; DUF #4.) During these events, defendant
4 Moreland (correctional officer working as the assigned Floor
5 Officer) and defendant Bartell (correctional officer working as the
6 assigned Control Officer) were stationed in the nearby control
7 tower. (Dkt. No. 100 at 7; DUF #5.) Moreland and Bartell were
8 responsible for providing security for inmates housed in the
9 building and inmates engaged in various activities in the building's
10 dayrooms by observing the activities of inmates in the dayrooms.
11 (Dkt. No. 185-4 ("Bartell decl.") at ¶4....

12 The next morning, on August 1, 2007, at approximately
13 7:53 a.m., plaintiff and Barrus were involved in a physical
14 altercation in CSP-SAC's A-facility exercise yard. (Dkt. No. 100 at
15 8-9; DUF #10.) During the altercation, plaintiff was pepper
16 sprayed in his facial area and hit in the right shoulder by a 40 mm
17 impact round fired by correctional officers. (Dkt. No. 100 at 8-9;
18 DUF ## 11, 12.).

19 Findings and Recommendations, filed February 6, 2013 (ECF No. 209) at 6-7. Relevant factual
20 disputes are discussed infra.

21 The court turns first to defendants' July 5, 2012 motion for summary judgment and the
22 February 6, 2013 findings and recommendations thereon.²

23 Plaintiff has no objection to the magistrate judge's findings and recommendations with
24 respect to the claims against defendants Bartell, B. Brown, or Bal, and those findings and
25 recommendations will be adopted in full.³

26 The magistrate judge recommends entry of summary judgment for defendant Valente,
27 finding that disputed facts are immaterial and that "[a]t most, plaintiff provides evidence of a
28 difference of opinion regarding medical treatment, which does not give rise to an Eighth
Amendment deliberate indifference claim." Findings and Recommendations (ECF No. 209) at

29 ² The court noted that the citations to Fed. R. Civ. P. 56 in the summary judgment standards set
30 forth in the findings and recommendations apparently refer to the version of Rule 56 that existed
31 prior to the 2010 amendments to that rule.

32 ³ In his objections, plaintiff proposes to dismiss these three defendants "on his own motion" and
33 to "reserve [] the right" to call one or both "as a witness in future proceedings." Objections filed
34 March 4, 2013 (ECF No. 212) at 2, 25. The time has passed for plaintiff to voluntarily dismiss
35 defendants from this action absent either a stipulation from defendants or an order of the court.
36 See Fed. R. Civ. P. 41(a)(1). Summary judgment will be entered for these three defendants. This
37 order has no effect on the designation of witnesses at any further proceedings in this action.

1 11-12 (citations omitted). Plaintiff objects to these findings and the accompanying
2 recommendation. In support of the motion for summary judgment, defendant Valente, a
3 registered nurse, presents evidence that she examined plaintiff right after he was involved in an
4 altercation on the yard with another inmate. Decl. of M. Valente (ECF No. 185-5) at ¶¶ 2-4.
5 According to defendant Valente, plaintiff “stated that he had been physically assaulted by another
6 inmate, and subsequently hit on the right shoulder by a 40 mm impact round fired by a
7 correctional officer,” Id. at ¶ 3. Defendant Valente avers that “[u]pon examining [plaintiff],
8 I noted abrasions and bruises on his right upper arm and shoulder, as well as on both knees. I did
9 not see any actively bleeding wounds. I did not see any other injuries.” Id. at ¶ 4. Defendant
10 Valente avers that she gave plaintiff, who had been partially decontaminated after being pepper-
11 sprayed, additional instructions on decontamination, “scrubbed his wounds with a disinfectant
12 solution,” examined him at three additional fifteen minute intervals, and offered him Motrin,
13 which plaintiff declined. Id. at ¶¶ 5-6. She also avers that prior to clearing plaintiff for transfer to
14 the Enhanced Outpatient Administrative Segregation Unit she advised plaintiff “that if his
15 condition changed he should submit a request to be seen by a physician.” Id. at ¶ 7.

16 In opposition to the motion for summary judgment, plaintiff has filed, inter alia, his own
17 declaration, in which he avers that he was attacked by an inmate and as he was defending himself,
18 he was shot in the right shoulder with a 40mm “direct impact round” and pepper-sprayed in his
19 face and eyes. Pl. Decl. (ECF No. 199) at 3. Plaintiff avers that the 40mm direct impact round
20 “tore my shoulder open causing it to begin bleeding, swelling, and extreme pain.” Plaintiff
21 further avers that defendant Valente “simply noted my multiple injuries on a medical form then
22 just wiped my wounds with ‘saline’ solution and ignored my pleas for medical attention.” Id.
23 Plaintiff avers that he “was also requesting medicine for the pain but that also was ignored” and
24 that after this defendant Valente cleared plaintiff to go to administrative segregation. Id. Plaintiff
25 avers that over the next thirteen days his repeated requests for medical attention and pain
26 medication were refused or ignored, that the only treatment he was given was some ointment and

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1 a bandaid⁴, and that his shoulder became increasingly painful and the wound on it infected. Id. at
2 3-7. Finally, plaintiff avers that he was taken to the “Emergency Room” on the A-Facility yard,
3 where he was given a tetanus shot, a “pain shot” and several x-rays. Id. at 7. He was seen by a
4 physician the next day who prescribed pain medication and ordered more x-rays. Id. at 8.

5 As discussed above, plaintiff claims that defendant Valente violated his rights under the
6 Eighth Amendment by acting with deliberate indifference to plaintiff’s serious medical needs.

7 “To set forth a constitutional claim under the Eighth Amendment
8 predicated upon the failure to provide medical treatment, first the
9 plaintiff must show a serious medical need by demonstrating that
10 failure to treat a prisoner's condition could result in further
11 significant injury or the unnecessary and wanton infliction of pain.
12 Second, a plaintiff must show the defendant’s response to the need
13 was deliberately indifferent.” Conn , 591 F.3d at 1094–95 (internal
14 quotation marks and citation omitted). The “deliberate indifference”
15 prong requires “(a) a purposeful act or failure to respond to a
16 prisoner's pain or possible medical need, and (b) harm caused by
17 the indifference.” Jett v. Penner, 439 F.3d 1091, 1096 (9th
18 Cir.2006); Conn, 591 F.3d at 1095 (quoting Jett, 439 F.3d at 1096).
19 “Indifference may appear when prison officials deny, delay or
20 intentionally interfere with medical treatment, or it may be shown
21 in the way in which prison [officials] provide medical care.” Jett,
22 439 F.3d at 1096 (citations and internal quotations marks omitted).
23 “[T]he indifference to [a prisoner's] medical needs must be
24 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical
25 malpractice’ will not support this [claim].” Broughton v. Cutter
26 Labs., 622 F.2d 458, 460 (9th Cir.1980) (citing Estelle v. Gamble,
27 429 U.S. 97, 105–06, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)). Even
28 gross negligence is insufficient to establish deliberate indifference
to serious medical needs. Wood v. Housewright, 900 F.2d 1332,
1334 (9th Cir.1990).

20 Lemire v. California Dept. of Corrections and Rehabilitation, 726 F.3d 1062, 1081-82 (9th Cir.
21 2013).

22 Here, defendant Valente seeks summary judgment on the ground that plaintiff’s claim is
23 predicated only a difference of opinion with the treatment she provided which, as the magistrate
24 correctly noted, is not a cognizable ground for liability under the Eighth Amendment. See
25 Findings and Recommendations (ECF No. 209) at 11-12 and cases cited therein. That, however,
26 is not the basis of plaintiff’s claim. Plaintiff’s claim is that defendant Valente acted with

28 ⁴ Plaintiff avers this was the treatment provided by defendant Craddock. See discussion infra.

1 deliberate indifference to plaintiff's need for adequate treatment of his shoulder injury by failing
2 to refer him to a physician, failing to provide pain medication, and clearing him for placement in
3 administrative segregation without adequate care. There are material disputes over the extent of
4 plaintiff's shoulder injury, over whether defendant Valente offered plaintiff any pain medication
5 and over the steps that defendant Valente took before clearing plaintiff for placement in
6 administrative segregation.⁵ These disputes preclude summary judgment for defendant Valente
7 on plaintiff's Eighth Amendment claim of deliberate indifference to his serious medical needs.

8 Plaintiff's Eighth Amendment claims against defendants Vance, Pereira, Mansaray,
9 Flores, Steward, Goldman, Scicluna, Walker, and W. Brown all arise from the alleged failure of
10 these defendants to respond to plaintiff's requests for medical attention for his shoulder. After
11 review of the record, the court adopts in full the magistrate judge's findings and recommendations
12 with respect to defendants Vance and Scicluna.

13 The court will not adopt the findings with respect to defendant Walker but will grant
14 summary judgment for said defendant. The magistrate judge find that plaintiff has not presented
15 any evidence "demonstrating that Walker was made aware of facts from which the inference
16 could be drawn that a substantial risk of serious harm to plaintiff's health existed, or that Walker
17 actually drew the inference." Findings and Recommendations (ECF No. 209) at 18. In his
18 declaration, plaintiff avers that he saw defendant Walker at a classification hearing, told him
19 everything that had happened, and asked for medical assistance. Decl. of Jennings (ECF No. 199)
20 at 5. Plaintiff also avers that defendant Walker told plaintiff that he should "be able to see the
21 doctor when [he] got released from administrative segregation" and that Walker had information
22 that plaintiff had been attacked and would be "released back to the yard." *Id.* at 5-6. These
23 averments are sufficient evidence that defendant Walker was made aware of plaintiff's injuries
24 and that he drew an inference that plaintiff needed medical attention. There is no evidence,
25 however, that defendant Walker was deliberately indifferent to plaintiff; under plaintiff's own
26 version of events at a classification committee hearing defendant Walker told plaintiff he would

27 ⁵ There is no dispute that defendant Valente did not refer plaintiff to a physician. Whether that
28 was a manifestation of deliberate indifference is for the trier of fact.

1 be able to see a doctor when he was released from administrative segregation and plaintiff was in
2 fact released from administrative segregation later that day. Summary judgment will be granted
3 for defendant Walker.

4 The court will not adopt the findings and recommendations with respect to the remaining
5 defendants. As discussed above, deliberate indifference may be shown by facts which establish,
6 inter alia, that prison officials denied or delayed medical treatment. Plaintiff has presented
7 evidence, through his own declaration, that, at different times between August 1, 2007 and
8 August 13, 2007, he told defendants Pereira, Mansaray, Flores, Steward, Goldman, and W.
9 Brown that he was in “terrible pain” and needed to see a doctor, and that none of them took any
10 action to address his complaints. Pl. Decl. (ECF No. 199) at 3-7. Plaintiff also avers that he
11 showed his injured and infected shoulder to several of these defendants. Id. As to each of these
12 defendants, there are disputes either over whether plaintiff in fact provided this information
13 and/or made these requests of each of these defendants, or whether the defendants took action to
14 address plaintiff’s requests for medical attention, or both. None of these defendants have
15 presented evidence sufficient to overcome these material disputes and establish their entitlement
16 to summary judgment.⁶ The motion for summary judgment will be denied as to defendants
17 Pereira, Mansaray, Flores, Steward, Goldman, and Brown.

18 Finally, the magistrate judge recommends summary judgment for defendant Craddock, a
19 nurse who saw plaintiff on August 8, 2007, on the ground that plaintiff’s disagreement with the
20 treatment she provided does not “constitute deliberate indifference to serious medical needs in
21 light of the undisputed facts regarding Craddock’s observation of plaintiff’s physical condition at

22 ⁶ Several have tendered declarations in which they aver that they have no recollection of the
23 events at bar and what their “customary practice” would have been in response to complaints such
24 as those claimed by plaintiff. See, e.g., Decl. of Flores (ECF No. 185-8) at ¶¶ 3-4; Decl. of
25 Mansaray (ECF No. 185-6) at ¶¶ 3-4; see also Decl. of W. Brown (ECF No. 186-6) at ¶ 4. These
26 declarations are insufficient to demonstrate an entitlement to summary judgment on this record.
27 Defendant Pereira avers that he initially told plaintiff to tell the nurse about his complaints and
28 “did not see any evidence that plaintiff was in acute medical distress.” Decl. of Pereira (ECF No.
186) at ¶ 3, 4. Plaintiff’s claim against defendant Pereira arises from the interaction they had
while plaintiff was in the holding cell. Defendant Pereira’s declaration is insufficient to establish
his entitlement to summary judgment.

1 the time she examined him.” Findings and Recommendations (ECF No. 209) at 16. There are
2 disputed issues of fact as to whether defendant Craddock improperly denied or delayed plaintiff
3 access to medical care. Accordingly, summary judgment will be denied for this defendant.

4 The court turns now to the August 9, 2013 findings and recommendations on defendants’
5 March 8, 2013 supplemental motion for summary judgment. The magistrate judge recommends
6 summary judgment on the ground of qualified immunity for defendants Vance and Walker on
7 plaintiff’s failure to protect claim. Plaintiff objects to this recommendation on several grounds,
8 contending in part that disputed issues of fact identified by the magistrate judge concerning
9 whether plaintiff voluntarily waived his right to placement on a sensitive needs yard, see Findings
10 and Recommendations filed August 9, 2013 (ECF No. 223) at 9, preclude summary judgment for
11 these two defendants. Under the circumstances of this case, plaintiff’s objection is without merit.

12 The undisputed evidence shows that the decision to rehouse plaintiff on the A-Facility
13 EOP yard was made in June 2006, over a year before the August 1, 2007 incident at bar.⁷ The
14 undisputed evidence also shows that a potential enemy situation with Inmate Barrus was resolved
15 over a year before the August 1, 2007 altercation between plaintiff and Inmate Barrus. Plaintiff
16 acknowledges the June 19, 2006 interview concerning the potential enemy situation with Inmate
17 Barrus and avers that he was “made to sign a chrono.” Jennings Decl., Ex. M to Pl’s. Opp. (ECF
18 No. 217). In the absence of any other evidence, plaintiff’s averment that he was “made” to sign
19 the chrono resolving the enemy situation is insufficient to create a triable issue of fact as to
20 whether he had agreed that the potential enemy concern with Inmate Barrus had been resolved as
21 described in the chrono.

22 The magistrate judge has correctly identified the legal standards that apply to defendants’
23 assertion of qualified immunity from liability for this claim. See Findings and Recommendations
24 filed August 9, 2013 (ECF No. 223) at 6. Under those standards, defendants Vance and Walker
25 are entitled to qualified immunity from liability unless reasonable officers in their positions with
26 the information they had would have perceived a substantial risk of harm to plaintiff from

27 ⁷ It appears plaintiff was on the A-Facility EOP yard for some period of time after his May 2005
28 arrival at CSP-SAC. See Exs. E and F to Pls. Opp. (ECF No. 217).

1 placement on the A-Facility EOP yard. The court finds plaintiff has not presented evidence
2 sufficient to give rise to a triable issue of fact as to whether a reasonable prison official in the
3 position of either defendant Vance or defendant Walker would have perceived a substantial risk
4 to plaintiff's safety by the June 2006 decision to rehouse him in the A-Facility EOP yard. As
5 discussed above the undisputed evidence shows that plaintiff had not been housed on a sensitive
6 needs yard for a year prior to the June 2006 housing decision, that he had spent some period of
7 that year housed on the A-Facility EOP yard, and that the enemy concern with Inmate Barrus was
8 resolved proximate to the June 2006 housing decision.⁸

9 For the foregoing reasons, the court finds that defendants Vance and Walker are entitled to
10 summary judgment on the ground of qualified immunity and adopts the magistrate judge's
11 findings and recommendations to the extent they are based on the facts set forth in this order.⁹

12 Plaintiff also objects to the recommendation that summary judgment be granted for
13 defendant Moreland on his claim that defendant Moreland acted with deliberate indifference to
14 plaintiff's serious medical needs. For reasons similar to those set forth supra concerning
15 plaintiff's claims against defendants Pereira, Mansaray, Flores, Steward, Goldman, and Brown,
16 the court finds triable issues of material fact as to whether defendant Moreland acted with
17 deliberate indifference to plaintiff's serious medical need for treatment of his shoulder injury and
18 will deny defendant Moreland's motion for summary judgment.

19 In accordance with the above, IT IS HEREBY ORDERED that:

20 _____
21 ⁸ Moreover, more than a year passed between the June 2006 housing placement decision and
22 resolution of plaintiff's enemy concerns with Inmate Barrus, and the August 1, 2007 altercation at
23 issue, attenuating significantly any causal nexus between the June 2006 housing decision and that
24 altercation.

25 ⁹ The court declines to adopt that part of the findings and recommendations which relies at least
26 in part on defendants' evidence that "CSP-Sacramento prison officials were forced to house SNY
27 EOP Level IV inmates with GP EOP Level IV inmates because of the lack of institutional
28 resources." Findings and Recommendations, filed August 9, 2013 (ECF No. 223) at 13. It is
well-settled that Eighth Amendment violations may result from overcrowded prison conditions,
see, e.g., Starr v. Baca, 652 F.3d 1202, 1208 (9th Cir. 2011) (discussing Redman v. Cnty. of San
Diego, 942 F.2d 1435, 1446-47 (9th Cir. 1991)). Here, the causal nexus between the inability to
place plaintiff on a sensitive needs yard and the events at bar is too attenuated to support liability.

1 1. The findings and recommendations filed February 6, 2013, are adopted in part in
2 accordance with this order;

3 2. Defendants' July 5, 2012 motion for summary judgment (ECF No. 185) is GRANTED
4 IN PART and DENIED IN PART as follows: (1) granted as to the Eighth Amendment failure to
5 protect claim against defendant Bartell; (2) granted as to the Eighth Amendment deliberate
6 indifference claims against defendants Vance, Scicluna, Walker, B. Brown, and Bal; (3) denied as
7 to plaintiff's Eighth Amendment deliberate indifference claim against defendants Valente,
8 Craddock, Goldman, Pereira, Steward, Flores, W. Brown, and Mansaray; and (4) denied as to the
9 Eighth Amendment failure to protect claim against Moreland;


10 3. The findings and recommendations filed August 9, 2013, are adopted in part in
11 accordance with this order;

12 4. Defendants' March 8, 2013 supplemental motion for summary judgment is granted as
13 to defendants Vance and Walker and denied as to defendant Moreland; and

14 5. This matter is referred back to the assigned magistrate judge for further proceedings.

15 DATED: February 10, 2014.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT