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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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SHIRLEY DOUGLAS,  
Plaintiff,

NO. CIV. S-08-2058 FCD CMK

v.

MEMORANDUM AND ORDER

SHASTA COUNTY, SHASTA COUNTY  
SHERIFF'S DEPARTMENT, DEPUTY  
N. THOMPSON DEPUTY NELSON of  
SHASTA COUNTY SHERIFF'S  
DEPARTMENT, DOES 1-10  
INCLUSIVE,

Defendants.

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This matter is before the court on Shasta County, Shasta  
County Sheriff's Department, and deputies Thompson and Nelson of  
the Shasta County Sheriff's Department's ("defendants") motion  
for summary judgment. Plaintiff Shirley Douglas ("plaintiff")  
opposes the motion.<sup>1</sup> For the reasons set forth below,  
defendant's motion for summary judgment is GRANTED.

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<sup>1</sup> Plaintiff does not oppose summary judgment with respect  
to defendant Shasta County, nor does plaintiff proffer any  
evidence in opposition to defendant Shasta County Sheriff's  
Department's motion for summary judgment. Accordingly, both  
motions are GRANTED.

1 **BACKGROUND<sup>2</sup>**

2 This case arises out of a domestic dispute between third  
3 parties to this litigation Kerriann Rivera ("Rivera") and her  
4 former fiancée, plaintiff's son Jean-Paul Heard ("Heard"). As a  
5 result of Rivera and Heard's dispute, the Shasta County Superior  
6 Court ordered that Rivera be allowed to remove her belongings  
7 from the home owned by plaintiff, which Rivera and Heard had  
8 previously cohabitated. (DSUF ¶ 1.) Pursuant to the court's  
9 order, Heard was not to be present at the time allotted for  
10 Rivera to retrieve her belongings from the house. (Id. ¶ 2.)  
11 Plaintiff's presence was allowed but not required by the court  
12 order. (Id.) Additionally, Rivera was permitted to come  
13 accompanied by family members to help facilitate the removal of  
14 her belongings from the premises. (Id. ¶ 4.)

15 Upon her arrival at the house at the date and time  
16 prescribed by the court order, Rivera was met by plaintiff, who  
17 refused her entry onto the premises. (Id. ¶ 5.) As a result of  
18 plaintiff's obstruction, and because of her suspicion that Heard  
19 was present, Rivera summoned Shasta County sheriff's deputies to  
20 act as a civil standby to enforce the court's order. (Id.)  
21 Individual defendants Thompson and Nelson, accompanied by other  
22 deputies, arrived at the premises shortly thereafter. (Id. ¶ 6.)

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25 <sup>2</sup> Unless otherwise noted, the facts set forth herein are  
26 undisputed. (Pl.'s Resp. To Def.'s Stmt. of Undisp. Facts  
27 ("DSUF"), filed June 21, 2010 (Docket #33-2)). Where the facts  
28 are disputed, the court recounts plaintiff's version of the  
facts, which are found primarily in plaintiff's deposition  
testimony. (Shirley Douglas Dep. ("Dep."), filed June 8, 2010  
(Docket #32-3)).

1 After speaking to plaintiff and Rivera, deputies Thompson  
2 and Nelson ascertained that Heard was present at the premises in  
3 violation of the court's order. Deputies Thompson and Nelson  
4 arrested Heard, who was taken from the premises in a deputy's  
5 patrol vehicle. (Id. ¶ 7; Dep. at 82:6-9.) The deputies  
6 informed plaintiff that Rivera and those present with her were  
7 acting pursuant to a valid court order and had permission to be  
8 on the premises. (Dep. at 89:5, 18-22.) Plaintiff complied and  
9 allowed Rivera and those present with her to enter the premises  
10 and begin the process of collecting and removing Rivera's  
11 belongings. (Dep. at 96:19-25, 97:1-4.)

12 Contrary to plaintiff's requests that sheriff's deputies  
13 remain at the premises while Rivera was present, Thompson and  
14 Nelson, along with the other deputies present, returned to their  
15 patrol vehicles and left. (Dep. at 85:7-25, 86:1-3.) Shortly  
16 thereafter, Rivera, along with at least one present family  
17 member, allegedly assaulted and battered plaintiff. (Dep. at  
18 99:10-15, 100:2-9. 101:17-24.) Subsequent to the alleged assault  
19 and battery and prior to Rivera and her associates leaving the  
20 premises, plaintiff spoke on the phone to deputy Nelson. (Dep.  
21 109:17.) At no point during this conversation did plaintiff  
22 mention having been assaulted or struck by Rivera or her  
23 associates.

24 Some time after Rivera left the premises, plaintiff began to  
25 drive to her attorney's office to report the altercation. (Dep.  
26 117:14-19, 118:8-10.) En route to her attorney's office,  
27 Thompson and Nelson performed a traffic stop and arrested  
28 plaintiff, acting on Rivera's allegation that plaintiff had

1 threatened and assaulted Rivera and those with her at the  
2 premises, and that she had threatened Rivera's son. (Dep. 120:9-  
3 10, 125:1-3, 127:16-21.)

4 Plaintiff alleges that deputies Thompson, Nelson, the Doe  
5 deputies present at the premises, and the Shasta County Sheriff's  
6 Department violated her constitutional rights. (Pl.'s Compl.  
7 ("Compl."), filed Aug. 29, 2008 (docket #1), ¶ 1.) Specifically,  
8 plaintiff alleges that by refusing to remain at the premises  
9 after she expressed her concern that Rivera and those  
10 accompanying her were "hostile," defendants negligently allowed  
11 her to be assaulted and battered, and thereby breached their duty  
12 to plaintiff and violated her Constitutional rights. (Compl. ¶  
13 21-22.) Defendants contend that they acted pursuant to valid  
14 court order and had no duty to remain at the premises after  
15 enforcing the court order.<sup>3</sup> (Def.'s Mot Summ. J. ("MSJ"), filed  
16 June 8, 2010 (docket #27), at 2.)

#### 17 STANDARD

18 The Federal Rules of Civil Procedure provide for summary  
19 judgment where "the pleadings, the discovery and disclosure  
20 materials on file, and any affidavits show that there is no  
21 genuine issue as to any material fact and that the movant is  
22 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c);  
23 see California v. Campbell, 138 F.3d 772, 780 (9th Cir. 1998).  
24 The evidence must be viewed in the light most favorable to the  
25 nonmoving party. See Lopez v. Smith, 203 F.3d 1122, 1131 (9th

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26  
27 <sup>3</sup> Defendants also argue that they are immune from section  
28 1983 liability. Because, as set forth *infra*, the court concludes  
that defendants did not owe plaintiff a duty, the court does not  
reach the merits of plaintiff's arguments relating to immunity.

1 Cir. 2000) (en banc).

2 The moving party bears the initial burden of demonstrating  
3 the absence of a genuine issue of fact. See Celotex Corp. v.  
4 Catrett, 477 U.S. 317, 325 (1986). If the moving party fails to  
5 meet this burden, "the nonmoving party has no obligation to  
6 produce anything, even if the nonmoving party would have the  
7 ultimate burden of persuasion at trial." Nissan Fire & Marine  
8 Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102-03 (9th Cir. 2000).  
9 However, if the nonmoving party has the burden of proof at trial,  
10 the moving party only needs to show "that there is an absence of  
11 evidence to support the nonmoving party's case." Celotex Corp.,  
12 477 U.S. at 325.

13 Once the moving party has met its burden of proof, the  
14 nonmoving party must produce evidence on which a reasonable trier  
15 of fact could find in its favor, viewing the record as a whole in  
16 light of the evidentiary burden the law places on that party.  
17 See Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th  
18 Cir. 1995). The nonmoving party cannot simply rest on its  
19 allegations without any significant probative evidence tending to  
20 support the complaint. See Nissan Fire & Marine, 210 F.3d at  
21 1107. Instead, through admissible evidence the nonmoving party  
22 "must set forth specific facts showing that there is a genuine  
23 issue for trial." Fed. R. Civ. P. 56(e). In other words, the  
24 evidence presented must be such that a reasonable jury could  
25 return a verdict for the nonmoving party. Anderson v. Liberty  
26 Lobby, Inc., 477 U.S. 242, 251-52 (1986).

27 In the endeavor to establish the existence of a factual  
28 dispute, the opposing party need not establish a material issue

1 of fact conclusively in its favor. It is sufficient that "the  
2 claimed factual dispute be shown to require a jury or judge to  
3 resolve the parties' differing versions of the truth at trial."  
4 First Nat'l Bank v. Cities Serv. Co., 391 U.S. 253, 289 (1968).  
5 Thus, the "purpose of summary judgment is to 'pierce the  
6 pleadings and to assess the proof in order to see whether there  
7 is a genuine need for trial.'" Matsushita Elec. Indus. Co. v.  
8 Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quoting Rule 56(e)  
9 advisory committee's note on 1963 amendments).

10 **ANALYSIS**

11 Plaintiff alleges that defendants Thompson and Nelson  
12 violated 42 U.S.C. section 1983 by allowing non-residents to  
13 enter her property, "knowing that she would be assaulted,  
14 battered, and robbed or disregarding the probability thereof."  
15 (Compl. ¶ 33.) In response, defendants move for summary  
16 judgment, arguing, *inter alia*, that deputies Thompson and Nelson  
17 had no duty to remain on the premises while Rivera and those  
18 accompanying her collected her belongings. However, plaintiff  
19 argues that defendants created a danger to plaintiff by (1)  
20 "depart[ing] from the plain language of [the court] order" by  
21 allowing those present with Rivera to enter the premises without  
22 verifying their identities as Rivera's family members, (Id. at  
23 7); and (2) acting affirmatively and in direct disregard of  
24 evidence that plaintiff required protection from Rivera and her  
25 "angry, belligerent group of non family members." (Compl. ¶¶ 27,  
26 33; Opp'n 9-10.)

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1 42 U.S.C. section 1983 provides, in relevant part:

2 Every person who, under color of any statute,  
3 ordinance, regulation, custom, or usage, of any  
4 State or Territory or the District of Columbia,  
5 subjects, or causes to be subjected, any citizen  
6 of the United States or other person within the  
7 jurisdiction thereof to the deprivation of any  
rights, privileges, or immunities secured by the  
Constitution and laws, shall be liable to the  
party injured in an action at law, suit in  
equity, or other proper proceeding for redress .  
. . . .

8 To establish a claim under section 1983, a plaintiff must  
9 initially allege "(1) the conduct complained of was committed by  
10 a person acting under color of state law; and (2) the conduct  
11 deprived the plaintiff of a constitutional right." L.W. v.  
12 Grubbs ("Grubbs I"), 974 F.2d 119, 120 (9th Cir. 1992).

13 The Supreme Court has expressly held that "the government's  
14 failure to protect an individual from private violence, even in  
15 the face of a known danger, does not constitute a [section 1983]  
16 violation." DeShaney v. Winnebago County Dep't of Soc. Serv.,  
17 489 U.S. 189, 197 (1989). In DeShaney, petitioner, a minor,  
18 brought suit against state social workers who had reason to  
19 believe that he was being abused by his father, but failed to  
20 remove him from his father's custody. Id. at 191. The court  
21 reasoned that the Due Process Clause is phrased as a limitation  
22 on state power to deprive individuals of life liberty and  
23 property without due process of law, and not as a guarantee of  
24 safety and security. As such, it cannot be fairly read to impose  
25 an affirmative obligation, absent special circumstances, on state  
26 actors to insure against any harm that may befall individuals  
27 through other means. Id. at 195-196. "[The Due Process  
28 Clause's] purpose was to protect the people from the State, not

1 to ensure that the State protected them from each other." Id. at  
2 196. As such, individuals generally do not have a constitutional  
3 right to sue government officials for injuries inflicted by third  
4 parties. Id. at 197; Ketchum v. County of Alameda, 811 F.2d  
5 1243, 1247 (9th Cir. 1987); Hinkle v. Blacketter, 2008 U.S. Dist.  
6 LEXIS 30289, at \*7 (D. Or. April 11, 2008).

7 However, under the danger creation exception, a government  
8 official may be liable under § 1983 when "the state action  
9 'affirmatively place[s] the plaintiff in a position of danger,'  
10 that is, where state action creates or exposes an individual to a  
11 danger which he or she would not have otherwise faced." Johnson  
12 v. City of Seattle, 474 F.3d 634, 639 (9th Cir. 2007) (quoting  
13 Kennedy v. City of Ridgfield, 439 F.3d 1055, 1061 (9th Cir.  
14 2006) (quoting DeShaney, 489 U.S. at 197)); see Wood v.  
15 Ostrander, 879 F.2d 583 (9th Cir. 1989); Penilla v. City of  
16 Huntington Park, 115 F.3d 707, 710 (9th Cir. 1997). The danger  
17 creation exception requires affirmative conduct on the part of  
18 the state in placing the plaintiff in danger. Grubbs I, 974 F.2d  
19 at 121. In Wood, a rape victim brought a section 1983 claim  
20 against the police officer who had impounded the car in which she  
21 had been a passenger and left her stranded in a high crime area.  
22 The court found that the police officer's conduct affirmatively  
23 placed the plaintiff in a more dangerous situation and, thus,  
24 violated her Constitutionally protected due process right. Wood  
25 v. Ostrander, 879 F.2d at 589-590. Similarly, in Penilla, the  
26 defendants cancelled a 911 call to paramedics and, after  
27 determining that the plaintiff was in serious need of medical  
28 attention, dragged him off of his porch where he was in public



1 view, leaving him locked in an empty house where he later died.  
2 Penilla v. City of Huntington Park, 115 F.3d at 710. The Penilla  
3 court held that by taking affirmative actions that significantly  
4 increased the danger facing the plaintiff, police officers had  
5 violated Penilla's Constitutional protection under section 1983.  
6 Id.

7 Mere inaction, or refusal to provide police protection, does  
8 not constitute the required affirmative conduct. Johnson v. City  
9 of Seattle, 474 F.3d 634 at 641 (affirming the denial the  
10 plaintiff's section 1983 claim because they failed to offer  
11 evidence that the defendants engaged in affirmative conduct that  
12 enhanced the danger to which the plaintiffs had exposed  
13 themselves); Wood v. Ostrander, 879 F.2d at 589-590. "In  
14 examining whether an officer affirmatively places an individual  
15 in danger, [courts] do not look solely to the agency of the  
16 individual, nor do we rest our opinion on what options may or may  
17 not have been available to the individual. Instead, [courts]  
18 examine whether the officers left the person in a situation that  
19 was more dangerous than the one in which they found him." Munger  
20 v. City of Glasgow Police Dep't, 227 F.3d 1082, 1086 (9th Cir.  
21 2000).

22 Additionally, a plaintiff seeking to invoke the danger  
23 creation exception must show that the state official in question  
24 acted with deliberate indifference to a known or obvious danger.  
25 L.W. v. Grubbs ("Grubbs II"), 92 F.3d 894, 900 (9th Cir. 1996)  
26 (finding the defendant could not be held liable to the plaintiff  
27 for a section 1983 violation because the plaintiff failed to  
28 prove that the defendant knew or should have known of the

1 dangerous situation confronting the plaintiff). Accordingly, to  
2 set forth a claim based on a government official's failure to  
3 act, a plaintiff must show (1) an unusually serious risk of harm;  
4 (2) defendants' actual knowledge of or willful blindness to that  
5 elevated risk; and (3) defendants' failure to take obvious steps  
6 to address that known, serious risk. Id.

7 In this case, plaintiff has failed to set forth sufficient  
8 evidence to raise a triable issue of fact that defendants  
9 violated her constitutional rights by failing to act. Plaintiff  
10 asserts that she informed the deputies that Rivera and those with  
11 her were "very hostile." (Dep. 85:18.) However, plaintiff  
12 concedes that Rivera and the individuals with her displayed no  
13 physically aggressive behavior either prior to or during deputies  
14 Thompson and Nelson's presence, nor did they behave in a fashion  
15 that would alert the deputies to any danger to plaintiff. (Id.  
16 at 96:2-15.) Plaintiff also concedes that she did not inform  
17 defendants of any verbally or physically threatening or abusive  
18 behavior when defendants made telephone contact with her after  
19 they left the property. (Dep. 110:3.) Moreover, plaintiff  
20 admits that she was able to leave the property at any point;  
21 however, she chose to stay at the property while Rivera and other  
22 individuals were present. Cf. Wood v. Ostrander, 879 F.2d 583  
23 (finding the defendants affirmatively created a danger when they  
24 left the plaintiff stranded in a high crime area without means of  
25 departure). Based upon these undisputed facts, no reasonable  
26 juror could conclude that defendants Thompson and Nelson were on  
27 notice of an imminent physical threat to plaintiff, or that

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1 ignoring plaintiff's request was an act of deliberate  
2 indifference to plaintiff's safety.

3 This case is similar to Johnson v. City of Seattle, where  
4 the court concluded that the danger creation exception to the  
5 general Deshaney rule did not apply. 474 F.3d at 637. In  
6 Johnson, the plaintiffs claimed the Seattle Police Department had  
7 violated their constitutional rights after they were assaulted  
8 and injured by a riotous crowd during a Mardi Gras celebration in  
9 the Pioneer Square District in Seattle. Based on the  
10 demonstrable hostility of those gathered, police officials  
11 decided to remain on the periphery of the crowd rather than  
12 insert themselves into the fray, risking injury to officers and  
13 civilians. Id. The plaintiffs argued that this strategic  
14 decision deprived them of police protection and directly resulted  
15 in their injuries, thus violating section 1983. The court found  
16 the plaintiffs' argument unavailing, reasoning, "[t]he decision  
17 [not to intervene] was not affirmative conduct that placed the  
18 Pioneer Square Plaintiffs in danger, because it did not place  
19 them in any worse position than they would have been in had the  
20 police not come up with any operational plan whatsoever." Id. at  
21 641. Likewise, in this case, deputies Thompson and Nelson's  
22 decision to leave the premises and not to intervene in the family  
23 dispute between Rivera and plaintiff, despite the fact that  
24 plaintiff requested their continued presence, was not affirmative  
25 conduct that placed plaintiff in danger. As was the case in  
26 Johnson, defendants did not create the danger, nor did they do  
27 anything to render plaintiff more vulnerable to danger. Id.; see  
28 also DeShaney, 489 U.S. at 192.

1 Plaintiff argues that by enforcing the court order without  
2 verifying that the individuals present with Rivera were members  
3 of her family, defendants affirmatively created a danger to  
4 plaintiff. However, as set forth above, there is no evidence  
5 that defendants ignored or were deliberately indifferent to a  
6 known risk created by the individuals present at the property.  
7 Further, plaintiff fails to present any evidence of a causal  
8 nexus between defendants' failure to verify the identities of  
9 those present and the injury suffered. By her own deposition  
10 testimony, plaintiff alleges that it was Rivera and Rivera's  
11 Aunt, rather than the other individuals present, who committed  
12 the battery. (Dep. 100:13-15, 101:1-3.) As such, defendants'  
13 failure to identify the individuals present with Rivera on the  
14 day in question is insufficient to set forth a constitutional  
15 violation.

16 **CONCLUSION**

17 For the foregoing reasons, defendants' motion for summary  
18 judgment is GRANTED.

19 IT IS SO ORDERED.

20 DATED: July 20, 2010



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21 FRANK C. DAMRELL, JR.  
22 UNITED STATES DISTRICT JUDGE  
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