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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DERRICK K. COURTNEY,  
Plaintiff,  
v.  
POOJA KANDEL, et al.,  
Defendants.

No. 2:18-CV-2052-KJM-DMC-P

**FINDINGS AND RECOMMENDATIONS**

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court are Defendants’ motion for summary judgement (ECF No. 43); Plaintiff’s opposition (ECF No. 45); and Defendants’ reply (ECF No. 46).

**I. PLAINTIFF’S ALLEGATIONS**

Plaintiff, Derrick Courtney, originally named the following as Defendants: 1) Shadi Boutros; 2) Dandra Roajof Moore; 3) Pooja Kandel; and 4) Khin Win. See ECF No. 1, pg. 2. Boutros and Moore were dismissed. See ECF Nos. 30, 35. Plaintiff alleges that, on November 23, 2017, Defendants Kandel and Win evaluated an injury to Plaintiff’s jaw. See ECF No. 1, pg. 4. Plaintiff states that, during that examination, his jaw was swollen and continued to swell. See id. Plaintiff states that the swelling indicated something was wrong and that he needed urgent medical attention. See id. Plaintiff claims that Defendants sent him back to his

1 housing area without treating him for a fractured mandible for a four-day period. See id. Plaintiff  
2 further claims that Defendants failed to give him medication. Id. Consequently, he suffered pain  
3 that prevented him from sleeping, eating, and talking over that four-day period, and that the delay  
4 in medical attention caused his jaw to heal incorrectly. See id.

## 6 **II. PROCEDURAL HISTORY**

7 On July 27, 2018, Plaintiff filed a prisoner civil rights complaint against Kandel,  
8 Win, Boutros, and Moore, alleging that their conduct violated his Eighth Amendment right to  
9 freedom from cruel and unusual punishment. See ECF No. 1. After a protracted procedural  
10 history, the Court dismissed Boutros and Moore, who Plaintiff named in the original complaint,  
11 as defendants. See ECF Nos. 30, 35; see also ECF No. 14, 25. The Court also denied the  
12 remaining defendants' motion to dismiss. See ECF No. 35. The remaining defendants, Kandel  
13 and Win, filed an answer and, subsequently, a motion for summary judgment. ECF Nos. 36, 43.  
14 Plaintiff filed an opposition to the motion for summary judgment. ECF No. 45. Defendants  
15 Kandel and Win filed a reply to Plaintiff's opposition. ECF No. 46.

## 17 **III. STANDARD FOR SUMMARY JUDGEMENT**

18 The Federal Rules of Civil Procedure (FRCP) provide for summary judgment or  
19 summary adjudication when “the pleadings, depositions, answers to interrogatories, and  
20 admissions on file, together with affidavits, if any, show that there is no genuine issue as to any  
21 material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ.  
22 P. 56(a). The standard for summary judgment and summary adjudication is the same. See Fed.  
23 R. Civ. P. 56(a), 56(c); see also Mora v. ChemTronics, 16 F. Supp. 2d. 1192, 1200 (S.D. Cal.  
24 1998). One of the principal purposes of Rule 56 is to dispose of factually unsupported claims or  
25 defenses. See Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Under summary judgment  
26 practice, the moving party

27 . . . always bears the initial responsibility of informing the district court of  
28 the basis for its motion, and identifying those portions of “the pleadings,  
depositions, answers to interrogatories, and admissions on file, together

1 with the affidavits, if any,” which it believes demonstrate the absence of a  
2 genuine issue of material fact.

3 Id. at 323 (quoting former Fed. R. Civ. P. 56(c)); see also Fed. R. Civ. P. 56(c)(1).

4 If the moving party meets its initial responsibility, the burden then shifts to the  
5 opposing party to establish that a genuine issue as to any material fact actually does exist. See  
6 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to  
7 establish the existence of this factual dispute, the opposing party may not rely upon the  
8 allegations or denials of its pleadings but is required to tender evidence of specific facts in the  
9 form of affidavits, and/or admissible discovery material, in support of its contention that the  
10 dispute exists. See Fed. R. Civ. P. 56(c)(1); see also Matsushita, 475 U.S. at 586 n.11. The  
11 opposing party must demonstrate that the fact in contention is material, i.e., a fact that might  
12 affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S.  
13 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th  
14 Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could  
15 return a verdict for the nonmoving party, Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436  
16 (9th Cir. 1987). To demonstrate that an issue is genuine, the opposing party “must do more than  
17 simply show that there is some metaphysical doubt as to the material facts . . . . Where the record  
18 taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no  
19 ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted). It is sufficient that “the  
20 claimed factual dispute be shown to require a trier of fact to resolve the parties’ differing versions  
21 of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631.

22 In resolving the summary judgment motion, the court examines the pleadings,  
23 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any.  
24 See Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed, see Anderson,  
25 477 U.S. at 255, and all reasonable inferences that may be drawn from the facts placed before the  
26 court must be drawn in favor of the opposing party, see Matsushita, 475 U.S. at 587.  
27 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to  
28 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen

1 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898, 902 (9th Cir.  
2 1987). Ultimately, “[b]efore the evidence is left to the jury, there is a preliminary question for the  
3 judge, not whether there is literally no evidence, but whether there is any upon which a jury could  
4 properly proceed to find a verdict for the party producing it, upon whom the onus of proof is  
5 imposed.” Anderson, 477 U.S. at 251.

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7 **IV. THE PARTIES’ EVIDENCE**

8 **A. Defendants’ Evidence**

9 Defendants’ motion for summary judgment is supported by the following sworn  
10 declarations: 1) Arthur B. Mark III (ECF No. 43-3, pgs. 1-2); 2) P. Kandel (ECF No. 43-4); and  
11 3) Dr. K. Win (ECF No. 43-5). Defendants further relied on excerpts from the deposition of  
12 Plaintiff, Mr. Derrick Courtney (ECF No. 43-3, Ex. A, pgs. 4-38), as well as documents Plaintiff  
13 provided relating to the deposition (ECF No. 43-3, Ex. 2 and 3, pgs. 42-49). Defendants also  
14 submit a Statement of Undisputed Facts discussed below in section (IV)(C).

15 **B. Plaintiff’s Evidence**

16 In support of his opposition, Plaintiff relies on Defendant Win’s responses to  
17 Plaintiff’s request for admissions (ECF No. 45, pgs. 94-98), Defendant Win’s responses to  
18 Plaintiff’s interrogatories (ECF No. 45, pgs. 108-113), as well as the following exhibits:

19 Exhibit 1 California Correctional Health Care Services,  
20 Volume 4: Medical Services Chapter 1.3 § 4.1.3  
21 Scheduling and Access to Care Procedure. ECF  
No. 45, pgs. 28-39 (labelled Exhibit HCS 1-12).

22 Exhibit 2 Excerpt of assorted medical records of Plaintiff  
23 from California State Prison, Solano. Id. at 40-46  
(labelled Exhibit 1-7).

24 Exhibit 3 Duty statement for registered nurses at correctional  
25 facilities. Id. at 56-58 (labelled Exhibit RNCF and  
Exhibit RNCF 1-2).

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1           **C.     Defendant’s Statement of Undisputed Facts and Plaintiff’s Response**

2                           The following are: 1) Defendants’ Statement of Undisputed Facts, ECF No. 43-2;  
3 and 2) Plaintiff’s responses, ECF No. 45, pgs. 9-18.

<b><u>Defendants’ Statement</u></b>	<b><u>Plaintiff’s Response</u></b>
<p>4</p> <p>5           1. Plaintiff, Derrick K. Courtney (CDCR No. F 03171), is an inmate of the California Department of Corrections and Rehabilitation (CDCR), serving a sentence of life without the possibility of parole.</p> <p>6</p> <p>7</p> <p>8           (P1’s Dep. at 5:7-13; 8:3-23 (Exhibit A to the Declaration of Arthur B. Mark III in Support of Defendants’ Motion for Summary Judgment (Mark Decl.)); P1’s Compl., ECF No. 1.)</p>	<p>9           1. Admit<sup>1</sup>.</p>
<p>10</p> <p>11</p> <p>12           2. In November 2017, Plaintiff was an inmate at California State Prison-Solano (CSP-Solano).</p> <p>13</p> <p>14           (P1’s Compl. ECF No. 1 at 1-2; P1’s Dep. at 14:9-15 (Mark Decl. Ex. A).)</p>	<p>15           2. Admit.</p>
<p>16           3. Plaintiff has no medical training or experience.</p> <p>17</p> <p>18           (P1’s Dep. at 10:2-20 (Mark Decl. Ex. A).)</p>	<p>19           3. Deny. Plaintiff has common sense that medical care should be provided to fix broken bones.</p> <p>20           (page 9 of Plaintiff’s Opposition to Defendants’ Motion for Summary Judgement)</p>
<p>21           4. Dr. Win worked as physician for forty years; he worked for CDCR as a physician from 2003 to 2018, and at CSP-Solano from August 2008 until he retired in December 2018.</p> <p>22</p> <p>23           (Declaration of K. Win in Support of Defs’ Motion for Summary Judgment (Win Decl.), ¶ 1-4.)</p>	<p>24           4. Deny. Dr. Win comes from Yangon (Rangoon), Myanmar, and Plaintiff contends that the country’s medical records may be incomplete or untrue. Plaintiff contests Dr. Win’s forty years of experience.</p> <p>25           (page 10 of Plaintiff’s Opposition to Defendants’ Motion for Summary Judgement)</p>

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27 <sup>1</sup> While Plaintiff uses the phrase, “EXCEPTION to Defendants UNDISPUTED MATERIAL FACT” for several of the responses, underneath these sections Plaintiff directly copies the Defendants’ undisputed material fact for the corresponding number and provides no contention or dispute. It appears that these sections are meant to be admissions or acceptances of the undisputed fact.

<p>1 5. Nurse Kandel has been a registered nurse 2 for eleven years and has worked at CSP- 3 Solano since July 2015.</p> <p>4 (Declaration of P. Kandel in Support of Defs' 5 Motion for Summary Judgment (Kandel Decl.) 6 ¶ 1-3.)</p>	<p>5. Deny. Nurse Kandel comes from Nepal, and Plaintiff contends that the country's medical records may be incomplete or untrue. Plaintiff contests Nurse Kandel's eleven years of experience.</p> <p>(page 10 of Plaintiff's Opposition to Defendants' Motion for Summary Judgement)</p>
<p>7 6. Plaintiff is suing Defendants Win and 8 Kandel for inadequate medical treatment on 9 November 23, 2017.</p> <p>10 (Pl's Dep. at 13:21-14:2; 33:15-34:4 (Mark 11 Decl. Ex. A); Pl's Compl. ECF No. 1.)</p>	<p>6. Deny. Plaintiff is suing for intentionally denying or delaying access to medical care and that his injuries required immediate medical care, and Defendant's Win and Kandel failed to take reasonable action to summon such medical care.</p> <p>(page 10 of Plaintiff's Opposition to Defendants' Motion for Summary Judgement)</p>
<p>13 7. November 23, 2017 was Thanksgiving Day, 14 a state holiday; the following day was also a 15 state holiday, and November 25-26, 2017 was 16 the weekend.</p> <p>17 (Kandel Decl. ¶ 3; Win Decl. ¶ 5, 8.)</p>	<p>7. Deny. On non-business days triage and treatment area (TTA) registered nurses are to determine if a patient requires urgent care and are to take action to coordinate that care. Patients with urgent medical symptoms are to be scheduled same day appointments with the primary registered nurse and other individuals as symptoms indicate.</p> <p>(page 10-11 of Plaintiff's Opposition to Defendants' Motion for Summary Judgement; Pl's Ex. 1, pg. 5)</p>
<p>20 8. Because it was a holiday, no physician was 21 on-site at CSP-Solano on November 23, 2017; 22 Dr. Win was on-call, available by telephone.</p> <p>23 (Kandel Decl. 3; Win. Decl. ¶ 5.)</p>	<p>8. Deny. Institutions are to use open access slots to ensure patients are seen in an efficient manner, in a clinically appropriate setting and within all mandated timeframes.</p> <p>(page 11 of Plaintiff's Opposition to Defendants' Motion for Summary Judgement; Pl's Ex. 1, pg. 9)</p>
<p>25 9. Nurse Kandel was working at CSP-Solano 26 on November 23, 2017 in the triage and 27 treatment area (TTA). If a patient was brought 28 to the TTA, Nurse Kandel would assess the patient's complaint and symptoms, including taking vital signs and conducting a visual</p>	<p>9. Deny. Plaintiff's systolic blood pressure was high and should have required Nurse Kandel to perform some form of procedure to reduce his blood pressure or send Plaintiff to an outside hospital on November 23, 2017.</p>

<p>1 examination. She would then contact the on-  2 call physician on the telephone and report what  3 she found and take orders from the physician  4 as to the plan and treatment for the inmate  5 patient.  6  7 (Kandel Decl. ¶ 3; Win Decl. ¶ 5.)</p>	<p>(page 11 of Plaintiff's Opposition to  8 Defendants' Motion for Summary Judgement;  9 Pl's Ex. 2, pg. 7)</p>
<p>10 10. Under her scope of practice, Nurse Kandel  11 could not make diagnoses or give orders for  12 treatment including, but not limited to,  13 medications or x-rays, or send an inmate to an  14 emergency room outside the prison.  15  16 (Kandel Decl. ¶ 4.)</p>	<p>10. Deny. Nurse Kandel failed to properly  11 assess the emergency severity index and  12 ensure an appropriate clinical handoff to Dr.  13 Win.  14  15 (page 11-12 of Plaintiff's Opposition to  16 Defendants' Motion for Summary Judgement;  17 Pl's Ex. 3; and Pl's Ex. 2, pgs. 1-7)</p>
<p>18 11. Plaintiff got in a fight on the yard with  19 another inmate on November 23, 2017 at about  20 8:00 p.m.  21  22 (Pl's Dep. 14:18-15:17; 16:24-17:1; 20:15-  23 21:22, Dep. Ex. 3 (Mark Decl. Ex. A).)</p>	<p>11. Admit.</p>
<p>24 12. Plaintiff claims the other inmate hit him in  25 the right side of his jaw; he was not bleeding  26 and he did not lose consciousness.  27  28 (Pl's Dep. at 16:4-23 (Mark Decl. Ex A);  Kandel Decl. ¶ 9-11.)</p>	<p>12. Admit.</p>
<p>13 13. Plaintiff was taken to the TTA at CSP-  14 Solano shortly after the fight.  15  16 (Pl's Dep. 22:3-24 (Mark Decl. Ex. A); Kandel  17 Decl. ¶ 5-6.)</p>	<p>13. Admit.</p>
<p>18 14. Plaintiff walked to the TTA without  19 assistance.  20  21 (Kandel Decl. ¶ 6; Pl's Dep. at 22:9-10 (Mark  22 Decl. Ex. A).)</p>	<p>14. Admit.</p>
<p>23 15. Nurse Kandel assessed Plaintiff's  24 condition using the Emergency Severity Index,  25 which is a tool used by nurses to assess a  26 patient's condition based on their physical</p>	<p>15. Admit.</p>

<p>1 presentation to determine what level of care the patient requires.</p> <p>2 (Kandel Decl. ¶ 6, Ex. A.)</p>	
<p>4 16. During the visit, Plaintiff could talk, did 5 not appear to have trouble breathing, and had 6 normal vital signs; he could breathe and 7 swallow. He asked Nurse Kandel questions and understood what she was saying to him.</p> <p>8 (Kandel Decl. ¶ 6, Ex. A; Pl's Dep. at 22:25- 23:5; 24:5-18 (Mark Decl. Ex. A.))</p>	<p>16. Deny. Plaintiff had difficulty talking due to swelling of his jaw and had high systolic and diastolic blood pressure. Plaintiff did not understand what Nurse Kandel was saying, that if the pain was reduced he would not be sent to an outside hospital.</p> <p>(page 12-13 of Plaintiff's Opposition to Defendants' Motion for Summary Judgement)</p>
<p>10 17. Plaintiff complained about loose teeth to 11 Nurse Kandel, but he did not lose any teeth as 12 a result of the fight.</p> <p>13 (Pl's Dep. 23:6-21 (Mark Decl. Ex. A.))</p>	<p>17. Admit.</p>
<p>14 18. Plaintiff did not appear to Nurse Kandel to 15 require immediate life-saving treatment; he 16 was not confused, lethargic, disoriented and did not appear to be in severe pain or distress.</p> <p>17 (Kandel Decl. ¶ 7, Ex. A; Pl's Dep. 16:9-23; 22:25-23:5; 24:5-18 (Mark Decl. Ex. A.))</p>	<p>18. Deny. Nurse Kandel mitigated the pain section of the vital signs so as to not provide Dr. Win with adequate information that showed Plaintiff required treatment from an outside hospital. Plaintiff was suffering from adjustment disorder and had an x-ray ordered for the swelling of his jaw.</p> <p>(page 13 of Plaintiff's Opposition to Defendants' Motion for Summary Judgement; Pl's Ex. 2, pgs. 4, 7.)</p>
<p>21 19. Plaintiff indicated a pain level of 6 out 10, 22 which is not considered severe.</p> <p>23 (Kandel Decl. ¶ 8, Ex. A.)</p>	<p>19. Deny. Nurse Kandel admitted less pain than Plaintiff actually had, so as to prevent Dr. Win from considering sending Plaintiff to a hospital.</p> <p>(page 13 of Plaintiff's Opposition to Defendants' Motion for Summary Judgement)</p>
<p>26 20. Nurse Kandel visually examined Plaintiff 27 and noted some swelling of his left jaw and the 28 only other injury she observed was a 1 cm laceration under his left eye, which was not</p>	<p>20. Deny. Nurse Kandel noted that Plaintiff was suffering from adjustment disorder. Because no doctor was present, Nurse Kandel assumed the role of a doctor by providing a diagnosis and prognosis.</p>



<p>1 actively bleeding, and only required a Band-  2 Aid (sterile strips) for closure and not sutures.  3 (Kandel Decl. ¶ 9-10, Ex. A. See Pl's Dep. at  4 16:4-23 (Mark Decl. Ex. A).)</p>	<p>(page 13-14 of Plaintiff's Opposition to  5 Defendants' Motion for Summary Judgement;  6 Pl's Ex. 2, pg. 7)</p>
<p>7 21. At Dr. Win's direction, Nurse Kandel  8 performed a test on Plaintiff by having him  9 hold a wooden tongue blade (tongue  10 depressor) between his teeth.  11 (Kandel Decl. ¶ 9; Win Decl. ¶ 7.)</p>	<p>21. Deny. Nurse Kandel does not have the  12 six years of medical education and two years  13 of hospital internship experience of a doctor,  14 and has no dental training, and could not give  15 an adequate assessment. Nurse Kandel did  16 not want to give an adequate assessment as an  17 adequate assessment would require outside  18 hospitalization.  19 (page 14 of Plaintiff's Opposition to  20 Defendants' Motion for Summary  21 Judgement)</p>
<p>22 22. Plaintiff was able to hold the tongue blade  23 firmly when Nurse Kandel twisted it; an  24 indicator that a fracture may not have been  25 present.  26 (Kandel Decl. ¶ 9; Win Decl. ¶ 7, Ex. A.)</p>	<p>22. Deny. Plaintiff could not open his mouth  27 all the way. Plaintiff had high systolic and  28 diastolic blood pressure.  29 (page 14 of Plaintiff's Opposition to  30 Defendants' Motion for Summary Judgement;  31 Pl's Ex. 2, pg. 7.)</p>
<p>32 23. Nurse Kandel did not see any loose teeth  33 or bleeding from Courtney's mouth. Her  34 examination of all his other bodily systems  35 revealed that they were within normal limits  36 and she observed no cardiac or breathing  37 distress, loss of consciousness or anything else  38 indicating that Plaintiff might need to go to an  39 emergency room.  40 (Kandel Decl. ¶ 11, Ex. A. See Pl's Dep. at  41 16:4-23; 22:11-23:5 (Mark Decl. Ex. A).)</p>	<p>23. Deny. Plaintiff could not open his mouth  42 all the way. Plaintiff had high systolic and  43 diastolic blood pressure.  44 (page 14 of Plaintiff's Opposition to  45 Defendants' Motion for Summary Judgement;  46 Pl's Ex. 2, pg. 7.)</p>
<p>47 24. Nurse Kandel relayed her findings  48 regarding Plaintiff to Dr. Win via telephone.  49 (Kandel Decl. ¶ 12; Win Decl. ¶ 6.)</p>	<p>24. Admit.</p>
<p>50 25. Dr. Win did not speak with or see Plaintiff  51 on November 23, 2017. Per CDCR protocols,  52 he relied on the information relayed to him by  53 Nurse Kandel to develop his assessment and  54 plan.</p>	<p>25. Deny. Dr. Win did not follow protocols.  55 (page 15 of Plaintiff's Opposition to  56 Defendants' Motion for Summary Judgement;</p>

<p>1 (Win Decl ¶ 6.)</p> <p>2</p>	<p>Admissions 5 and 6; Interrogatories 5, 6, and 7.)</p>
<p>3 26. Nurse Kandel advised Dr. Win that</p> <p>4 Plaintiff had been involved in a physical</p> <p>5 altercation; had sustained a 1 cm laceration</p> <p>6 under his left eye and had a swollen left jaw,</p> <p>7 but that he denied any other injury, loss of</p> <p>8 consciousness, blurry vision or loose teeth.</p> <p>9 (Win Decl. ¶ 7, Ex. A.)</p>	<p>26. Deny. Plaintiff contends this is not a true</p> <p>account of the conversation between Nurse</p> <p>Kandel and Dr. Win and that the phone call</p> <p>recording was recorded.</p> <p>(page 15 of Plaintiff's Opposition to</p> <p>Defendants' Motion for Summary</p> <p>Judgement)</p>
<p>10 27. Dr. Win concurred with Nurse Kandel's</p> <p>11 assessment that no suture was needed and that</p> <p>12 a sterile-strip (band-aid) for the laceration was</p> <p>sufficient.</p> <p>(Win Decl. ¶ 7, Ex. A.)</p>	<p>27. Admit.</p>
<p>13 28. Based on Nurse Kandel's description of</p> <p>14 Plaintiff's presentation and the tongue blade</p> <p>15 test, Dr. Win did not suspect he had a broken</p> <p>16 jaw or fracture. His symptoms were mild, with</p> <p>17 no loss of consciousness or other injuries or</p> <p>18 indicators for emergency treatment.</p> <p>19 Accordingly, nothing Nurse Kandel relayed</p> <p>20 indicated that Plaintiff needed emergency</p> <p>21 treatment or an x-ray on an emergency basis.</p> <p>22 However, because a fracture cannot be ruled</p> <p>23 out without an x-ray, Dr Win ordered an x-ray</p> <p>24 for Plaintiff the next business day (November</p> <p>25 27, 2017).</p> <p>26 (Win Decl. ¶ 7-8, Ex. A-B.)</p>	<p>28. Deny. Plaintiff was not able to open his</p> <p>mouth completely. A broken jaw requires</p> <p>adequate alignment and would require</p> <p>treatment. Dr. Win did not ask for an</p> <p>adequately precise examination of Plaintiff's</p> <p>jaw.</p> <p>(page 15-16 of Plaintiff's Opposition to</p> <p>Defendants' Motion for Summary</p> <p>Judgement)</p>
<p>27 29. Based on Dr. Win's medical training and</p> <p>28 experience and the information relayed</p> <p>concerning Plaintiff's condition, Dr. Win did</p> <p>not believe Plaintiff was an emergency case</p> <p>requiring transport outside the prison to an</p> <p>emergency room.</p> <p>(Win Decl. ¶ 8.)</p>	<p>29. Deny. Plaintiff was in debilitating pain</p> <p>due to a dental related condition.</p> <p>(page 16 of Plaintiff's Opposition to</p> <p>Defendants' Motion for Summary Judgement;</p> <p>Admission 5.)</p>
<p>27</p> <p>28</p>	

1	30. In addition to the x-ray, Dr. Win ordered	30. Admit.
2	ibuprofen for pain relief and a follow-up with	
3	Plaintiff's primary care doctor and nurse.	
4	(Win Decl. ¶ 8, Ex. B; Kandel Decl. ¶ 12, Ex. B.)	
5	31. Nurse Kandel also provided ice for	31. Admit.
6	Plaintiff's swollen jaw.	
7	(Kandel Decl. ¶ 12; Win Decl. Ex. A.)	
8	32. Plaintiff was ambulatory at the end of the	32. Admit.
9	visit with Nurse Kandel and she advised him	
10	before he left that if he experienced any	
11	increase in pain or other symptoms or felt he	
12	needed medical attention he should seek	
13	medical treatment by going "man down."	
14	(Kandel Decl. ¶ 13; Win Decl. ¶ 9; Pl's Dep. 27:9-18 (Mark Decl. Ex. A.))	
15	33. Plaintiff did not return to the TTA on	33. Admit
16	November 23, 2017.	
17	(Kandel Decl. ¶ 13; Win Decl. ¶ 9; Pl's Dep. 27:9-18 (Mark Decl. Ex. A.))	
18	34. Plaintiff never complained to his dorm	34. Admit.
19	mates about his jaw between November 23 and	
20	November 27, 2017 and he has no records	
21	showing that he sought medical treatment after	
22	his encounter with Nurse Kandel on November	
23	23, 2017.	
24	(Pl's Dep. 28:1-31:7; 45:5-49:16, Dep. Exs. 1, 2 (Mark Decl. Ex A); Mark Decl ¶ Ex. B.)	
25	35. In 2017, there was x-ray equipment at	35. Deny. On non-business days the TTA RN
26	CSP-Solano, but the technicians that operate it	shall determine if a patient requires urgent or
27	do not work on state holidays or weekends.	routine care and coordinate care of patients
28	Thus, there were no x-ray services available at	with emergency or urgent conditions. The
	CSP-Solano when Courtney was brought to	TTA RN will immediately refer urgent dental
	medical on November 23, 2017.	needs to appropriate clinicians for evaluations
	(Kandel Decl. ¶ 14; Win Decl. ¶ 8.)	consistent with established program
		guidelines.

1		(page 17 of Plaintiff's Opposition to Defendants' Motion for Summary Judgement; Pl's Ex. 1, pgs. 5, 8.)
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3	36. Plaintiff had his x-ray on November 27, 2017 as ordered by Dr. Win, which revealed a fracture in the left mandible. Plaintiff was sent out for treatment and had surgery on November 29, 2017.	36. Admit.
4		
5	(Win Decl. ¶ 10, Ex. C.; Pl's Dep. at 34:14-19 (Mark Decl. Ex. A).)	
6		
7		
8	37. Plaintiff also saw a dentist at the prison on November 27, 2017.	37. Admit.
9		
10	(Pl's Dep. at 34:10-11 (Mark Decl. Ex. A).)	
11		
12	38. Plaintiff's records reveal that by January 23, 2018, his fractures appeared to have healed uneventfully and without any complication.	38. Admit.
13		
14	(Win Decl. ¶ 10, Ex. C; Pl's Dep. 36:4-10; 44:7-11 (Mark Decl. Ex. A).)	
15	39. The reference to "adjustment disorder" in Plaintiff's medical records refers to a mental health condition, and not to any physical deformity of Plaintiff's jaw.	39. Deny. The assertion that medical record that states adjustment disorder refers to anything other than the reason for Plaintiff's visit is false.
16		
17	(Kandel Decl. ¶ 15; see Pl's Dep. at 18:3-19:2; Dep. Ex. 2 (Mark Decl. Ex. A).)	(page 17-18 of Plaintiff's Opposition to Defendants' Motion for Summary Judgement; Pl's Ex. 2, pg. 7.)
18		
19		
20	40. Plaintiff could not describe either defendant and incorrectly identified Dr. Win as a female, when in fact he is a man, and as young when, in fact, he was 64 years old in 2017.	40. Deny. Plaintiff admitted that he was confused and corrected his error, stating that he could not describe Dr. Win.
21		
22	(Pl's Dep. at 13:2-20; 43:2-11 (Mark Decl. Ex A); Win Decl. ¶ 1.)	(page 18 of Plaintiff's Opposition to Defendants' Motion for Summary Judgement; Pl's Dep. at 13:10-20.)
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1 **V. DISUCSSION**

2 In their motion for summary judgment, Defendants argue: (1) Plaintiff presents no  
3 genuine dispute of material fact that would support that Defendant Kandel or Defendant Win  
4 were deliberately indifferent to Plaintiff’s medical needs; and (2) Defendants are entitled to  
5 qualified immunity. The Court agrees on both points.

6 **A. Deliberate Indifference to Medical Needs**

7 Defendants argue that undisputed evidence shows that neither Defendant was  
8 deliberately indifferent to Plaintiff’s medical needs. The Court agrees and concludes that Kandel  
9 and Win are entitled to judgment as a matter of law.

10 The treatment a prisoner receives in prison and the conditions under which the  
11 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel  
12 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,  
13 511 U.S. 825, 832 (1994). The Eighth Amendment “. . . embodies broad and idealistic concepts  
14 of dignity, civilized standards, humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102  
15 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.  
16 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with  
17 “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint v. McCarthy,  
18 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only when  
19 two requirements are met: (1) objectively, the official’s act or omission must be so serious such  
20 that it results in the denial of the minimal civilized measure of life’s necessities; and (2)  
21 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of  
22 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison  
23 official must have a “sufficiently culpable mind.” See id.

24 Deliberate indifference to a prisoner’s serious illness or injury, or risks of serious  
25 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 105;  
26 see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental health  
27 needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982), abrogated on other grounds by  
28 Sandin v. Conner, 515 U.S. 472 (1995). An injury or illness is sufficiently serious if the failure to

1 treat a prisoner's condition could result in further significant injury or the ". . . unnecessary and  
2 wanton infliction of pain." McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled  
3 on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc); see  
4 also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994). Factors indicating seriousness  
5 are: (1) whether a reasonable doctor would think that the condition is worthy of comment; (2)  
6 whether the condition significantly impacts the prisoner's daily activities; and (3) whether the  
7 condition is chronic and accompanied by substantial pain. See Lopez v. Smith, 203 F.3d 1122,  
8 1131-32 (9th Cir. 2000) (en banc).

9           The requirement of deliberate indifference is less stringent in medical needs cases  
10 than in other Eighth Amendment contexts because the responsibility to provide inmates with  
11 medical care does not generally conflict with competing penological concerns. See McGuckin,  
12 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to  
13 decisions concerning medical needs. See Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir.  
14 1989). The complete denial of medical attention may constitute deliberate indifference. See  
15 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical  
16 treatment, or interference with medical treatment, may also constitute deliberate indifference. See  
17 Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also demonstrate  
18 that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

19           Negligence in diagnosing or treating a medical condition does not, however, give  
20 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a  
21 difference of opinion between the prisoner and medical providers concerning the appropriate  
22 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,  
23 90 F.3d 330, 332 (9th Cir. 1996).

24           Undisputed facts show that November 23, 2017 was Thanksgiving, and because of  
25 the holiday, no physician was present at the prison. See ECF No. 43-2, pg. 2. On November 23,  
26 2017, Plaintiff was injured in an altercation with another inmate around 8:00 p.m. See id. at 3.  
27 After the fight, Plaintiff went to the triage and treatment area to receive assistance. See id.  
28 Plaintiff claimed he was hit on the right side of his jaw. See id. Plaintiff was not bleeding, and

1 he did not lose consciousness. See id. at 4. Plaintiff walked to the triage and treatment area  
2 without assistance. See id. at 3. Defendant Kandel was the registered nurse present at the triage  
3 and treatment area and Defendant Win was the physician on-call on November 23, 2017. See id.

4 1. Defendant Kandel

5 Defendants present undisputed facts that show that Defendant Kandel was not  
6 deliberately indifferent to Plaintiff's medical needs. See, e.g., Edmo v. Corizon, Inc., 935 F.3d  
7 757, 786 (9th Cir. 2019); Colwell v. Bannister, 763 F.3d 1060, 1066–68 (9th Cir. 2014). When  
8 Plaintiff arrived at the triage and treatment area, Defendant Kandel examined him; her exam did  
9 not indicate that Plaintiff required immediate, lifesaving treatment. See ECF No. 43-2, pg. 4.  
10 Plaintiff was able to talk, did not appear to have trouble breathing, was able to breath and  
11 swallow, and had normal vital signs. See id. Kandel contacted the on-call physician, Defendant  
12 Win, and at his instruction, performed a test with a tongue blade to determine whether Plaintiff's  
13 jaw was broken; the test indicated that there might not have been a fracture in Plaintiff's jaw. See  
14 id. at 5. Plaintiff's bodily symptoms were within normal limits, and nothing indicated to Kandel  
15 that Plaintiff needed to go to an emergency room. See id. Kandel described the results of her  
16 examinations to Win. See id. Kandel provided ice to the Plaintiff for the swelling of his jaw.  
17 See id. at 7. Because Kandel is a registered nurse, she could not order x-rays, prescribe  
18 medication, or order for to be sent Plaintiff to an emergency room. See id. at 3. After Win gave  
19 his instructions for Plaintiff's care, Plaintiff was able to walk and Kandel advised him that if his  
20 pain increased, or other symptoms occurred, or if Plaintiff felt he needed medical attention he  
21 should seek medical treatment. See id. at 7. Plaintiff did not return to the triage and treatment  
22 area on November 23, 2017 and did not seek medical assistance of any kind between November  
23 23, 2017, and November 27, 2017, when his jaw was x-rayed per Defendant Win's order. See id.  
24 Plaintiff did not complain of any pain or discomfort in his jaw to his dorm mates. See id.  
25 Plaintiff's jaw x-ray did show a fracture, which Plaintiff had surgery for on November 29, 2017.  
26 See id. at 7-8. Plaintiff's fractures healed without complication. See id. at 8.

27 Although Plaintiff does deny some of the facts presented by Defendants related to  
28 Defendant Kandel, he fails to raise any instance of disputed material fact. Plaintiff contends that

1 because his systolic and diastolic blood pressure results were high, he should have been sent to  
2 the emergency room, but Plaintiff provides no evidence to support the assertion that those high  
3 blood pressure results would require emergency treatment. See ECF No. 45, pgs. 12-14. Even if  
4 it were the case that Plaintiff should have been sent to the emergency room, Kandel did not have  
5 the ability to order that Plaintiff go to the emergency room. See ECF No. 43-2, pg. 3. Moreover,  
6 Plaintiff's complaint does not indicate any injury related to his blood pressure, only the injury  
7 related to his fractured jaw. See ECF No. 1, pg. 4.

8 Plaintiff also contends Kandel knew he needed treatment at an outside facility  
9 based on a notation in his medical records that mentioned Plaintiff had an adjustment disorder.  
10 See ECF No. 45, pgs. 13-14. Defendants, relying on Kandel's sworn declaration, state that  
11 Plaintiff's adjustment disorder refers to a mental health condition and does not relate to Plaintiff's  
12 jaw. See ECF No. 43-2, pg. 8; see ECF No. 43-4, pg. 4. Plaintiff denies this and argues that his  
13 adjustment disorder was a reason for his visit; he does not, however, provide any evidence to  
14 support his assertion that his adjustment disorder had anything to do with the condition of his jaw.  
15 See ECF No. 45, pg. 18. Even if there was evidence supporting Plaintiff's contention that the  
16 notation of his adjustment disorder related to his jaw, Plaintiff provides no evidence that such an  
17 issue would require immediate medical treatment rather than the x-ray that he was scheduled for.

18 Defendants have shown that Defendant Kandel was not indifferent to Plaintiff's  
19 medical needs. See, e.g., Edmo, 935 F.3d at 786; Colwell, 763 F.3d at 1066–68. When Plaintiff  
20 went to the triage and treatment area, Kandel evaluated him, provided him with ice for his  
21 swelling, and contacted the on-call physician. The contentions that Plaintiff raises appear at most  
22 to be differences of opinion and are otherwise assertions unsupported by any evidence. There is  
23 no factual indication that Kandel's actions were medically unacceptable under the circumstances  
24 or that Kandel was aware of and ignored Plaintiff's broken jaw. See, e.g., Edmo, 935 F.3d at 786;  
25 Colwell, 763 F.3d at 1066–68. Defendants have met their burden and shown that there is no  
26 genuine issue of material fact and that Defendant Kandel is entitled to summary judgement as a  
27 matter of law. Plaintiff has not shown that there is a genuine dispute of material fact. As such,  
28 the Court finds Defendants' motion for summary judgement should be granted as to Kandel.



1           2.     Defendant Win

2           Defendants have similarly provided undisputed facts showing that Defendant Win  
3 was not deliberately indifferent to Plaintiff's medical needs. Defendant Win was the on-call  
4 physician on November 23, 2017 and was not present at the prison facilities due to the holiday.  
5 See ECF No. 43-2, pg. 2. Kandel contacted Win and told him that Plaintiff had been in a physical  
6 altercation, that Plaintiff had not lost consciousness, did not have blurry vision, had a laceration  
7 under his left eye, and had a swollen jaw. See id. at 5. Win instructed Kandel to perform a test  
8 with a tongue blade, which indicated that Plaintiff's jaw might not have been broken. See id.  
9 Win, based on his medical training and the information he received from Kandel, did not believe  
10 that Plaintiff's injury required him to be transported to the emergency room. See id. at 6. Win  
11 ordered that Plaintiff's jaw be x-rayed on the next business day, November 27, 2017, and ordered  
12 ibuprofen for pain relief. See id. at 6-7. As stated above, Plaintiff's jaw x-ray revealed a fracture,  
13 for which Plaintiff had surgery, and which has healed without complication. See id. at 7-8.

14           Plaintiff denies several of the facts presented by the Defendants relating to Win,  
15 but Plaintiff fails to raise a dispute of material fact. Plaintiff denies Defendants' statement that no  
16 physician was on site at the prison due to the holiday and that Win was available by phone. See  
17 ECF No. 45, pg. 11. Plaintiff states that institutions are meant to ensure patients are seen in an  
18 efficient manner, in clinically appropriate settings. See id. In support of his assertion, Plaintiff  
19 references health care services policy documents. See id. at 11, 36. Defendants correctly point  
20 out that these exhibits, which were not produced or identified by Plaintiff during discovery,  
21 should not be considered by the Court. See ECF No. 46 pgs. 2-3. However, even if these  
22 documents had been properly presented during discovery, their contents do not provide a genuine  
23 dispute of material fact. The documents show guidelines about open access slots and procedures  
24 to follow for non-business days, and they do not contradict Defendants' factual statements.

25           Plaintiff also denies Defendants' statement that, at Win's direction, Kandel  
26 performed a test using a tongue blade. Plaintiff asserts that as a nurse Kandel lacks the training of  
27 a doctor and could not give an adequate assessment to Win. See ECF No. 45 at 14. Plaintiff  
28 provides no evidence to support his contention that Kandel was unable to perform the test.

1 Plaintiff also denies the result of the tongue blade test indicating that he might not have a fracture.  
2 See id. In that denial, Plaintiff states that he could not open his mouth all the way and that he had  
3 high systolic and diastolic blood pressure. See id. Neither of Plaintiff's assertions contradict  
4 Defendants' statements that Win directed Kandel to perform a tongue blade test that indicated  
5 Plaintiff's jaw may not have been fractured. Plaintiff's assertions accordingly do not create a  
6 genuine issue of material fact.

7 Plaintiff further denies that Kandel told Win that Plaintiff had been in a physical  
8 altercation and that he had a laceration and a swollen jaw, but that he had not lost consciousness  
9 and did not have blurry vision. See ECF No. 45, pg. 15. Plaintiff asserts that this call was  
10 recorded and that the recording would establish inaccuracy in Defendants' recounting, however  
11 Plaintiff does not reference any evidence to support these claims. See id. Plaintiff does not  
12 identify which part of the stated fact is inaccurate or how it is inaccurate. Plaintiff's vague  
13 allegations of falsity, lacking any evidence, do not show that there is a dispute of material fact.

14 Defendant Win was not deliberately indifferent to Plaintiff's medical needs. See,  
15 e.g., Edmo, 935 F.3d at 786; Colwell, 763 F.3d at 1066–68. When contacted, Win received  
16 information from Kandel and instructed her to perform a test to gather more information. Based  
17 on his medical experience and the information available to him, Win determined that Plaintiff's  
18 condition did not require immediate treatment, ordered an x-ray to be done the next business day,  
19 and ordered ibuprofen to assist in Plaintiff's pain management. There is no factual indication that  
20 any of Win's actions were medically unacceptable under the circumstances or that Win was  
21 aware of and ignored Plaintiff's broken jaw. See, e.g., Edmo, 935 F.3d at 786; Colwell, 763 F.3d  
22 at 1066–68. Defendants have met their burden and shown that there is no genuine issue of  
23 material fact and that Defendant Win is entitled to summary judgement as a matter of law.  
24 Plaintiff has not shown that there is a genuine dispute of material fact. The Court thus finds that  
25 Defendants' motion for summary judgement should be granted for Defendant Win.

26 **B. Qualified Immunity**

27 The Court finds that Plaintiff has failed to establish a genuine issue of material fact  
28 showing deliberate indifference to his medical needs. However, in the event the District Judge

1 finds a genuine issue in Plaintiff's claims, the undersigned provides the following analysis.

2 Government officials enjoy qualified immunity from civil damages unless their  
3 conduct violates "clearly established statutory or constitutional rights of which a reasonable  
4 person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). In general,  
5 qualified immunity protects "all but the plainly incompetent or those who knowingly violate the  
6 law." Malley v. Briggs, 475 U.S. 335, 341 (1986). In ruling upon the issue of qualified  
7 immunity, the initial inquiry is whether, taken in the light most favorable to the party asserting the  
8 injury, the facts alleged show the defendant's conduct violated a constitutional right. See Saucier  
9 v. Katz, 533 U.S. 194, 201 (2001). If a violation can be made out, the next step is to ask whether  
10 the right was clearly established. See id. This inquiry "must be undertaken in light of the specific  
11 context of the case, not as a broad general proposition . . ." Id. "[T]he right the official is  
12 alleged to have violated must have been 'clearly established' in a more particularized, and hence  
13 more relevant, sense: The contours of the right must be sufficiently clear that a reasonable  
14 official would understand that what he is doing violates that right." Id. at 202 (citation omitted).  
15 Thus, the final step in the analysis is to determine whether a reasonable officer in similar  
16 circumstances would have thought his conduct violated the alleged right. See id. at 205.

17 When identifying the right allegedly violated, the court must define the right more  
18 narrowly than the constitutional provision guaranteeing the right, but more broadly than the  
19 factual circumstances surrounding the violation. See Kelly v. Borg, 60 F.3d 664, 667 (9th Cir.  
20 1995). For a right to be clearly established, "[t]he contours of the right must be sufficiently clear  
21 that a reasonable official would understand [that] what [the official] is doing violates the right."  
22 See Anderson v. Creighton, 483 U.S. 635, 640 (1987). Typically, once the court concludes a  
23 right was clearly established, an officer is not entitled to qualified immunity because a reasonably  
24 competent official is charged with knowing the law governing his conduct. See Harlow v.  
25 Fitzgerald, 457 U.S. 800, 818-19 (1982). However, even if a plaintiff has alleged a violation of a  
26 clearly established right, the government official is entitled to qualified immunity if he could have  
27 ". . . reasonably but mistakenly believed that his . . . conduct did not violate the right." Jackson v.  
28 City of Bremerton, 268 F.3d 646, 651 (9th Cir. 2001); see also Saucier, 533 U.S. at 205.

1           The first factors in the qualified immunity analysis involve purely legal questions.  
2     See Trevino v. Gates, 99 F.3d 911, 917 (9th Cir. 1996). The third inquiry involves a legal  
3     determination based on a prior factual finding as to the reasonableness of the government  
4     official’s conduct. See Neely v. Feinstein, 50 F.3d 1502, 1509 (9th Cir. 1995). The district court  
5     has discretion to determine which of the Saucier factors to analyze first. See Pearson v. Callahan,  
6     555 U.S. 223, 236 (2009). In resolving these issues, the court must view the evidence in the light  
7     most favorable to plaintiff and resolve all material factual disputes in favor of plaintiff. See  
8     Martinez v. Stanford, 323 F.3d 1178, 1184 (9th Cir. 2003).

9           The Court finds Defendants are entitled to qualified immunity. “Except in the rare  
10    case of an ‘obvious’ instance of constitutional misconduct . . . Plaintiffs must ‘*identify a*  
11    *case* where an officer acting under similar circumstances as [defendants] was held to have  
12    violated [plaintiff’s constitutional rights].” Sharp v. Cty. of Orange, 871 F.3d 901, 911 (9th Cir.  
13    2017) (emphasis in original) (quoting White v. Pauly, 137 S.Ct. at 552).

14           Plaintiff’s claims against Defendants relate to the medical care provided to him  
15    and the delay between his initial examination and subsequent treatments. Defendant Kandel’s  
16    interaction with Plaintiff took place within the triage and treatment area. As discussed above,  
17    Kandel did not have the ability to prescribe medication to Plaintiff, order x-rays for Plaintiff, or to  
18    send Plaintiff to the emergency room. Kandel assessed Plaintiff and concluded that Plaintiff did  
19    not need urgent, life-saving medical care. Kandel relayed her findings to Win and provided  
20    Plaintiff ice to reduce the swelling in his jaw. As for Win, he never physically saw Plaintiff and  
21    used the description provided to him by Kandel to reach his determinations. Based on the  
22    information that Kandel gleaned from her assessment of Plaintiff, Win did not believe Plaintiff  
23    needed treatment from an outside facility. Win prescribed ibuprofen to aid with pain  
24    management, as well as scheduled an appointment for an x-ray of Plaintiff’s jaw for the following  
25    business day. These actions are not “obvious” instances of constitutional misconduct. Plaintiff  
26    must thus demonstrate legal precedent where an officer acting under similar circumstances as  
27    defendants was held to have violated plaintiff’s constitutional rights. See Sharp, 871 F.3d 911.  
28    Plaintiff provides no such precedent in his opposition and has failed in this burden.

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**V. CONCLUSION**

Based on the foregoing, the undersigned recommends that Defendant’s motion for summary judgment (ECF No. 43) be granted in full.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: December 4, 2020

  
\_\_\_\_\_  
DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE