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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER NATHANIEL
WASHINGTON,

Plaintiff,

v.

RALPH DIAZ, et al.,

Defendants.

No. 2:20-cv-2261 KJM AC P

ORDER AND FINDINGS &
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court are defendants’ motion for summary judgment (ECF No. 126) and plaintiff’s various motions for miscellaneous relief (ECF Nos. 137-141).

I. Procedural History

This case proceeds on plaintiff’s fourth amended complaint. ECF No. 54. On screening, the court found that plaintiff had stated cognizable claims for failure to protect and retaliation against defendants Emerson and Coder,¹ and his claims against defendant Meza were dismissed without leave to amend. ECF Nos. 76, 84. After the close of discovery, defendants moved for summary judgment (ECF No. 126) which plaintiff opposes (ECF No. 131).

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¹ Coder was incorrectly identified as “Codes” in the complaint. ECF No. 30 at 2.

1 Plaintiff has also moved for reconsideration of the order denying his motion for a
2 preliminary injunction (ECF No. 137), trial by consent and entry of judgment in his favor (ECF
3 No. 138, 139), leave to file a motion for summary judgment (ECF No. 140), and a jury trial (ECF
4 No. 141).

5 II. Plaintiff's Allegations

6 The complaint alleges that plaintiff's First and Eighth Amendment rights were violated by
7 defendants when they verbally threatened him from November 2019 through December 31, 2019,
8 saying he needed to die and they would make sure he died because he was a snitch on staff. Id. at
9 4; ECF. No. 54 at 4-5, 9. On January 10, 2020, plaintiff was assaulted by three other inmates, and
10 he asserts that the assault was caused by staff because they told other inmates that he snitched on
11 correctional staff. ECF No. 4 at 4-5, 11.

12 III. Motion for Summary Judgment

13 A. Defendants' Arguments

14 Defendants move for summary judgment on plaintiff's retaliation claim on the grounds
15 that plaintiff cannot establish either defendant was aware of the lawsuit alleged as plaintiff's
16 protected conduct, that either threatened him, or that telling other inmates that he "snitches on
17 staff" would put him in danger. ECF No. 126-1 at 10-12. They argue that they are entitled to
18 summary judgement on plaintiff's failure to protect claim on the grounds that plaintiff does not
19 allege any facts that show that defendants would have known that telling other inmates that
20 plaintiff snitched on staff would put him in danger. Id. at 12-14. Alternatively, defendants argue
21 that they are entitled to qualified immunity on both claims. Id. at 15-16.

22 B. Plaintiff's Response

23 At the outset, the court notes that plaintiff has failed to comply with Federal Rule of Civil
24 Procedure 56(c)(1)(A), which requires that "[a] party asserting that a fact . . . is genuinely
25 disputed must support the assertion by . . . citing to particular parts of materials in the record."
26 Plaintiff has also failed to file a separate document in response to defendants' statement of
27 undisputed facts that identifies which facts are admitted and which are disputed, as required by
28 Local Rule 260(b), though his response to defendant's motion has partially complied with this

1 requirement. See ECF No. 131 at 2-6.

2 “Pro se litigants must follow the same rules of procedure that govern other litigants.”
3 King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (citation omitted), overruled on other grounds,
4 Lacey v. Maricopa County, 693 F.3d 896, 928 (9th Cir. 2012) (en banc). However, it is well-
5 established that district courts are to “construe liberally motion papers and pleadings filed by *pro*
6 *se* inmates and should avoid applying summary judgment rules strictly.” Thomas v. Ponder, 611
7 F.3d 1144, 1150 (9th Cir. 2010). The unrepresented prisoner’s choice to proceed without counsel
8 “is less than voluntary” and they are subject to “the handicaps . . . detention necessarily imposes
9 upon a litigant,” such as “limited access to legal materials” as well as “sources of proof.”
10 Jacobsen v. Filler, 790 F.2d 1362, 1364 n.4 (9th Cir. 1986) (alteration in original) (citations and
11 internal quotation marks omitted). Inmate litigants, therefore, should not be held to a standard of
12 “strict literalness” with respect to the requirements of the summary judgment rule. Id. (citation
13 omitted).

14 Accordingly, the court considers the record before it in its entirety despite plaintiff’s
15 failure to be in strict compliance with the applicable rules. However, only those assertions in the
16 opposition which have evidentiary support in the record will be considered. Plaintiff opposes the
17 motion for summary judgment and argues that defendants have misrepresented facts and did in
18 fact retaliate against him and fail to protect him. ECF No. 131.

19 Plaintiff also argues that the motion for summary judgment should be stricken under
20 Federal Rule of Civil Procedure 12(f). Id. at 1, 7. However, Rule 12(f) relates to striking
21 pleadings and does not apply to motions for summary judgment and the motion will be denied.
22 See Worldwide Subsidy Grp., LLC v. Worldwide Pants Inc., 729 F. App’x 625, 626 (9th Cir.
23 2018) (Rule 12(f) inapplicable to motion for summary judgment). Plaintiff has also filed a
24 motion leave to file a motion for summary judgment and requests summary judgement be entered
25 in his favor. ECF No. 140. The deadline to file motions for summary judgment expired on April
26 26, 2024. ECF No. 98 at 6. Plaintiff’s motion, filed approximately nine months after the
27 expiration of that deadline, offers no explanation for its untimeliness or justification for allowing
28 him to file an untimely motion. ECF No. 140. To the extent the motion is intended as a motion

1 for summary judgment, it should be denied because plaintiff makes only conclusory assertions
2 that he is entitled to summary judgment; fails to comply with any of the formal requirements of a
3 motion for summary judgment, such as providing a statement of facts; and does not cite to or
4 attach any evidence to support his claim that he is entitled to summary judgment.

5 C. Legal Standards for Summary Judgment

6 Summary judgment is appropriate when the moving party “shows that there is no genuine
7 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
8 Civ. P. 56(a). Under summary judgment practice, “[t]he moving party initially bears the burden
9 of proving the absence of a genuine issue of material fact.” In re Oracle Corp. Sec. Litig., 627
10 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). The
11 moving party may accomplish this by “citing to particular parts of materials in the record,
12 including depositions, documents, electronically stored information, affidavits or declarations,
13 stipulations (including those made for purposes of the motion only), admissions, interrogatory
14 answers, or other materials” or by showing that such materials “do not establish the absence or
15 presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to
16 support the fact.” Fed. R. Civ. P. 56(c)(1).

17 “Where the non-moving party bears the burden of proof at trial, the moving party need
18 only prove that there is an absence of evidence to support the non-moving party’s case.” Oracle
19 Corp., 627 F.3d at 387 (citing Celotex, 477 U.S. at 325); see also Fed. R. Civ. P. 56(c)(1)(B).
20 Indeed, summary judgment should be entered, “after adequate time for discovery and upon
21 motion, against a party who fails to make a showing sufficient to establish the existence of an
22 element essential to that party’s case, and on which that party will bear the burden of proof at
23 trial.” Celotex, 477 U.S. at 322. “[A] complete failure of proof concerning an essential element
24 of the nonmoving party’s case necessarily renders all other facts immaterial.” Id. at 323. In such
25 a circumstance, summary judgment should “be granted so long as whatever is before the district
26 court demonstrates that the standard for the entry of summary judgment, as set forth in Rule
27 56(c), is satisfied.” Id.

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1 If the moving party meets its initial responsibility, the burden then shifts to the opposing
2 party to establish that a genuine issue as to any material fact actually does exist. Matsushita Elec.
3 Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). In attempting to establish the
4 existence of this factual dispute, the opposing party may not rely upon the allegations or denials
5 of its pleadings but is required to tender evidence of specific facts in the form of affidavits, and/or
6 admissible discovery material, in support of its contention that the dispute exists. See Fed. R.
7 Civ. P. 56(c). The opposing party must demonstrate that the fact in contention is material, i.e., a
8 fact “that might affect the outcome of the suit under the governing law,” and that the dispute is
9 genuine, i.e., “the evidence is such that a reasonable jury could return a verdict for the nonmoving
10 party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

11 In the endeavor to establish the existence of a factual dispute, the opposing party need not
12 establish a material issue of fact conclusively in its favor. It is sufficient that “the claimed factual
13 dispute be shown to require a jury or judge to resolve the parties’ differing versions of the truth at
14 trial.” T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir. 1987)
15 (quoting First Nat’l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968). Thus, the
16 “purpose of summary judgment is to pierce the pleadings and to assess the proof in order to see
17 whether there is a genuine need for trial.” Matsushita, 475 U.S. at 587 (citation and internal
18 quotation marks omitted).

19 “In evaluating the evidence to determine whether there is a genuine issue of fact, [the
20 court] draw[s] all inferences supported by the evidence in favor of the non-moving party.” Walls
21 v. Cent. Contra Costa Transit Auth., 653 F.3d 963, 966 (9th Cir. 2011) (citation omitted). It is the
22 opposing party’s obligation to produce a factual predicate from which the inference may be
23 drawn. See Richards v. Nielsen Freight Lines, 810 F.2d 898, 902 (9th Cir. 1987). Finally, to
24 demonstrate a genuine issue, the opposing party “must do more than simply show that there is
25 some metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at 586 (citations
26 omitted). “Where the record taken as a whole could not lead a rational trier of fact to find for the
27 non-moving party, there is no ‘genuine issue for trial.’” Id. at 587 (quoting First Nat’l Bank, 391
28 U.S. at 289).

1 Defendants simultaneously served plaintiff with notice of the requirements for opposing a
2 motion pursuant to Rule 56 of the Federal Rules of Civil Procedure along with their motion for
3 summary judgment. ECF No. 126-7; see Klinge v. Eikenberry, 849 F.2d 409, 411 (9th Cir.
4 1988) (pro se prisoners must be provided with notice of the requirements for summary judgment);
5 Rand v. Rowland, 154 F.3d 952, 960 (9th Cir. 1998) (en banc) (movant may provide notice).

6 D. Undisputed Material Facts

7 Plaintiff did not separately and individually respond to defendants' statement of
8 undisputed facts and the facts are therefore deemed undisputed except as otherwise discussed.²

9 At all times relevant to the complaint, plaintiff was a prisoner in the custody of the
10 California Department of Corrections and Rehabilitation (CDCR) at Mule Creek State Prison
11 (MCSP) in Facility A, which was a designated Sensitive Needs Yard (SNY) at the time.
12 Defendants' Undisputed Statement of Facts (ECF No. 126-8) (DSUF) ¶¶ 1-3.

13 On October 31, 2019, plaintiff settled a case against correctional officers at High Desert
14 State Prison (HDSP). DSUF ¶¶ 18-19.³ Plaintiff alleges that beginning in November 2019
15 through December 31, 2019, defendants threatened him, making comments like "you are a snitch
16 on staff so do not be surprised when you die, you are going to die we will make sure that you
17 die." ECF No. 54 at 4-5, 9. He further alleges that on December 31, 2019, another inmate,⁴
18 whose declaration he attaches, witnessed defendants saying that plaintiff "needs to be murdered
19 he snitches on correction staff in court!" in front of other inmates. Id. at 10-11. Defendants assert
20 that Emerson did not work on December 31, 2019, and she and Coder worked in different

21 ² Although plaintiff states that he disputes all facts, and references some specifically, his disputes
22 and objections are general and without citations to any evidence. ECF No. 131 at 2 (¶¶ 4-6), 3
23 (¶¶ 9-16), 4 (¶¶ 17-22), 5 (¶¶ 23-30), 6 (objecting to all thirty facts generally).

24 ³ Plaintiff objects to DSUF ¶¶ 18-19 as irrelevant, but admits he settled his case on October 31,
25 2019. ECF No. 131 at 4.

26 ⁴ Defendants assert that they were unable to identify any current or former inmate assigned
27 CDCR #A162801 or with a name similar to "Brittney Cripson" (DSUF ¶ 11), to which plaintiff
28 responds that the inmate's name is "Brittney Gipson," and he was assigned CDCR #AK-2801
(ECF No. 131 at 3). Defendants' misreading of the inmate's name and number does not appear to
be in bad faith, given that portions of the name and number were not clearly written. See ECF
No. 54 at 11. At this stage, the court presumes defendants were unable to identify the inmate due
to their misreading of his name and number and considers the declaration to the extent it would
any other declaration submitted in support of a motion for summary judgment.

1 positions at MCSP that did not overlap.⁵ DSUF ¶¶ 10, 12-15. Neither defendant communicated
2 regularly with the other, nor did they socialize outside of work. DSUF ¶ 16. Defendants also
3 assert that they did not have any knowledge of the settlement, they did not communicate with any
4 officers employed at HDSP, and information about the settlement would not have been included
5 in plaintiff's files at MCSP. DSUF ¶ 21. Plaintiff asserts that defendants had knowledge of the
6 settlement because the settlement conference took place at MCSP. ECF No. 131 at 4.

7 Plaintiff alleges he was attacked in the evening of January 10, 2020, while working in the
8 dining hall, and that the attack occurred as a result of defendants' threats. ECF No. 54 at 4-5. He
9 was seen by medical staff at 9:41 that evening for an injury to the left side of his jaw, which he
10 told nurses was caused by injuring himself using exercise equipment. DSUF ¶ 26.⁶ Three days
11 later, plaintiff told correctional officers that instead he had been attacked at the dining hall by one
12 of his coworkers. DSUF ¶ 27. In his opposition, plaintiff asserts that his attackers made
13 reference to being part of a gang that formed to protect gay inmates and retaliate against inmates
14 who assaulted them. ECF No. 131 at 4.

15 As an SNY, Facility A was reserved for and made up of inmates who are at a greater risk
16 of assault by gangs or other inmates within the prison general population because of their status
17 as sexual offenders or former prison gang members who had been informants on gang activity.
18 DSUF ¶¶ 4-5.⁷ Defendants were unaware that plaintiff would be at a greater risk of harm if other

19 ⁵ Plaintiff disputes DSUF ¶¶ 9-16. ECF No. 131 at 3. Relevant to DSUF ¶¶ 10 and 12-16, he
20 asserts that staff at the prison "swap" positions with other staff members on and off the record,
21 including swaps for locations, positions, and days. ECF No. 131 at 3-4. However, he does not
22 cite to any evidence supporting this proposition or demonstrate that he has personal knowledge
23 that would make him competent to testify as to whether any changes in shifts or position were
24 done off the record. DSUF ¶¶ 10 and 12-16 are therefore deemed undisputed.

25 ⁶ Plaintiff objects to DSUF ¶¶ 23-30 on the grounds that they are immaterial, and that medical
26 staff made false statements about his injury and that his jaw was actually broken. ECF No. 131 at
27 5-6. There is no dispute that plaintiff reported an injury on January 10, 2020, and the level of
28 injury is immaterial to resolution of this motion. Plaintiff's objections do not otherwise address
the content of the statements and therefore do not create a dispute of fact and DSUF ¶¶ 23-30 are
otherwise deemed undisputed and will be considered to the extent they are material to resolution
of the motion.

⁷ Plaintiff argues that DSUF ¶¶ 4-6 are irrelevant but does not otherwise object to the contents of
the statements other than to state that defendants could not know the state of mind of the entire
(continued)

1 inmates in the SNY learned he had settled an action accusing officers of misconduct, as they had
2 never heard of an inmate being attacked for this reason, and believed, if anything, it would help
3 an inmate's reputation. DSUF ¶ 22.⁸

4 E. Discussion

5 i. Retaliation

6 Within the prison context, a viable claim of First Amendment
7 retaliation entails five basic elements: (1) an assertion that a state
8 actor took some adverse action against an inmate (2) because of (3)
9 that prisoner's protected conduct, and that such action (4) chilled the
inmate's exercise of his First Amendment rights, and (5) the action
did not reasonably advance a legitimate correctional goal.

10 Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005) (citations and footnote omitted). "To
11 prevail on a retaliation claim, a plaintiff must show that his protected conduct was 'the
12 "substantial" or "motivating" factor behind the defendant's conduct.'" Brodheim v. Cry, 584
13 F.3d 1262, 1271 (9th Cir. 2009) (quoting Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314
14 (9th Cir. 1989)).

15 "To raise a triable issue as to motive, [a plaintiff] must offer 'either direct evidence of
16 retaliatory motive or at least one of three general types of circumstantial evidence [of that
17 motive].'" McCollum v. Cal. Dep't Corr. & Rehab., 647 F.3d 870, 882 (9th Cir. 2011) (second
18 alteration in original) (quoting Allen v. Iranon, 283 F.3d 1070, 1077 (9th Cir. 2002)).
19 Circumstantial evidence of motive may include (1) the proximity in time between the protected
20 conduct and the alleged retaliation; (2) the defendant's expressed opposition to the protected
21 conduct; and (3) other evidence showing that the defendant's reasons for the challenged action
22 were false or pretextual. Id. (quoting Allen, 283 F.3d at 1077). "[M]ere speculation that
23 defendants acted out of retaliation is not sufficient." Wood v. Yordy, 753 F.3d 899, 905 (9th Cir.
24 2014) (citations omitted).

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26 inmate population. ECF No. 131 at 2. Since these statements relate to the composition of A
27 yard's prisoner population and defendants' beliefs, plaintiff's objection does not create a dispute
of fact and DSUF ¶¶ 4-6 are deemed admitted.

28 ⁸ Plaintiff objects to DSUF ¶ 22 as immaterial but does not appear to dispute the contents of
DSUF ¶ 22 (ECF No. 131 at 4) and it is therefore deemed admitted.

1 Defendants argue that plaintiff cannot establish they retaliated against him, for two
2 reasons. First, he cannot show that either of them were aware of plaintiff's lawsuit against staff at
3 HDSP. ECF No. 126-1 at 11. Second, he cannot show that they took adverse actions against
4 him. Id. at 11-12.

5 With respect to the first argument, defendants assert that they did not know about and
6 could not have known about the lawsuit because evidence of the settlement would not have been
7 in plaintiff's file and they did not know officers from HDSP. Id. at 11. However, plaintiff asserts
8 that the settlement conference was held at MCSP and that defendants verbally threatened him
9 between November 2019 and December 31, 2019, calling him a "snitch on staff." ECF No. 54 at
10 4-5, 9; ECF No. 131 at 4. Plaintiff has also submitted a declaration from another inmate stating
11 that on December 31, 2019, he overheard defendants saying that plaintiff "needs to be murdered
12 because he snitches on correction staff in court!" ECF No. 54 at 11. Even if the court discounts
13 the declaration because Emerson was not working on December 31, 2019, plaintiff's own
14 assertion that defendants threatened him and called him a "snitch on staff" during the two-month
15 period immediately following his settlement conference is enough to create an issue of fact as to
16 whether defendants were aware of plaintiff's lawsuit and settlement. See Carr v. Stelzer, 733 F.
17 App'x 361, 363-64 (9th Cir. 2018) (genuine issue of material fact where defendants claimed they
18 were unaware of plaintiff's correspondence with ACLU and plaintiff's verified complaint, along
19 with affidavits from other inmates, stated defendants threatened to remove protective custody
20 status if plaintiff continued to correspond with ACLU).

21 Defendants' second argument, that plaintiff cannot establish that they took adverse action
22 against him, is made up of two parts. First, they assert that he cannot show an adverse action
23 because Emerson was not working on December 31, 2019, and they were unable to identify the
24 inmate who signed the declaration submitted by plaintiff. ECF No. 126-1 at 11. However, any
25 disputes regarding whether Emerson worked on December 31, 2019, or who wrote the declaration
26 are ultimately immaterial. Plaintiff has alleged that defendants directly threatened him with death
27 and called him a "snitch on staff" during the two months following the settlement conference.
28 These allegations, made in plaintiff's verified complaint, are sufficient to establish an adverse

1 action by defendants. See Brodheim, 584 F.3d at 1270 (“[T]he mere *threat* of harm can be an
2 adverse action, regardless of whether it is carried out, because the threat itself can have a chilling
3 effect.”). Accordingly, the undersigned concludes that defendants are not entitled to summary
4 judgment on the retaliation claim to the extent it is premised on retaliatory threats.

5 Defendants also argue that calling plaintiff a “snitch on staff” was not an adverse action
6 because no reasonable officer could conclude that plaintiff would be at risk of assault by other
7 inmates because he snitched on law enforcement, and they had never heard of an inmate facing an
8 increased risk of assault for this reason.⁹ ECF No. 126-1 at 11-12. They further assert that while
9 an inmate usually faces an increased risk for snitching on *other inmates*, plaintiff was housed on
10 an SNY, which housed numerous inmates who had left their prison gangs and provided
11 information on the gangs to law enforcement. Id. In other words, plaintiff was housed on a yard
12 comprised of “snitches.” There is no evidence indicating that the inmates who assaulted plaintiff
13 did so because of defendants’ statements that plaintiff was a “snitch on staff.” Furthermore,
14 plaintiff does not dispute either of defendants’ assertions or provide any evidence that being
15 called a “snitch on staff,” particularly when housed on an SNY, would put him at risk of assault
16 by other inmates and therefore fails to demonstrate that such statements would constitute an
17 adverse action.¹⁰ Defendants are therefore entitled to summary judgment on the retaliation claim
18 to the extent it is premised on the alleged adverse action of calling plaintiff a “snitch on staff.”

19 Accordingly, defendants’ motion for summary judgment should be granted in part and
20 denied in part as to the retaliation claim, which should be narrowed to allegedly retaliatory threats
21 of harm.

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24 ⁹ The court notes that while plaintiff submits the declaration of another inmate who states he
25 witnessed defendants say that plaintiff “needs to be murdered he snitches on correction staff in
26 court!” in front of other inmates, there are no allegations that defendants arranged to have other
inmates assault him.

27 ¹⁰ Considering the vast number of inmates who routinely file lawsuits against correctional
28 officers in this and other courts, and who in this court’s experience often openly receive help from
other inmates, it seems rather improbable that being labeled a “snitch on staff” would put a
prisoner at any kind of risk from other inmates.

1 ii. Failure to Protect

2 Prison officials have an obligation to protect prisoners from injury by other prisoners.
3 Farmer v. Brennan, 511 U.S. 825, 833-34 (1994). The Eighth Amendment is only violated,
4 however, when a defendant acts with a sufficiently culpable state of mind. Wilson v. Seiter, 501
5 U.S. 294, 297 (1991). Accordingly, to state an Eighth Amendment claim for failure to protect, a
6 plaintiff must plead facts demonstrating that the defendant knew of and disregarded an excessive
7 risk to inmate health or safety. Farmer, 511 U.S. at 837. “[T]he official must both be aware of
8 facts from which the inference could be drawn that a substantial risk of serious harm exists, and
9 he must also draw the inference.” Id. Negligent failure to protect an inmate from harm is not
10 actionable under § 1983; even civil recklessness—failure “to act in the face of an unjustifiably
11 high risk of harm that is either known or so obvious that it should be known”—is insufficient to
12 establish an Eighth Amendment claim. Id. at 835-37.

13 Defendants argue that they were not deliberately indifferent to a risk of harm created by
14 telling inmates plaintiff was a “snitch on staff” or that he was falsely accused of sexual assault by
15 a former cellmate. ECF No. 126-1 at 12-15. As addressed above, plaintiff has not produced
16 evidence showing that being called a “snitch on staff” would put him at increased risk of assault
17 by other inmates. Accordingly, even if defendants labeled plaintiff as such in front of other
18 inmates, he cannot show that their conduct was deliberately indifferent to his safety or that they
19 knew such comments would put him at risk. With respect to the argument about labeling plaintiff
20 a sex offender, though the original complaint alleged that defendants endangered plaintiff by
21 calling him a sex offender in addition to being a “snitch on staff” (ECF No. 1 at 2), the operative
22 complaint does not make a similar allegation and that claim is not before the court.¹¹ The motion

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24 ¹¹ Even if this claim were before the court, summary judgment would be appropriate. Although
25 plaintiff argues in his opposition that the inmates who assaulted him were part of a gang formed
26 to protect gay inmates and retaliate against inmates who assault them (ECF No. 131 at 4),
27 implying that the assault was motivated by the accusation he sexually assaulted a former cellmate,
28 plaintiff offers no evidence demonstrating that defendants were responsible for spreading such
information. At most, the original complaint alleges that they called him a sex offender (ECF No.
1 at 2), but it is undisputed that plaintiff was being housed on a yard specifically intended to
house sex offenders (DSUF ¶ 4), and there are no allegations that defendants told other inmates
(continued)

1 for summary judgment should therefore be granted as to plaintiff's deliberate indifference claim.

2 iii. Qualified Immunity

3 "[G]overnment officials performing discretionary functions generally are shielded from
4 liability for civil damages insofar as their conduct does not violate clearly established statutory or
5 constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457
6 U.S. 800, 818 (1982) (citations omitted). In analyzing a qualified immunity defense, the court
7 must consider the following: (1) whether the alleged facts, taken in the light most favorable to the
8 plaintiff, demonstrate that defendant's conduct violated a statutory or constitutional right; and (2)
9 whether the right at issue was clearly established at the time of the incident. Saucier v. Katz, 533
10 U.S. 194, 201 (2001), overruled in part by Pearson v. Callahan, 555 U.S. 223, 236 (2009)
11 (overruling Saucier's requirement that the two prongs be decided sequentially).

12 The facts taken in the light most favorable to plaintiff show that defendants did not violate
13 his constitutional rights by telling other inmates that he was a "snitch on staff." It is therefore
14 unnecessary for the court to address defendants' qualified immunity arguments as to the
15 retaliation and failure to protect claims premised on this allegation and the court declines to do so.
16 However, as discussed above, there are material disputes of fact as to the claim that defendants
17 threatened plaintiff and routinely harassed him over a two-month period because of a lawsuit he
18 filed against other officers. Taking the evidence in the light most favorable to plaintiff,
19 defendants knew he had settled a lawsuit against other officers and over a two-month period
20 routinely harassed and threatened him, telling him he should die and that they would make sure
21 he died, thereby violating his First Amendment rights. Under this version of facts, defendants
22 could not have reasonably believed that their conduct was permissible. See Rhodes, 408 F.3d at
23 567 (2005) (prisoners have a First Amendment right to pursue civil rights litigation and to be free
24 from retaliation for doing so). These disputed facts therefore preclude summary judgment on
25 qualified immunity grounds.

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28 that plaintiff has assaulted another inmate, such that the nature of his sex offense might make him
a target.

1 F. Conclusion

2 For the reasons set forth above, defendants' motion for summary judgment should be
3 granted on the ground that defendants did not violate plaintiff's First or Eighth Amendment rights
4 when they told other inmates he was a "snitch on staff" and the court declines to address
5 defendants' qualified immunity arguments as to these claims. However, summary judgment
6 should be denied as to the claim that defendants retaliated against plaintiff by threatening and
7 harassing him over a two-month period after he settled a lawsuit against other officers.

8 IV. Plaintiff's Motion for Reconsideration

9 Plaintiff has moved for reconsideration of the order denying his motion for a preliminary
10 injunction. ECF No. 137. The motion does not identify any new or different facts or
11 circumstances demonstrating that the motion for a preliminary injunction should be granted. See
12 L.R. 230(j)(3)-(4) ("what new or different facts or circumstances are claimed to exist which did
13 not exist or were not shown upon such prior motion, or what other grounds exist for the motion;
14 and . . . why the facts or circumstances were not shown at the time of the prior motion.").
15 Moreover, in light of the recommendation that defendants' motion for summary judgment be
16 granted, plaintiff cannot establish he is likely to succeed on the merits. See Winter v. Nat. Res.
17 Def. Council, Inc., 555 U.S. 7, 20 (2008) ("A plaintiff seeking a preliminary injunction must
18 establish that he is likely to succeed on the merits"). The motion for reconsideration should
19 therefore be denied.

20 V. Plaintiff's Motions for Trial and Final Judgment

21 Plaintiff has filed multiple motions for a trial and final judgment in his favor. ECF Nos.
22 138, 139, 141. These motions will be summarily denied. Trial setting will follow in due course
23 pursuant to the Federal Rules of Civil Procedure, the Local Rules of this court, and the operative
24 scheduling order in this case.

25 VI. Plain Language Summary of this Order for a Pro Se Litigant

26 It is being recommended that defendants' motion for summary judgment be granted as to
27 your retaliation and failure to protect claims based on defendants calling you a "snitch on staff,"
28 because you have not shown that this label put you at risk of harm from other inmates. It is being

1 recommended that the motion be denied as to the claim that they retaliated against you by
2 harassing you and threatening you for two months after you settled your case against HDSP staff.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. Plaintiff' motion to strike (ECF No. 131 at 1, 7) is DENIED; and
- 5 2. Plaintiff's motions for a trial and final judgment in his favor (ECF Nos. 138, 139, 141)
6 are DENIED

7 IT IS FURTHER RECOMMENDED that:

- 8 1. Plaintiff's motion for reconsideration of the order denying his motion for a
9 preliminary injunction (ECF No. 137) be DENIED;
- 10 2. Plaintiff's motion for leave to file a motion for summary judgment and motion for
11 summary judgment (ECF No. 140) be DENIED;
- 12 3. Defendants' motion for summary judgment (ECF No. 126) be GRANTED in part and
13 DENIED in part as follows:
 - 14 a. GRANTED as to plaintiff's First and Eighth Amendment claims based on the
15 allegation that defendants told other inmate he was a "snitch on staff;" and
 - 16 b. DENIED as to plaintiff's First Amendment claim that defendants retaliated against
17 him by threatening and harassing him for two months after he settled a lawsuit
18 against other officers.

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen days**
21 after being served with these findings and recommendations, any party may file written
22 objections with the court and serve a copy on all parties. Such a document should be captioned
23 "Objections to Magistrate Judge's Findings and Recommendations." **Due to exigencies in the**
24 **court's calendar, no extensions of time will be granted.**¹² The parties are advised that failure

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26 _____
27 ¹² Plaintiff is informed that in order to obtain the district judge's independent review and
28 preserve issues for appeal, he need only identify the findings and recommendations to which he
objects. There is no need to reproduce his arguments on the issues.

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to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: March 10, 2025



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE