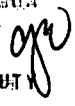


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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY 

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GENGHIS KHAN ALI STEVENSON,

CASE NO.07-CV-277 W (PCL)

Plaintiff,

ORDER ADOPTING REPORT
AND RECOMMENDATION AND
GRANTING DEFENDANTS'
SUMMARY-JUDGMENT
MOTION

vs.

D. HARMON, et al.,

Defendants.

Plaintiff Genghis Khan Ali Stevenson, a California prisoner proceeding *pro se*, filed this civil rights lawsuit alleging excessive force and failure to protect Plaintiff from imminent harm. On April 14, 2008, Defendants filed a summary-judgment motion. Plaintiff opposed the motion, and on November 25, 2008, United States Magistrate Judge Peter C. Lewis issued a Report and Recommendation ("Report"), recommending that the Court grant Defendants' motion. On February 17, 2009, Plaintiff filed objections to the Report. Additionally, Plaintiff has filed a motion for sanctions against Defendants.

The Court decides the matters on the papers submitted and without oral argument. See Civ. L.R.7.1.(d.1). For the reasons outlined below, the Court

1 ADOPTS the Report (Doc. No. 66) and GRANTS Defendants' summary-judgment
2 motion (Doc. No. 44). Additionally, the Court DENIES Plaintiff's motion for
3 sanctions. (Doc. No. 73.)
4

5 I. BACKGROUND

6 The following factual background is taken from the Report, and is based primarily
7 on Plaintiff's statements in the complaint and attached exhibits, and during his
8 deposition.¹

9 In June 2006, Plaintiff was housed in the Administrative Segregation Unit
10 ("ASU") at Calipatria State Prison. (*Comp.* [Doc. No. 1], at 3.) Defendants Harmon,
11 Williams, and Rush were correctional officers assigned to the ASU. (*Rush Dec.* [Doc.
12 No. 44-8], ¶1.) Defendant Velasco was a Sergeant, and supervised Defendants
13 Harmon, Williams, and Rush. (*Velasco Dec.* [Doc. No. 44-5], ¶2.)

14 On June 11, 2006, at approximately 8:00 a.m., Defendants Harmon and Williams
15 approached Plaintiff's cell during the shower program. (*Comp.*, at 3, Ex. A at 1.)
16 Plaintiff's cellmate stated that he would take a shower; Plaintiff stated that he would
17 not. (*Id.*) In accordance with prison rules and protocol, both inmates were handcuffed
18 before the cell door was opened and stood facing the back of the cell. (*Id.*, Ex. A at 3.)
19 Defendant Williams then escorted Plaintiff's cellmate out of the cell to the showers.
20 (*Id.*)

21 As the cell door began to close, Defendant Harmon directed the tower officer to
22 keep the door open. (*Comp.*, at 3, Ex. A at 3.) Plaintiff then turned toward Defendant
23 Harmon, who instructed Plaintiff to exit the cell. (*Hixson Dec.* [Doc. No. 44-3], Ex. A
24 [Plf.'s Depo. Transcript] at 25:8-13.²) Rather than comply with the order, Plaintiff
25

26 ¹Defendants version of events differs from Plaintiff's version. However, because the
27 Court is being asked to rule on Defendants' summary-judgment motion, the Court must assume
28 the truth of Plaintiff's version.

²References to Plaintiff's deposition transcript are to the transcript's actual page number.

1 questioned Defendant Harmon, who then informed Plaintiff that he was going to
2 conduct a cell search. (*Id.*) In response, Plaintiff again questioned Defendant Harmon,
3 who then entered the cell. (*Id.* at 27:1–7.) Plaintiff shouted an expletive at Defendant
4 Harmon (*Perez Dec.* [Doc. No. 56-6] at 2), who then grabbed Plaintiff's left arm and
5 attempted to pull him out of the cell (*Hixson Dec.*, Ex. A at 28:15–16). Plaintiff pulled
6 away from Defendant Harmon, who then allegedly struck Plaintiff's mid section with
7 the back of his forearm. (*Id.* at 28:17–18, 29:5–9.) Plaintiff then bent over and
8 Defendant Harmon wrestled him to the ground, locking his handcuffs tighter behind
9 his back. (*Comp.*, at Ex. A at 3.)

10 Upon hearing the commotion, Defendants Williams and Rush went to the cell
11 and assisted Defendant Harmon in subduing Plaintiff. (*Williams Dec.* [Doc. No. 44-7],
12 ¶ 8; *Harmon Dec.* [Doc. No. 44-6], ¶¶ 8–9; *Comp.*, Ex. A at 3.) Plaintiff was then taken
13 to a holding cell to await a medical evaluation. (*Harmon Dec.*, ¶¶ 8–9.)

14 Medical Technical Assistant (MTA) Bell evaluated Plaintiff. (*Comp.*, Ex. B at
15 1.) During the evaluation, Plaintiff stated that “[he] got beat up.” (*Id.*) MTA Bell
16 noted some dry skin on the left side of Plaintiff's face, and found Plaintiff's pupils were
17 equal and reactive to light, indicating the absence of head trauma. (*Bell Dec.* [Doc. No.
18 44-4], ¶ 7.) There were no other injuries observed. (*Id.*)

19 As Plaintiff was being escorted back to his cell by Defendants Velasco and Rush,
20 Plaintiff told Defendant Velasco that he had cuts on his wrist that MTA Bell failed to
21 notice, and thus needed to return to the clinic. (*Hixson Dec.*, Ex. A at 94:13–14.)
22 Defendant Velasco responded that MTA Bell would be sent to Plaintiff's cell to perform
23 another evaluation. (*Id.* at 94:14–21.) Plaintiff, however, refused to proceed towards
24 his cell, and immediately stopped and turned toward the direction of the medical office.
25 (*Id.* at 106:14–107:10.) Within seconds, Plaintiff alleges he was tackled by Defendant
26 Harmon. (*Id.* at 106:3–24.)

27 Plaintiff was taken to another holding cell and seen by MTA Bell. (*Velasco Dec.*
28 [Doc. No. 44-5], ¶ 12.) MTA Bell noted “superficial abrasions to [Plaintiff's] bilateral

1 wrists," a "superficial abrasion to [the] left knee" and a "small bump" on the right side
2 of Plaintiff's forehead. (*Comp.*, Ex. B-2.)

3 On February 9, 2007, Plaintiff filed this lawsuit. (Doc. No. 1.) On April 14,
4 2008, Defendants filed the pending summary-judgment motion. After obtaining an
5 extension of time, Plaintiff filed an opposition on June 5, 2008, *nunc pro tunc* to May 30,
6 2008. (Doc. No. 49.) However, on June 13, 2008, Magistrate Judge Lewis provided a
7 *Klinge/Rand* notice and permitted Plaintiff to file a supplemental opposition. (Doc No.
8 59.) On July 14, 2008, Plaintiff filed a supplemental opposition, and on July 28, 2008,
9 Defendants filed their reply.

10 On November 25, 2008, Magistrate Judge Lewis issued the Report,
11 recommending that the Court grant Defendants' motion. (Doc. No. 66.) The Report
12 also ordered that any objections were to be filed by December 17, 2008, and any replies
13 filed by December 31, 2008.

14 On December 22, 2008, Plaintiff filed a motion for sanctions against Defendants.
15 (Doc. No. 73.) On February 17, 2009, pursuant to this Court's order granting an
16 extension to file objections, Plaintiff filed an objection to the Report. (Doc. No. 76.)
17 Defendants did not file a reply.

18
19 **II. LEGAL STANDARD**

20 The duties of the district court in connection with a magistrate judge's report and
21 recommendation are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and
22 28 U.S.C. § 636(b)(1). The district court "must make a de novo determination of those
23 portions of the report ... to which objection is made," and "may accept, reject, or
24 modify, in whole or in part, the findings or recommendations made by the magistrate."
25 28 U.S.C. § 636(b)(1)(C); see also United States v. Raddatz, 447 U.S. 667, 676 (1980);
26 United States v. Remsing, 874 F.2d 614, 617 (9th Cir. 1989).

27 //

28

1 **III. ANALYSIS**

2 Having read and considered the papers submitted, including Plaintiff's objections
3 to the Report, the Court concludes the Report presents a well-reasoned analysis of the
4 issues. The Report correctly concluded that based on the undisputed material facts,
5 Defendants are entitled to summary judgment.

6
7 **A. Summary Judgment Standard.**

8 Summary judgment is appropriate under Rule 56(c) where the moving party
9 demonstrates the absence of a genuine issue of material fact and is entitled to judgment
10 as a matter of law. See Fed. R. Civ. P. 56(c); Celotex Corp v. Catrett, 477 U.S. 317,
11 322 (1986). A fact is material when, under the governing substantive law, it could
12 affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49
13 (1986). Summary judgment should be entered against a party if there is insufficient
14 evidence to establish the existence of an essential element of a party's case. Celotex,
15 477 U.S. at 322.

16 Where a plaintiff is *pro se* in a civil rights case, the court must be careful to
17 construe the pleadings liberally and afford plaintiff any benefit of the doubt. See Karim-
18 Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988). However, at
19 a minimum, even a *pro se* plaintiff must allege with at least some degree of particularity
20 overt acts which defendants engaged in that support his claim. Jones v. Community
21 Redevelopment Agency, 733 F.2d 646, 649 (9th Cir. 1984).

22 Under Section 1983, a claim exists only when a plaintiff alleges that: (1) the
23 defendant(s) acted under color of state law, and (2) the defendant(s) deprived him of
24 rights secured by the Constitution or federal law. Long v. County of Los Angeles, 442
25 F.3d 1178, 1185 (9th Cir. 2006). Plaintiff alleges use of excessive force by Defendants
26 Harmon, Williams, and Rush in violation of his Eighth Amendment rights, and failure
27 to protect him from the other named defendants against Defendant Velasco in violation
28 of his Fourteenth Amendment right to due process and equal protection.

1 **B. Plaintiff's Excessive Force Claim.**

2 For an excessive force claim, the issue is whether the defendant applied force in
3 a good faith effort to maintain or restore discipline, or instead, did so maliciously and
4 sadistically for the purpose of causing harm. Hudson v. McMillian, 503 U.S. 1, 7
5 (1992); see also Martinez v. Stanford, 323 F.3d 1178, 1184 (9th Cir. 2003). Five
6 factors, set out in Hudson, inform this determination: (1) the need for application of
7 force, (2) the relationship between the need and the amount of force used, (3) the
8 threat reasonably perceived by the responsible officials, (4) any efforts made to temper
9 the severity of the forceful response, and (5) the extent of injury suffered by an inmate.
10 503 U.S. at 7 (citing to Whitely v. Albers, 475 U.S. 312, 321 (1986)). Further, there
11 must be a showing of improper motive on behalf of the defendant using "specific,
12 nonconclusory factual allegations." Crawford-El v. Britton, 523 U.S. 574, 598 (quoting
13 Siegert v. Gilley, 500 U.S. 226, 236 (1991) (Kennedy, J., concurring in judgment));
14 Jeffers v. Gomez, 267 F.3d 895, 911 (9th Cir. 2001).

15 Plaintiff alleges two separate incidents of excessive force: first, when he was
16 removed from his cell; and second, when he refused to return to his cell after the first
17 medical examination. The Report concluded that the force used by Defendants was
18 reasonable, and did not violate Plaintiff's Eight Amendment rights because Plaintiff
19 failed to offer specific facts and/or nonconclusory allegations that show Defendants
20 Harmon, Williams and Rush were sadistic and malicious in their use of force. (*Report*
21 [Doc. No. 66], at 8.)

22 In his objection, Plaintiff contends that there are numerous disputed issues of
23 fact, and summary judgment must therefore be denied. But as demonstrated below,
24 even accepting as true Plaintiff's version of events, the Court agrees with the Report's
25 conclusion.

26 With respect to the first incident, statements from Plaintiff and his witnesses
27 establish the following:
28

- 1 • Defendant Harmon lawfully ordered Plaintiff to exit his cell for a search.
2 (Hixson Dec. [Doc. No. 44-3], Ex. A [Plf.'s Depo. Transcript] at
3 25:10–18.)
- 4 • Rather than exit the cell, Plaintiff began to question Defendant Harmon's
5 orders. (Id. at 26:20–27:1.)
- 6 • Plaintiff also resisted Defendant Harmon's attempt to remove Plaintiff
7 from the cell. When Defendant Harmon entered the cell and grabbed
8 Plaintiff's arm, Plaintiff pulled away. (Id. at 28:15–18; 29:5–9.)
- 9 • In addition to refusing to obey Defendant Harmon's orders, Plaintiff
10 directed an expletive at Defendant Harmon. (Perez Dec. [Doc. No. 56-6],
11 at 2.)
- 12 • Plaintiff was struck in his midsection and tackled *after* refusing the lawful
13 order to exit the cell and resisting Defendant Harmon's attempt to remove
14 Plaintiff. (Comp. [Doc. No. 1], Ex. A at 3.)

15 Finally, there is also no dispute that the only injury that MTA Bell observed was dry
16 skin on the left side of Plaintiff's face. (Bell Dec. [Doc. No. 44-4], ¶ 7.)

17 As the Report noted, it "is well settled that when confronted with a disturbance,
18 prison guards are permitted to use reasonable force to restore order within the prison
19 and prevent a threat to prison workers, administrators, visitors and other inmates."
20 (Report [Doc No. 66], at 10, citing Hudson, 503 U.S. at 3.) The undisputed facts
21 establish that when ordered to exit his cell, Plaintiff began arguing with Defendant
22 Harmon, and then became combative when Defendant Harmon grabbed Plaintiff's arm
23 to remove him from the cell. Under these circumstances, the Court finds that
24 Defendants reasonably perceived that Plaintiff posed a threat, that the use of force was
25 justified, that the amount of force used was reasonable, and that the extent of Plaintiff's
26 injury was minimal. Moreover, the Court agrees with the Report's conclusion that
27 there is no evidence in the record suggesting that Defendants acted with improper
28 motive. In short, under the Hudson factors, Defendants did not use excessive force
during the first incident.

1 The second incident is similar to the first in that it was precipitated by Plaintiff's
2 refusal to obey lawful orders from the Defendant officers. There is no dispute that while
3 Plaintiff was being escorted back from the medical examination, he again refused to
4 comply with the officer's order to proceed to his cell. (*Hixson Dec.*, Ex. A at
5 106:14–107:10.) Specifically, after being told that a second medical examination would
6 be conducted at his cell, Plaintiff stopped and turned back towards the medical unit
7 without being given permission to do so. Plaintiff's refusal to follow the officer's
8 directives, particularly given his earlier disobedience, again created a need for the use
9 of some force "to maintain or restore discipline." See White v. Roper, 901 F.2d 1501,
10 1507 (9th Cir. 1990) (concluding that need to use force to restrain and subdue pretrial
11 detainee was created by detainee's refusal to enter and move away from assigned cell).

12
13 Because corrections officers must balance the need to "maintain and restore
14 discipline" through force against the risk of injury to inmates, correction officers "should
15 be accorded wide-ranging deference in the adoption and execution of policies and
16 practices that in their judgment are needed to preserve internal order and discipline and
17 to maintain institutional security." Whitely, 475 U.S. at 321. Under the
18 circumstances, the Court finds that Defendants reasonably perceived that Plaintiff
19 posed a threat, that the use of force was justified, that the amount of force used was
20 reasonable, and that the extent of Plaintiff's injury was minimal. Moreover, the Court
21 agrees with the Report's conclusion that there is no evidence in the record suggesting
22 that with regard to the second incident, Defendants acted with improper motive. In
23 short, under the Hudson factors, Defendants did not use excessive force during the
24 second incident.

25
26 **C. Plaintiff's "Failure to Protect" Claim.**

27 Plaintiff does not dispute the Report's conclusion that his allegations actually
28 raise a "Failure to Protect" claim under the Eighth Amendment, rather than a

1 Fourteenth Amendment claim. Accordingly, this Court will analyze the failure to
2 protect claim.

3 The Eighth Amendment requires prison officials to take reasonable measures to
4 protect inmates from serious risks to their health and safety. Farmer v. Brennan, 511
5 U.S. 825, 837 (1970); Helling v. McKinney, 509 U.S. 25, 33-34 (1993). To be culpable,
6 a prison official must demonstrate a state of mind of “deliberate indifference.” Farmer,
7 511 U.S. at 834. The “deliberate indifference” standard requires a prison official to
8 have an actual, subjective knowledge of an excessive risk of harm to the prisoner’s
9 safety and fail to prevent it. Id. at 837-39. This failure must also result in the “denial
10 of ‘the minimal civilized measures of life’s necessities.’” Id. at 834. Although a prison
11 official may actually know of a substantial risk to inmate health and safety, he is free
12 from liability if he responded reasonably to the risk. Id. at 844.

13 Plaintiff’s objection surrounds the fact that Defendant Velasco denies ever
14 having been informed of the first incident by Plaintiff. (*Pl. Objections* [Doc. No. 76],
15 at 14-15.) Assuming, as the Report did, that Plaintiff has established Defendant
16 Velasco’s knowledge of the first incident, the undisputed facts nevertheless establish
17 that Defendant Velasco acted reasonably in response to that risk.

18 Plaintiff admits that Defendant Velasco dismissed Defendants Harmon and
19 Williams from the area after Plaintiff told him about the first incident. (*Comp.*, at 4;
20 *see also Pl. Objections*, at 17.) In doing so, Defendant Velasco acted to alleviate
21 Plaintiff’s fears and Plaintiff has provided no evidence to the contrary. Accordingly,
22 Defendants are entitled to summary judgment on this claim as well.

23

24 **IV. CONCLUSION**

25 Plaintiff objects to the Report on the basis that there are numerous disputed
26 issues of fact. As addressed above, Plaintiff’s objection lacks merit. Accordingly, for the
27 reasons addressed above, the Court **ADOPTS** the reasoning and findings contained in
28


1 the Report (Doc. No. 66), which are incorporated herein by reference, and **GRANTS**
2 Defendants' summary-judgment motion (Doc. No. 44).

3 Additionally, having reviewed Plaintiff's motion for sanctions, the Court finds
4 that, contrary to Plaintiff's contention, he was timely served with Defendants' reply to
5 the supplemental opposition. (*See Certificate of Service* [Doc. No. 63].) Accordingly,
6 Plaintiff's motion is **DENIED**. (Doc. No. 73.)

7 The Clerk of Court shall close the district court case file.

8
9 **IT IS SO ORDERED.**

10
11 **DATED: March 13, 2009**



12 **HON. THOMAS J. WHELAN**
13 United States District Court
14 Southern District of California
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