

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RODNEY WAYNE JONES,
CDCR #D-55894,

Plaintiff,

vs.

STUART J. RYAN, et al.,

Defendants.

Civil No. 07cv1019 JMA (NLS)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
PARTIAL MOTION FOR
SUMMARY JUDGMENT
PURSUANT TO FED.R.CIV.P. 56**

[Doc. Nos. 130, 131]

I.

STATEMENT OF THE CASE

Rodney Wayne Jones, (“Plaintiff”), a state prisoner currently housed at the California State Prison located in Represa, California, is proceeding pro se and *in forma pauperis* with a First Amended Complaint filed pursuant to the Civil Rights Act, 42 U.S.C. § 1983. Currently pending before the Court is Defendants Ryan, Valenzuela, Ochoa, Ortiz, Ritter, Flores, Jimenez, Cosio, Castaneda, Schommer, Martinez, Rangel, Bell, Mejia, Rodiles, Sandoval, Wells, Zills, Andalon, Stratton and Price’s Motion for Summary Judgment pursuant to FED.R.CIV.P. 56 [Doc. No. 130]. Defendant Pegues has filed a Notice of Joinder to Defendants’ Motion [Doc. No. 131].

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

PROCEDURAL BACKGROUND

Defendants are moving for partial summary judgment on Plaintiff's First, Eighth and Fourteenth Amendment claims. On April 12, 2010, the Court advised Plaintiff of his rights and obligations to oppose Defendants' Motion pursuant to *Klinge* v. *Eikenberry*, 849 F.2d 409 (9th Cir. 1988) and *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) (en banc).¹ Plaintiff filed his Opposition, along with an Amended Opposition to Defendants' Motion [Doc. Nos. 144, 160]. Plaintiff was also permitted to file a "Supplemental Declaration" [Doc. No. 172].² All the Defendants who have moved for summary judgment, other than Defendant Pegeus, have filed a Reply to Plaintiff's Opposition [Doc. Nos. 166, 173].

Having now exercised its discretion to consider the matter as submitted on the papers without oral argument pursuant to S.D. CAL. CIVLR 7.1.d.1, the Court hereby **GRANTS** in part and **DENIES** in part Defendants' Partial Motion for Summary Judgment pursuant to FED.R.CIV.P. 56 for the reasons set forth in detail below.

///

¹ *Klinge* and *Rand* together require the district court "as a bare minimum, [to provide a pro se prisoner] with fair notice of the requirements of the summary judgment rule." *Klinge*, 849 F.2d at 411 (quoting *Hudson v. Hardy*, 412 F.2d 1091, 1094 (D.C. Cir. 1968)). "It would not be realistic to impute to a prison inmate ... an instinctual awareness that the purpose of a motion for summary judgment is to head off a full-scale trial by conducting a trial in miniature, on affidavits, so that not submitting counter affidavits is the equivalent of not presenting any evidence at trial." *Jacobsen v. Filler*, 790 F.2d 1362, 1364 n.4 (9th Cir. 1986) (internal quotation omitted). Actual knowledge or any level of legal sophistication does not obviate the need for judicial explanation. *Klinge*, 849 F.2d at 411-12. Thus, the district court is required to "tell the prisoner about his 'right to file counter-affidavits or other responsive materials and [to][alert][him] to the fact that his failure to so respond might result in the entry of summary judgment against him.'" *Jacobsen*, 790 F.2d at 1365 n.8 (quoting *Klinge*, 849 F.2d at 411).

² In order to lessen any confusion Court will refer solely to Plaintiff's Amended Opposition as it is virtually identical to Plaintiff's initial Opposition.

1 **III.**

2 **PLAINTIFF’S FACTUAL ALLEGATIONS³**

3 In 2005 Plaintiff was housed at Centinela State Prison which is located in Imperial
4 County. (See FAC at 1.) On June 10, 2005, Plaintiff was awakened by his cell door being
5 pushed open and saw Defendants Schommer and Ortiz standing in front of his cell. (*Id.* at ¶¶
6 1-2.) Defendant Schommer told Plaintiff it was “count time” and Plaintiff informed Defendant
7 Schommer that he had fallen asleep because he was taking pain medication. (*Id.* at ¶¶ 3-4.)
8 Defendants Schommer and Ortiz walked away from Plaintiff’s cell as Defendants Torres and
9 Mejia approached. (*Id.* at ¶¶ 6-7.) Defendant Wells closed Plaintiff’s cell door from the control
10 tower. (*Id.* at ¶ 8). Defendants Schommer, Ortiz and Torres told Defendant Wells to reopen
11 Plaintiff’s cell. (*Id.* at ¶ 12.) Defendants Schommer and Torres entered Plaintiff’s cell and
12 began to simultaneously use oleresin capsicum (also known as “pepper spray”) on Plaintiff, who
13 was not resisting. (*Id.* at ¶¶ 14-18.)

14 While Plaintiff was shielding his face, he was struck on the lower left leg with a baton
15 by either Defendant Torres or Schommer and then struck on the right temple by Defendant
16 Torres. (*Id.* at ¶¶ 20-21.) Defendant Castaneda then entered Plaintiff’s cell and placed Plaintiff
17 in handcuffs. (*Id.* at ¶ 22.) Defendant Castaneda then took Plaintiff to the shower in order to
18 “decontaminate” Plaintiff from the pepper spray, but instead of using cold water, which is
19 required by regulations, Defendant Castaneda used hot water which caused Plaintiff’s skin to
20 burn. (*Id.* at ¶¶ 23- 25.) Defendant Zills entered the shower area and began pushing Plaintiff
21 to the exit of the housing unit by his handcuffs. (*Id.* at ¶¶ 27-28.) While exiting through the
22 corridor area, Defendant Zills “ran Plaintiff face first into the corridor’s brick wall.” (*Id.* at ¶
23 29.) Plaintiff was then “slammed to the ground” by Defendants Zills and Torres. (*Id.* at ¶ 31.)
24 As Defendant Zills held Plaintiff, “Defendants Torres, Ortiz and Rodiles proceeded to take turns
25 striking Plaintiff in the head and body utilizing their state-issued side handle batons.” (*Id.* at ¶
26

27 ³ These factual allegations are taken from Plaintiff’s First Amended Complaint and were set
28 forth in the Court’s previous Order granting in part and denying in part Defendants’ Motion to Dismiss.
To the extent that Defendants dispute Plaintiff’s allegations or add additional factual allegations, those
will be set forth below in the Court’s analysis on the merits of the claims.

1 32.) As Defendant Zills continued to hold Plaintiff, Defendant Mejia “walked over and kicked
2 Plaintiff.” (*Id.* at ¶ 35.) In addition, Defendant Sandoval began “viciously [kicking] Plaintiff”
3 in his chest “with enough force that [caused] Plaintiff to temporarily stop breathing.” (*Id.* at ¶
4 37.) Defendant Castaneda began to yell in Spanish “that’s it.” (*Id.* at ¶ 39.) Plaintiff claims that
5 Defendants Castaneda, Jimenez, Bailey, Cosio, Bell and Andalón “observed Plaintiff being
6 maliciously and wantonly beaten” but failed to intervene. (*Id.* at ¶ 40.)

7 Defendants placed Plaintiff in the shower to remove any signs of blood and then
8 Defendants Torres, Jimenez and Bell proceeded to take Plaintiff to the medical clinic. (*Id.* at ¶
9 42-44.) Plaintiff claims that Defendants Jimenez and Torres “intentionally [delayed] Plaintiff
10 from receiving medical evaluation and treatment” by keeping Plaintiff in a holding cell for two
11 hours inside the medical clinic. (*Id.* at ¶¶ 46-47.) Plaintiff was later examined by medical staff
12 and it was determined that he should be seen by the prison’s physician. (*Id.* at ¶ 50.) Plaintiff
13 claims that while he was waiting to be seen by the prison’s physician, Defendants Harmon and
14 Duarte made “obscene/vulgar statements directed at Plaintiff.” (*Id.* at ¶¶ 53-54.) Plaintiff was
15 examined by “Doctor Naz,” the prison’s physician, who “sutured Plaintiff’s three scalp
16 lacerations and one left leg laceration and evaluated plaintiff as having a possible liver rupture
17 and chest wall contusion.” (*Id.* at ¶ 56.) Defendants Stratton and Mejia videotaped Plaintiff’s
18 injuries. (*Id.* at ¶ 57.) Defendants Ryan, Ochoa and Pegues arrived soon after and asked
19 Plaintiff’s questions regarding the incidents that led to his injuries. (*Id.* at ¶ 58.)

20 Doctor Naz recommended that Plaintiff be immediately transferred to Pioneer Memorial
21 Hospital (“PMH”) due to his potentially “life-threatening injuries.” (*Id.* at ¶ 60.) Defendants
22 Ryan, Ochoa, Pegues and Stratton “refused to act or expedite Plaintiff’s transfer to PMH and
23 instead intentionally allowed Plaintiff’s suffering condition to deteriorate.” (*Id.* at ¶ 61.) At
24 approximately 4:34 a.m. on June 11, 2005, Plaintiff was transferred to the PMH emergency
25 room. (*Id.* at ¶ 63.) Plaintiff underwent medical examinations and testing where it was
26 determined that he suffered from a “punctured and collapsed right lung, a minimum of four
27 broken right ribs, three severe scalp lacerations, one left leg laceration, and multiple abrasions,
28 bruising and swelling throughout Plaintiff’s body.” (*Id.* at ¶ 65.) Plaintiff claims Defendants

1 Jimenez, Torres, Schommer, Ortiz, Zills, Rodiles, Wells, Flores and Ritter submitted “fabricated
2 disciplinary reports against Plaintiff” to “conceal” their own misconduct. (*Id.* at ¶¶ 68-70.)
3 Defendant Flores submitted a report indicating that he had discovered an inmate manufactured
4 weapon in Plaintiff’s cell which Plaintiff claims is a false accusation. (*Id.* at ¶ 71.)

5 Plaintiff was charged with disciplinary violations including assault on staff, battery on
6 staff, battery on a Peace Officer with a weapon and attempted murder of a Peace Officer. (*Id.*
7 at ¶ 73.) Plaintiff also claims that his property was taken by Defendants in retaliation for
8 Plaintiff’s allegations against Defendants. (*Id.* at ¶¶ 93-95.) To date, Plaintiff has yet to receive
9 a disciplinary hearing on the rules violation report that was issued to him charging Plaintiff with
10 attempted murder of a Peace Officer. (*Id.* at ¶ 100.)

11 IV.

12 DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

13 A. Standard of Review

14 Summary judgment is properly granted when “there is no genuine issue as to any material
15 fact and ... the moving party is entitled to judgment as a matter of law.” FED.R.CIV.P. 56(c).
16 Entry of summary judgment is appropriate “against a party who fails to make a showing
17 sufficient to establish the existence of an element essential to that party’s case, and on which that
18 party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).
19 The court shall consider all admissible affidavits and supplemental documents submitted on a
20 motion for summary judgment. *See Connick v. Teachers Ins. & Annuity Ass’n*, 784 F.2d 1018,
21 1020 (9th Cir. 1986).

22 The moving party has the initial burden of demonstrating that summary judgment is
23 proper. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152 (1970). However, to avoid summary
24 judgment, the nonmovant cannot rest solely on conclusory allegations. *Berg v. Kincheloe*, 794
25 F.2d 457, 459 (9th Cir. 1986). Rather, he must present “specific facts showing there is a genuine
26 issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). The Court may not
27 weigh evidence or make credibility determinations on a motion for summary judgment. Quite
28 the opposite, the inferences to be drawn from the underlying facts must be viewed in the light

1 most favorable to the nonmoving party. *Id.* at 255; *United States v. Diebold, Inc.*, 369 U.S. 654,
2 655 (1962). The nonmovant’s evidence need only be such that a “fair minded jury could return
3 a verdict for [him] on the evidence presented.” *Anderson*, 477 U.S. at 255. However, in
4 determining whether the nonmovant has met his burden, the Court must consider the evidentiary
5 burden imposed upon him by the applicable substantive law. *Id.*

6 A verified complaint or motion may be used as an opposing affidavit under FED.R.CIV.P.
7 56 to the extent it is based on personal knowledge and sets forth specific facts admissible in
8 evidence. *McElyea v. Babbitt*, 833 F.2d 196, 197-98 (9th Cir. 1987) (per curiam) (complaint);
9 *Johnson v. Meltzer*, 134 F.3d 1393, 1399-1400 (9th Cir. 1998) (motion). To “verify” a
10 complaint, the plaintiff must swear or affirm that the facts in the complaint are true “under the
11 pains and penalties of perjury.” *Schroeder v. McDonald*, 55 F.3d 454, 460 n.10 (9th Cir. 1995).

12 **B. 42 U.S.C. § 1983**

13 Section 1983 authorizes a “suit in equity, or other proper proceeding for redress” against
14 any person who, under color of state law, “subjects, or causes to be subjected, any citizen of the
15 United States ... to the deprivation of any rights, privileges, or immunities secured by the
16 Constitution.” *Nelson v. Campbell*, 541 U.S. 637, 124 S.Ct. 2117, 2122 (2004).

17 **C. Evidentiary Objections**

18 Defendants have filed evidentiary objections to three documents attached to Plaintiff’s
19 Amended Opposition. *See* Defs.’ Reply at 2. However, at the summary judgment stage, the
20 Court need not focus on whether the form of the evidence is admissible. Instead, the court must
21 focus on the admissibility of its contents and ask whether the evidence “could be presented in
22 an admissible form at trial.” *Fraser v. Goodale*, 342 F.3d 1032, 1036-37 (9th Cir. 2003) (citing
23 *Block v. City of Los Angeles*, 253 F.3d 410, 418-19 (9th Cir. 2001) (“To survive summary
24 judgment, a party does not necessarily have to produce evidence in a form that would be
25 admissible at trial, as long as the party satisfies the requirements of Federal Rules of Civil
26 Procedure 56.”); *Fed. Deposit Ins. Corp. v. N.H. Ins. Co.*, 953 F.2d 478, 485 (9th Cir. 1991)
27 (“the nonmoving party need not produce evidence in a form that would be admissible at trial in
28 order to avoid summary judgment.”) (internal quotation marks and citation omitted)).

1 Plaintiff's Exhibit "K" appears to a summary of the criminal charges brought against
2 Plaintiff relating to the incidents that form the basis of this action, but it is unclear where the
3 document came from or its intended purpose. Thus, the Court sustains Defendants' objections
4 to this document. Exhibit "L" appears to be a news article and Appendix "A" appears to be a
5 memorandum from the California Department of Corrections and Rehabilitation ("CDCR"). It
6 will not be necessary for the Court to consider these documents with respect to Defendants'
7 Motion for Summary Judgment. Accordingly, the Court overrules Defendants' objections to
8 Exhibit "L" and Appendix "A" without prejudice to re-asserting these objections at trial should
9 Plaintiff move to introduce these exhibits into evidence.

10 **D. Eighth Amendment Failure to Protect Claims**

11 Defendants Wells, Castaneda, Jimenez, Cosio, Bell and Andalon seek summary judgment
12 on Plaintiff's claims that they violated his Eighth Amendment rights by failing to protect him
13 from a serious risk of harm. (*See* Defs.' P&As in Supp. of Summ. J. at 11-12.) Under the Eighth
14 Amendment, prison officials must "take reasonable measures to guarantee the safety of the
15 inmates." *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984); *DeShaney v. Winnebago County*
16 *Dep't of Social Services*, 489 U.S. 189, 199-200 (1989) ("[W]hen the State takes a person into
17 its custody and holds him there against his will, the Constitution imposes upon it a corresponding
18 duty to assume some responsibility for his safety and general well-being."). In fact, the Supreme
19 Court has specifically held that this duty requires prison officials to protect prisoners from
20 violence at the hands of other prisoners. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (citations
21 omitted). "Protecting the safety of prisoners and staff involves difficult choices and evades easy
22 solutions." *Berg v. Kincheloe*, 794 F.2d at 460.

23 Thus, to show that a prisoner has been subject to cruel and unusual punishment by an
24 officer's failure to protect him, he must point to evidence in the record which shows that the
25 alleged deprivation was objectively "sufficiently serious," *i.e.*, that the conditions he faced posed
26 a "substantial risk of serious harm." *Farmer*, 511 U.S. at 834. Second, because "only the
27 unnecessary and wanton infliction of pain implicates the Eighth Amendment," evidence must
28 exist to show the defendant acted with a "sufficiently culpable state of mind." *Wilson*, 501 U.S.

1 at 297 (internal quotation marks, emphasis and citations omitted); *see also Hudson*, 503 U.S. at
2 5, 8.

3 In a failure to protect case, “that state of mind is one of ‘deliberate indifference’ to inmate
4 health or safety.” *Farmer*, 511 U.S. at 834. Prison officials display a deliberate indifference to
5 an inmate’s well-being when they know of and consciously disregard an excessive risk of harm
6 to that inmate’s health or safety. *Farmer*, 511 U.S. at 837. “[T]he official must both be aware
7 of facts from which the inference could be drawn that a substantial risk of serious harm exists,
8 and he must also draw the inference.” *Id.* Thus, “deliberate indifference” entails something
9 more than mere negligence, but may be satisfied with proof of something less than acts or
10 omissions “for the very purpose of causing harm,” or that a particular official “acted or failed
11 to act believing that harm actually would befall an inmate; it is enough that the official acted or
12 failed to act despite his knowledge of a substantial risk of serious harm.” *Farmer*, 511 U.S. at
13 842. “Whether a prison official had the requisite knowledge of a substantial risk” may be
14 inferred if the prisoner produces evidence sufficient to show that the risk was “obvious.” *Id.*

15 a. *Claims against Defendant Wells*

16 Plaintiff alleges Defendant Wells, who was the officer in the control tower responsible
17 for opening and closing cell doors, “appeared to have prior knowledge of the forthcoming
18 attack” by Defendants Torres and Schommer and Ortiz because he opened the door to Plaintiff’s
19 cell to allow them to enter. (FAC at 6; Pl.’s Amd. Opp’n, Ex. “M” Transcript of Grand Jury
20 Proceedings at 76:1-4.) Defendant Wells argues that there is no evidence of any “discussion
21 regarding a plot to use excessive force against Plaintiff.” (Defs.’ P&A’s in Supp. of Summ. J.
22 at 11.) Plaintiff responds by asserting that there was a discussion among Defendants Torres,
23 Schommer, Ortiz, Mejia and Wells prior to Wells opening Plaintiff’s cell door. (*See* Pl.’s Amd.
24 Opp’n at 4.) However, while Plaintiff testified that the conversation which formed the “plan of
25 attack” against him took place outside of the control tower, he also testified that Wells was in
26 the control tower during the entire incident. (*See* Defs.’ Ex. 1, Pl.’s Depo. at 49:22-25; 49:11-
27 15.)

28 ///

1 Plaintiff's only evidence to support his claim that Defendant Wells knew of the attack is
2 his allegation that Defendant Torres asked Defendant Schommer "are you ready" immediately
3 prior to entering Plaintiff's cell, which he claims is indicative of a "preplanned attack" on
4 Plaintiff." (See Pl.'s Amd. Opp'n at 4.) However, "sweeping conclusory allegations will not
5 suffice to prevent summary judgment" on Plaintiff's Eighth Amendment claims against
6 Defendant Wells. *Leer v. Murphy*, 844 F.2d 628, 634 (1988) (citing *Berg*, 794 F.2d at 460.)
7 Even if

8 These allegations are mere speculation by Plaintiff as to what was said or heard by
9 Defendant Wells, whom Plaintiff acknowledges was in the control tower during the entire
10 incident. Thus, Plaintiff has pointed to no evidence in the record to show that Defendant Wells
11 had any actual knowledge of a "substantial risk of serious harm" to Plaintiff in his prison cell.
12 *Farmer*, 511 U.S. at 842. Based on the lack of a triable issue of material fact, the Court
13 **GRANTS** Defendant Wells' Motion for Summary Judgment as to Plaintiff's Eighth Amendment
14 failure to protect claims.

15 2. *Claims against Castaneda*

16 Defendant Castaneda moves to dismiss Plaintiff's Eighth Amendment failure to protect
17 claims alleged against him. Plaintiff alleges that Defendant Castaneda was present during the
18 time excessive force was being used against him, but failed to take action to stop the use of
19 force. (See FAC at 7-8.) Specifically, Plaintiff claims "only after Plaintiff was repeatedly struck
20 with batons and kicked at least twice" did Defendant Castaneda yell in Spanish "that's it!" (*Id.*
21 at 8.)

22 In their moving papers, Defendants claim "Castaneda . . . never witnessed any force being
23 used against Plaintiff on June 10, 2005." (Defs.' P&A's in Supp. of Summ. J. at 11; *see also*,
24 Defs.' Sep. Stmt. Undis. Fact No. 24.) In support of this statement, Defendants submit the
25 Declaration of F. Castaneda. (*Id.*) Defendant Castaneda does not claim he was not present
26 during any of the incidents alleged to have occurred by Plaintiff, but rather only that he did not
27 actually observe any of the alleged force being used. Defendant Castaneda's declaration simply
28 states, "I did not witness any force being used against inmate Jones on June 10, 2005;" he

1 provides no other explanation and does not deny he was present when the alleged force took
2 place. (Decl. of F. Castaneda at ¶ 4.) Plaintiff states, in his verified First Amended Complaint,
3 that Defendant Castaneda was present and failed to protect him from a serious risk of harm. (*See*
4 FAC at 8.) Plaintiff testified, with specificity, in his deposition that Defendant Castaneda was
5 present during the incident outside of Plaintiff's housing unit and further alleges that Castaneda
6 spoke to the other officers in Spanish to stop the use of force. (*Id.*) Here, Plaintiff has alleged
7 that Castaneda failed to stop the force before it was used, while Castaneda denies ever seeing
8 force used on Plaintiff. Unlike the claims against Defendant Wells, these claims and the
9 arguments raised are not speculative, but instead raise issues of credibility that cannot be decided
10 at the summary judgment stage. These types of credibility determinations are the sole province
11 of a jury. *Dominguez-Curry v. Nevada Transp. Dep't*, 424 F.3d 1027, 1036 (9th Cir. 2005) (in
12 ruling on a motion for summary judgment, the court may not weigh evidence or judge the
13 credibility of witnesses).

14 Thus, Defendant Castaneda's Motion for Summary Judgment of the Eighth Amendment
15 failure to protect claims brought against him is **DENIED**.

16 3. *Claims against Defendants Jimenez, Cosio, Bell and Andalon*

17 Defendants Jimenez, Cosio, Bell and Andalon raise similar arguments as those raised by
18 Castaneda in their motion for summary judgment as to Plaintiff's Eighth Amendment failure to
19 protect claims. These Defendants also claim they did not witness the use of force against
20 Plaintiff. (Defs.' P&A's in Supp. of Summ. J. at 12; *see also*, Defs.' Sep. Stmt. Undis. Fact No.
21 26.).

22 In his First Amended Complaint, Plaintiff alleges that these Defendants were present
23 when he was allegedly beaten after he had been taken to the showers and escorted out of the
24 housing unit. (*See* FAC at 8; *see also* Pl.'s Depo at 96:8-16.) The evidence Defendants provide
25 in support of their argument that they did not witness any force being used against Plaintiff is
26 found in their responses to Plaintiff's Request for Admissions. (Defs.' Sep. Stmt. Undis. Fact
27 No. 26.) Defendants Cosio and Andalon deny seeing Plaintiff at any time that day. (*Id.*)
28 However, Defendants Jimenez and Bell admit that they observed Plaintiff being escorted out of

1 his housing unit, which is the time frame during which the second incident of force is alleged
2 to have occurred. (*See* Defs.’ Ex. 2, Jimenez’s Response to Pl.’s Req. for Admissions No. 4; *see*
3 *also* Defs.’ Ex. 4, Bell’s Response to Pl.’s Req. for Admissions No. 4.)

4 Plaintiff maintains that the “handwritten incident reports” document that force was used
5 “upon Plaintiff immediately after Plaintiff was escorted out of the Housing Unit.” (Pl.’s Amd.
6 Opp’n at 6.) Thus, according to Plaintiff, it stands to reason that if Jimenez and Bell saw
7 Plaintiff being escorted out of the housing unit, they would have also seen the force that was
8 used on Plaintiff at this time and failed to prevent the force from being used. (*Id.*) Defendants
9 do not dispute that the reports do appear to indicate that force was used against Plaintiff as he
10 was escorted out of the housing unit. Thus, the record before the Court indicates that there is
11 a triable issue of material fact with regard to whether Defendants Jimenez and Bell observed
12 force being used on Plaintiff and whether they were deliberately indifferent to a “substantial risk
13 of serious harm” to Plaintiff. *Farmer*, 511 U.S. at 842.

14 However, with respect to Defendants Cosio and Andalon, these Defendants stated under
15 oath that they did not observe Plaintiff at any time on the night of June 10, 2005. (*See* Defs.’ Ex.
16 3, Cosio’s Resp. to Req. for Admissions, No. 12; *see also* Defs.’ Ex. No. 5, Andalon’s Resp. to
17 Request for Admissions, No. 12.) Plaintiff does not provide any evidence or point to any
18 evidence in the record indicating that either of these Defendants was present at any time during
19 any of the alleged incidents.

20 Accordingly, the Court **GRANTS** Defendants Cosio and Andalon’s Motion for Summary
21 Judgment and **DENIES** Defendants Jimenez and Bell’s Motion for Summary Judgment as to
22 Plaintiff’s Eighth Amendment failure to protect claims.

23 **E. Eighth Amendment excessive force claims**

24 Defendant Castaneda moves to dismiss Plaintiff’s Eighth Amendment excessive force
25 claims against him. The “core judicial inquiry,” when a prisoner alleges the excessive use of
26 force under the Eighth Amendment, is “not whether a certain quantum of injury was sustained,
27 but rather “whether force was applied in a good-faith effort to maintain or restore discipline, or
28 maliciously and sadistically to cause harm.” *Hudson v. McMillian*, 503 U.S. at 1, 7 (1992); *see*

1 also *Whitley v. Albers*, 475 U.S. 312, 319-321, (1986). “When prison officials maliciously and
2 sadistically use force to cause harm,” the Supreme Court has recognized, “contemporary
3 standards of decency always are violated ... whether or not significant injury is evident.
4 Otherwise, the Eighth Amendment would permit any physical punishment, no matter how
5 diabolic or inhuman, inflicting less than some arbitrary quantity of injury.” *Hudson*, 503 U.S.
6 at 9. Thus, “[i]n determining whether the use of force was wanton and unnecessary,” the court
7 must “evaluate the need for application of force, the relationship between that need and the
8 amount of force used, the threat reasonably perceived by the responsible officials, and any
9 efforts made to temper the severity of a forceful response.” *Id.* at 7 (internal quotation marks
10 and citations omitted).

11 Here, Plaintiff’s claims of excessive force against Castaneda arise from his allegation that
12 Castaneda purposefully used hot water instead of cold water when he was decontaminating
13 Plaintiff after being exposed to pepper spray. (*See* FAC at 7.) Defendant Castaneda responds
14 in his Declaration that he does “not believe” that he was the officer who “turned on the water
15 and placed inmate Jones underneath it.” (Castaneda Decl. at ¶ 3.) Here, even assuming that
16 Castaneda was the officer who placed Plaintiff in the shower and pushed the hot water button,
17 there is no evidence in the record that would support a claim that this was done with malicious
18 or sadistic intent. *Hudson*, 503 U.S. at 7. Plaintiff does refer to Defendant Castaneda’s
19 “malicious actions” in his Opposition, but fails to refer to any evidence in the record that would
20 support a finding of malicious or sadistic intent. (Pl.’s Amd. Opp’n at 6.) Moreover, there is
21 no evidence in the record to find that Plaintiff suffered any injury, de minimus or otherwise, as
22 a result of the decontamination shower. “Not every push or shove, even if it may later seem
23 unnecessary in the peace of a judge’s chambers, violates a prisoner’s constitutional rights.”
24 *Hudson*, 503 U.S. at 9 (citing *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)).

25 Thus, the Court finds there is no triable issue of material fact as to whether Defendant
26 Castaneda used excessive force against Plaintiff in violation of his Eighth Amendment rights.
27 Defendant Castaneda’s Motion for Summary Judgment as to Plaintiff’s Eighth Amendment
28 excessive force claims is **GRANTED**.

1 **F. Plaintiff’s Eighth Amendment Medical Care Claims**

2 The Eighth Amendment prohibits punishment that involves the “unnecessary and wanton
3 infliction of pain.” *Estelle v. Gamble*, 429 U.S. 97, 103 (1976) (quoting *Gregg v. Georgia*, 428
4 U.S. 153, 173 (1976)); *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004). The Eighth
5 Amendment’s cruel and unusual punishments clause is violated when prison officials are
6 deliberately indifferent to a prisoner’s serious medical needs. *Estelle*, 429 U.S. at 105.
7 “Medical” needs include a prisoner’s “physical, dental, and mental health.” *Hoptowit v. Ray*,
8 682 F.2d 1237, 1253 (9th Cir. 1982).

9 To show “cruel and unusual” punishment under the Eighth Amendment, the prisoner must
10 point to evidence in the record from which a trier of fact might reasonably conclude that
11 Defendants’ medical treatment placed Plaintiff at risk of “objectively, sufficiently serious” harm
12 and that Defendants had a “sufficiently culpable state of mind” when they either provided or
13 denied him medical care. *Wallis v. Baldwin*, 70 F.3d 1074, 1076 (9th Cir. 1995) (internal
14 quotations omitted). Thus, there is both an objective and a subjective component to an
15 actionable Eighth Amendment violation. *Clement v. Gomez*, 298 F.3d 898, 904 (9th Cir. 2002);
16 *Toguchi*, 391 F.3d at 1057 (“To establish an Eighth Amendment violation, a prisoner ‘must
17 satisfy both the objective and subjective components of a two-part test.’”) (quoting *Hallett v.*
18 *Morgan*, 296 F.3d 732, 744 (9th Cir. 2002)).

19 Although the “routine discomfort inherent in the prison setting” is inadequate to satisfy
20 the objective prong of an Eighth Amendment inquiry, *see Johnson v. Lewis*, 217 F.3d 726, 731
21 (9th Cir. 1999), the objective component is generally satisfied so long as the prisoner alleges
22 facts to show that his medical need is sufficiently “serious” such that the “failure to treat [that]
23 condition could result in further significant injury or the unnecessary and wanton infliction of
24 pain.” *Clement*, 298 F.3d at 904 (quotations omitted); *Lopez*, 203 F.3d at 1131-32; *see also Doty*
25 *v. County of Lassen*, 37 F.3d 540, 546 (9th Cir. 1994) (“serious” medical conditions are those
26 a reasonable doctor would think worthy of comment, those which significantly affect the
27 prisoner’s daily activities, and those which are chronic and accompanied by substantial pain).

28 ///

1 However, the subjective component requires the prisoner to also allege facts which show
2 that the officials had the culpable mental state, which is “‘deliberate indifference’ to a substantial
3 risk of serious harm.” *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998) (quoting *Farmer v.*
4 *Brennan*, 511 U.S. 825, 835 (1994)). As stated above, “deliberate indifference” is evidenced
5 only when “the official knows of and disregards an excessive risk to inmate health or safety; the
6 official must both be aware of the facts from which the inference could be drawn that a
7 substantial risk of serious harm exists, and he must also draw the inference.” *Farmer*, 511 U.S.
8 at 837; *Toguchi*, 391 F.3d at 1057.

9 Inadequate treatment due to “mere medical malpractice” or even gross negligence, does
10 not amount to a constitutional violation. *Estelle*, 429 U.S. at 106; *Hallett*, 296 F.3d at 744; *Wood*
11 *v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990). In other words, an “official’s failure to
12 alleviate a significant risk that he should have perceived but did not, ... cannot ... be condemned
13 as the infliction of punishment.” *Farmer*, 511 U.S. at 838; *Toguchi*, 391 F.3d at 1057 (“If a
14 prison official should have been aware of the risk, but was not, then the official has not violated
15 the Eighth Amendment, no matter how severe the risk.”) (brackets, footnote and citations
16 omitted)). The Eighth Amendment proscribes only “the ‘unnecessary and wanton infliction of
17 pain,’ [] includ[ing] those sanctions that are ‘so totally without penological justification that it
18 results in the gratuitous infliction of suffering.’” *Hoptowit*, 682 F.2d at 1246 (quoting *Gregg*,
19 428 U.S. at 173, 183).

20 Moreover, a difference of opinion between medical professionals concerning the
21 appropriate course of inmate treatment or care is not enough, by itself, to support a claim of
22 deliberate indifference. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). Nor does a
23 difference of opinion between the prisoner and his doctors constitute deliberate indifference.
24 *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996). Deliberate indifference can be
25 manifested if a doctor or prison guard intentionally denies or delays access to medical care or
26 otherwise interferes with medical treatment already prescribed, *see Estelle*, 429 U.S. at 104-05.

27 ///

28 ///

1 1. *Claims against Jimenez, Wells, Castaneda, Cosio and Bell*

2 Plaintiff claims in his First Amended Complaint that after he was subjected to excessive
3 force, Defendants Jimenez and Bell escorted him to the “holding cage located inside the Facility
4 “A” medical clinic.” (FAC at 8.) Plaintiff alleges that they failed to provide him with medical
5 attention for two hours while he was “barely breathing and still bleeding profusely.” (*Id.*) In
6 moving for summary judgment, Defendants maintain that Defendant Bell, a Medical Technical
7 Assistant (“MTA”), examined Plaintiff and observed “some lacerations and abrasions” but no
8 “internal injuries or need for Plaintiff to receive immediate medical attention.” (Defs.’ P&A’s
9 in Supp. of Summ. J. at 13; *see also* Bell Decl. at ¶ 3.)

10 It is undisputed that Plaintiff was placed in the holding cell for approximately two hours
11 before he was brought to the prison’s infirmary where he was eventually seen by a physician.
12 Bell did examine Plaintiff in the holding cell and found that he had several lacerations and
13 abrasions. (*See* Defs.’ Ex. 7, Medical Report of Injury or Unusual Occurrence completed by D.
14 Bell, MTA) In his Declaration, Bell states that “after examining Inmate Jones, the MTA
15 assigned to that medical clinic returned and I left Jones in that MTA’s care and returned to my
16 assigned post.” (Bell Decl. at ¶ 5.)

17 The Court finds that there is a triable issue of material fact whether Bell should have
18 known the need for Plaintiff to receive immediate medical attention. Plaintiff states in his
19 verified First Amended Complaint that he was “barely breathing” and “bleeding profusely” when
20 he was brought to the holding cell and examined by Bell. (*See* FAC at 8.) Bell maintains that
21 he only saw “some lacerations and abrasions.” (Bell Decl. at ¶ 3.) While Bell declares that he
22 was not aware of the need for Plaintiff to have “immediate medical attention,” the record shows
23 that Plaintiff ultimately received stitches for his lacerations and that there was a medical finding
24 that he had a punctured lung and broken ribs. (*See* Pl.’s Amd. Opp’n, Ex. E, Medical records
25 from Pioneers Hospital dated June 11, 2005.) In *Farmer*, the Supreme Court stated that “a
26 factfinder may conclude that a prison official knew of a substantial risk from the very fact that
27 the risk was obvious.” *Farmer*, 511 U.S. at 842. Here, based on the record before the Court,
28 there is a triable issue of material fact as to whether Defendant Bell was deliberately indifferent

1 to a serious risk to Plaintiff's health by allegedly causing him to be in a holding cell for two
2 hours prior to being seen by a prison physician for treatment. Accordingly, Defendant Bell's
3 Motion for Summary Judgment as to Plaintiff's Eighth Amendment deliberate indifference to
4 serious medical needs claims is **DENIED**.

5 However, there is no evidence in the record to support an Eighth Amendment claim
6 against Defendants Jimenez, Wells, Castaneda and Cosio. Plaintiff alleges that Defendant
7 Jimenez "locked Plaintiff inside a holding cage located inside the Facility "A" medical clinic."
8 (FAC at 8.) He further claims that Defendant Jimenez "intentionally delayed Plaintiff from
9 receiving medical evaluation." (*Id.*) Even if Defendant Jimenez initiated the order to initially
10 house Plaintiff in the holding cell, Plaintiff was left with Defendant Bell, a prison official with
11 medical training, in the holding tank of the medical facility to determine the extent of his
12 injuries. (*See* FAC at 8.) Plaintiff provides no evidence to counter Defendant Jimenez's
13 showing that he left Plaintiff in the care of Defendant Bell. Plaintiff makes a similar argument
14 as to Defendants Castaneda, Wells and Cosio, arguing that when they "signed-out on June 10,
15 2005 at approximately 2200 hours" they "left Plaintiff - for dead." (*See* Pl.'s Amd. Opp'n at 7.)
16 There is no evidence that they had any more contact with Plaintiff after he was transported to
17 be examined by Defendant Bell, nor does Plaintiff provide any evidence to overcome Defendant
18 Jimenez, Wells, Castaneda and Cosio's showing that they had no involvement with the length
19 of time Plaintiff was housed in the holding cell or any of the subsequent medical care he
20 received after Jimenez left Plaintiff with the MTA. Thus, there is no evidence in the record to
21 show that Defendants Jimenez, Wells, Castaneda and Cosio were deliberately indifferent to
22 Plaintiff's serious medical needs. Accordingly, Defendant Jimenez, Wells, Castaneda and
23 Cosio's Motion for Summary Judgment as to Plaintiff's Eighth Amendment deliberate
24 indifference to serious medical needs claims is **GRANTED**.

25 2. *Claims against Defendants Stratton, Ryan and Ochoa*

26 These Defendants move for summary judgment on the grounds that they "did not
27 purposefully ignore or fail to respond to Plaintiff's pain or medical needs since there is no
28 evidence they knew Plaintiff had a punctured lung, and Plaintiff was timely processed for

1 transport.” (Defs.’ P&A’s in Supp. of Summ. J. at 14.) The only evidence these Defendants
2 point to is the notation by Doctor Naz that Plaintiff may be transported to the hospital “via state
3 vehicle” and Defendant Stratton’s declaration that he processed the necessary paperwork to
4 transfer Plaintiff “as quickly as possible.” (See Defs.’ Ex. 6, Physician’s Orders; see also
5 Stratton Decl. at ¶ 7.) There is nothing in the record, nor do Defendants provide any support for
6 the argument, that the fact that the Doctor ordered Plaintiff to be transported via “state vehicle”
7 as opposed to a different form of transportation lessened the need for Plaintiff to be transported
8 to a hospital in a timely manner. In addition, Defendant Stratton sets forth his understanding of
9 the policy as it relates to transporting an inmate to an outside hospital, but fails to actually
10 identify the particular regulation that provides the framework for the policy.

11 The Court takes judicial notice of the CDCR’s Operations Manual pursuant to Federal
12 Rule of Evidence 201(c). In his Declaration, Defendant Stratton states that one of the reasons
13 for the delay in transporting Plaintiff was the need to “pull” Plaintiff’s “central file” that is “kept
14 in a central locked area which is not staffed at night.” (See Stratton Decl. at ¶¶ 5-6.) In
15 reviewing the CDCR’s Operations Manual, it appears that this procedure as outlined by
16 Defendant Stratton is only mandatory when the request for removal occurs “during normal work
17 hours.” See CDCR Operations Manual § 62070.9.2. It is undisputed that the events that are the
18 basis for this action occurred during the night, which is not typical “work hours.”

19 When a request for temporary removal for medical reasons is made, CDCR form 7252
20 “Request for Authorization of Temporary Removal for Medical Treatment” is submitted by the
21 medical staff. See CDCR Operations Manual § 62070.9.3. This form was completed by Dr. Naz
22 and signed by Defendant Ryan. (See Defs.’ Ex. 7, CDCR Form 7252 dated June 11, 2005.) In
23 this document, it appears that Dr. Naz writes under “description of condition suggesting
24 removal” that Plaintiff has severe [right upper quadrant] abdominal pain, tenderness [rule out]
25 liver laceration/liver rupture, severe [shortness of breath],” and “possible pneumothorax.” (*Id.*)

26 Defendants claim that there is “no evidence they knew Plaintiff had a punctured lung.”
27 (Defs.’ P&A’s in Supp. of Summ. J. at 14.) However, as stated above, Defendant Ryan signed
28 the request for temporary removal that indicated Plaintiff had a “possible pneumothorax.”

1 (Def.' Ex. 7, CDCR Form 7252 dated June 11, 2005.) The definition of a pneumothorax is a
2 "condition in which air or other gas is present in the pleural cavity" which occurs due to a
3 number of conditions including a "puncture of the chest wall or is induced as a therapeutic
4 measure to collapse the lung." Merriam Webster's Medical Dictionary, available at
5 <http://medical.merriam-webster.com/medical/pneumothorax>.

6 Dr. Naz lists a variety of concerns that would appear to dispute Defendants' contentions
7 that Plaintiff's medical condition did not qualify as an emergency. Moreover, there is evidence
8 in the record to suggest that these Defendants were aware that Plaintiff may have suffered a
9 punctured or collapsed lung even if it was not definitively diagnosed until several hours later
10 after he was transported to the hospital. Finally, the CDCR's Operations Manual appears to
11 dispute Defendant Stratton's declaration that all the steps he took in processing Plaintiff's
12 transfer to the hospital, which allegedly caused a four hour delay in Plaintiff receiving medical
13 attention at the hospital, were mandatory. In fact the Operations Manual suggests that in
14 circumstances like the ones here, many of the steps that were taken that allegedly caused a delay
15 of several hours could have been avoided.

16 Accordingly, the Court finds that there are triable issues of material fact as to whether
17 Defendants Ryan, Ochoa and Stratton were deliberately indifferent to Plaintiff's serious medical
18 needs in violation of his Eighth Amendment rights. Defendant Ryan, Ochoa and Stratton's
19 Motion for Summary Judgment as to Plaintiff's Eighth Amendment medical care claims is
20 **DENIED.**

21 3. *Claims against Defendant Pegues*

22 Defendant Pegues, who has filed a joinder to Defendants' Motion, argues that he cannot
23 be held liable for deliberate indifference to Plaintiff's medical needs. Specifically, Defendant
24 Pegues, as an investigator for the Office of the District Attorney for the County of Imperial,
25 declares that he had "no authority to transport, expedite the transportation of, or delay the
26 transportation of an inmate at Calipatria State Prison to an outside hospital." (*See Pegues*
27 *Declaration at ¶ 10.*) Plaintiff, in response, argues that Defendant Pegues has not been
28 forthcoming and has been evasive in his discovery responses. (*See Pl.'s Suppl. Decl. in Support*

1 of Pl.’s Amd. Opp’n at 2-4.) Plaintiff also states that “the primary claim and allegation against
2 Defendant Pegues is that subsequent to his arrival at CAL and witnessing my gross physical
3 condition, Defendant Pegues purposefully ignored and failed to respond to my severe pain and
4 medical need” by failing to arrange transportation to the hospital. (*Id.* at 4.) However,
5 Defendant Pegues was not under the authority of the CDCR and there is no evidence in the
6 record to support the claim that he had the authority, as an employee of the County of Imperial,
7 to remove an inmate from the prison. Moreover, Plaintiff offers no evidence to dispute
8 Defendant Pegues’ assertion that he “was not involved in any decision to take plaintiff Rodney
9 Wayne Jones to an outside hospital.” (*See* Pegues Decl. at ¶ 9.)

10 Accordingly, Defendant Pegues’ Motion for Summary Judgment as to all claims against
11 him is **GRANTED**.

12 **G. Retaliation Claims**

13 1. *Claims against Defendants Jimenez and Ritter*

14 Defendants Jimenez and Ritter seek summary judgment as to Plaintiff’s retaliation claims
15 against them. (*See* Defs.’ P&A’s in Supp. of Mot. at 16-17.) Plaintiff claims that Defendants
16 Jimenez and Ritter retaliated against him by fabricating disciplinary reports. (*See* FAC at 10.)

17 “[A] viable claim of First Amendment retaliation entails five basic elements: (1) An
18 assertion that a state actor took some adverse action against an inmate (2) because of (3) that
19 prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First
20 Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.”
21 *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted) (citing *Resnick v.*
22 *Hayes*, 213 F.3d 443, 449 (9th Cir. 2000); *Barnett v. Centoni*, 31 F.3d 813, 815-16 (9th Cir.
23 1994)).

24 Defendants Jimenez and Ritter argue that the actions they took could not be considered
25 “adverse” to Plaintiff. Specifically, they maintain that the reports they drafted were not “first-
26 hand” accounts of the incident, but rather they “merely summarized information provided by
27 others, and provided information regarding photographs taken.” (*See* Defs.’ P&A’s in Supp. of
28 Mot. at 15.) Plaintiff argues that these reports were “embellished.” (*See* Pl.’s Amd. Opp’n at

1 11.) Because these reports were used in charging Plaintiff with a disciplinary infraction,
2 regardless of whether the reports were summaries of other reports and photographs, there is a
3 triable issue as to whether they could be viewed as “adverse actions” against Plaintiff. *Rhodes*,
4 408 F.3d at 567-68.

5 Defendants argue that even if there was an “adverse action” against Plaintiff, there was
6 a “legitimate correctional goal in having an incident commander summarize first-hand accounts
7 and gather the documents together.” (Defs.’ P&A’s in Supp. of Mot. at 15.) Courts must
8 “‘afford appropriate deference and flexibility’ to prison officials in the evaluation of proffered
9 legitimate penological reasons for conduct alleged to be retaliatory.” *Pratt v. Rowland*, 65 F.3d
10 802, 806-807 (quoting *Sandin v. Conner*, 515 U.S. 472, 482 (1995)). Thus, the burden is on the
11 prisoner to establish facts which demonstrate “that there were no legitimate correctional
12 purposes motivating the actions he complains of.” *Id.* at 808. Plaintiff offers no evidence to
13 meet his burden of proof to overcome Defendants’ assertion that they acted with a legitimate
14 penological purpose when they summarized the reports. Accordingly, Defendants’ Jimenez and
15 Ritter’s Motion for Summary Judgment as to Plaintiff’s retaliation claims is **GRANTED**.

16 2. *Claims against Defendant Price*

17 Plaintiff alleges Defendant Price interviewed him on June 13, 2005 regarding the alleged
18 assault by Defendant Sandoval. (See Pl.’s FAC at 12.) Plaintiff contends that “soon thereafter,”
19 Defendant Price, along with other “unidentified CAL staff members,” destroyed Plaintiff’s
20 “appliances and other tangible personal property” in retaliation “for the allegations made against
21 their fellow Officers.” (*Id.*)

22 Defendant Price argues that there is no evidence she took any “adverse action” against
23 Plaintiff. (See Defs.’ P&A’s in Supp. of Mot. at 16.) In her declaration, Defendant Price
24 declares that her duties as the Administrative Segregation Unit Lieutenant “did not include
25 processing inmates’ property when they were transferred from the general population to
26 Administrative Segregation.” (Price Decl. at ¶ 3.) Moreover, Defendant Price declares that she
27 “did not destroy any of inmate Jones’ property.” (*Id.* at 4.) Plaintiff disputes this claim and
28 states “the issue here is Defendant Price’s act of destroying Plaintiff’s personal property in

1 retaliation for Plaintiff exercising his First Amendment rights.” (Pl.’s Amd. Opp’n at 12.)
2 Plaintiff claims the timing of the alleged destruction of his property shortly after he was
3 interviewed by Defendant Price and her “refusal to respond to Plaintiff’s Request for Admissions
4 regarding CAL procedure for destroying inmates’ personal property” is sufficient to survive
5 Defendants’ motion for summary judgment. (*Id.*)

6 Plaintiff must provide sufficient evidence to show a causal connection between the
7 allegedly retaliatory conduct and the action that purportedly provoked the retaliation. In fact,
8 a plaintiff must produce sufficient evidence to show that the protected conduct was a
9 “substantial” or “motivating” factor in the defendant’s decision to act. *Soranno’s Gasco v.*
10 *Morgan*, 874 F.2d 1310, 1314 (9th Cir. 1989). Here, Plaintiff has not provided any evidence that
11 links Defendant Price to the alleged deprivation of his property beyond mere speculation.

12 Moreover, even if Plaintiff were able to provide evidence to support the first four
13 elements of his retaliation claim, Plaintiff has failed to produce evidence sufficient to show that
14 any of the named Defendants acted in the absence of a legitimate penological goal. *Barnett*, 31
15 F.3d at 815-16. As stated previously, courts must “afford appropriate deference and flexibility’
16 to prison officials in the evaluation of proffered legitimate penological reasons for conduct
17 alleged to be retaliatory.” *Pratt*, 65 F.3d at 807 (quoting *Sandin v. Conner*, 515 U.S. 472, 482
18 (1995)). Thus, the burden is on the prisoner to allege facts which demonstrate “that there were
19 no legitimate correctional purposes motivating the actions he complains of.” *Id.* at 808.

20 Plaintiff has not met his burden of proof to demonstrate that Defendant Price took an
21 “adverse action” against him or that any of the named Defendants acted without a legitimate
22 penological purpose. Accordingly, Defendant Price’s Motion for Summary Judgment as to
23 Plaintiff’s retaliation claims is **GRANTED**.

24 3. *Claims against Defendants Martinez, Valenzuela and Rangel*

25 After the alleged incident in this matter occurred, Plaintiff was transferred to Centinela
26 State Prison (“CEN”) where Defendants Martinez, Valenzuela and Rangel are correctional
27 officers. (*See* FAC at 14.) Plaintiff claims that these Defendants verbally harassed him,
28 interfered with his legal mail and denied him adequate access to the prison law library. (*Id.*)

1 Plaintiff claims that Defendant Valenzuela's acts of retaliation against him were
2 "stemming from the June 10, 2005 attack upon Plaintiff." (FAC at 14.) Plaintiff fails to identify
3 any evidence that would demonstrate how the "June 10, 2005 attack upon Plaintiff" would be
4 considered "protected conduct." *See Rhodes*, 408 F.3d at 567-68. As to Defendants Martinez
5 and Rangel, Plaintiff never makes clear the reason he believes that they were hindering his
6 access to the law library or interfering with his mail. Further, while he alleges they engaged in
7 this behavior, he does not point to any conduct on his part, other than his involvement in the
8 incident at Calipatria, that could be considered "protected conduct." *Id.* In essence, Plaintiff
9 fails to provide any reasoning in his First Amended Complaint as to what "started" the alleged
10 behavior on Martinez and Rangel's part other than his involvement in an assault at another
11 prison. As stated above, a plaintiff must produce sufficient evidence to show that the protected
12 conduct was a "substantial" or "motivating" factor in the defendant's decision to act. *Soranno's*
13 *Gasco v. Morgan*, 874 F.2d 1310, 1314 (9th Cir. 1989). Here, the "conduct" Plaintiff refers to
14 is these Defendants' alleged knowledge that Plaintiff had an incident involving force while he
15 was housed at another prison. (*See* FAC at 14.) There are no allegations, or evidence, to support
16 a claim that Valenzuela, Martinez or Rangel were retaliating against Plaintiff because Plaintiff
17 was engaging in "protected conduct." *Soranno's Gasco*, 874 F.2d at 1314.

18 In his Amended Opposition, Plaintiff now suggests that Defendants were retaliating
19 against him for filing administrative grievances. (*See* Pl.'s Amd. Opp'n at 15.) These claims
20 were not made in Plaintiff's First Amended Complaint and Plaintiff cannot simply seek to
21 introduce entirely new allegations in his Opposition in an attempt to rebut Defendants'
22 arguments. Unsworn allegations in the pleadings are not facts that can be used to defeat
23 summary judgment. *Keenan v. Allan*, 91 F.3d 1275, 1278 (9th Cir. 1996).

24 Accordingly, Defendants' Martinez, Rangel and Valenzuela's Motion for Summary
25 Judgment as to Plaintiff's retaliation claims is **GRANTED**.

26 **H. Access to Courts Claims**

27 Defendants Martinez, Rangel and Valenzuela also seek summary judgment on Plaintiff's
28 access to courts claim. Plaintiff appears to predicate this claim on the basis that these

1 Defendants' actions caused his state law claims to be "dismissed by the United States District
2 Court with Prejudice." (FAC at 15.) Defendants argue that Plaintiff has not connected any of
3 their actions to Plaintiff's alleged failure to timely file a lawsuit to protect his state law claims.
4 (See Defs.' P&A's in Supp. of Mot. at 16.) Plaintiff maintains in his Opposition that this Court
5 dismissed Plaintiff's state law claims with prejudice in this action. (See Pl.'s Amd. Opp'n at 14.)

6 Prison officials who deliberately interfere with the transmission of a prisoner's legal
7 papers, or deny him access to a legitimate means to petition for redress for the purpose of
8 thwarting his litigation may violate the prisoner's constitutionally protected right to access to the
9 court. *Lewis v. Casey*, 518 U.S. 343, 351-55 (1996); *Vandelft v. Moses*, 31 F.3d 794, 796 (9th
10 Cir. 1994). However, Plaintiff must be able to demonstrate a specific actual injury involving a
11 nonfrivolous legal claim, *Lewis*, 518 U.S. at 351-55, and must allege facts showing that he
12 "could not present a claim to the courts because of the [Defendants'] failure to fulfill [their]
13 constitutional obligations." *Allen v. Sakai*, 48 F.3d 1082, 1091 (9th Cir. 1994). An actual injury
14 will exist only if "a nonfrivolous legal claim had been frustrated or was being impeded." *Lewis*,
15 518 U.S. at 353 & n.3. Thus, an inmate must plead facts sufficient to show that prison officials
16 have actually frustrated or impeded a nonfrivolous attack on either his sentence or the conditions
17 of his confinement. *Id.* at 352-53.

18 In dismissing Plaintiff's state law claims on September 25, 2008, the Court stated that in
19 order to preserve his state law claims, Plaintiff had to "institute a suit within six months of
20 notice" of the rejection of his claims by California Victim Compensation and Government
21 Claims Board. (See Sept. 25, 2008 Order Adopting Report and Recommendation Granting in
22 Part and Denying in Part Defendants' Motion to Dismiss Plaintiff's Complaint at 8-9.) The
23 Court found that Plaintiff's deadline to institute an action based on his state law tort claims was
24 March 6, 2007 and that he failed to file this action until June 4, 2007. (*Id.*)

25 Plaintiff's access to courts claim fails for several reasons. First, it does not appear that
26 Plaintiff has suffered an "actual injury" as defined by the Supreme Court in *Lewis*. The right of
27 access is only guaranteed for certain types of claims: direct and collateral attacks upon a
28 conviction or sentence, and civil rights actions challenging the conditions of confinement.

1 *Lewis*, 518 U.S. at 354. Here, Plaintiff is challenging the dismissal of his state law tort claims
2 which is neither a challenge to his conviction nor an action that involves his civil rights.

3 Moreover, Plaintiff has failed to point to evidence in the record showing that these
4 Defendants played any role in the dismissal of Plaintiff's state law tort claims. Plaintiff claims
5 that Defendants were hindering his ability to bring the state law claims because of their ongoing
6 actions "which continued until June 28, 2007" which is the final date that his grievances against
7 these Defendants were exhausted. (*See* Pl.'s Amd. Opp'n at 13.) Plaintiff also relies on
8 evidence that Lieutenant Webb and Warden Giurbino, after an investigation, determined that
9 based on the actions of Defendants Rangel and Martinez, "Inmate JONES has been denied
10 meaningful and equal access to the courts by virtue of not being allowed to attend Law Library
11 commensurate with similarly situated inmates." (*See* Pl.'s Amd. Opp'n, Appendix "G,"
12 Confidential Supplement to Appeal, dated March 16, 2006, Log No. CEN-C-06-0098.) The
13 report goes on to state "Sgt. Martinez' written denial of access to the law library was
14 inappropriate and is not within his scope of authority." (*Id.*) Plaintiff notes in his Opposition
15 that Defendants failed to provide this report to the Court in support of their Motion for Summary
16 Judgment. (*See* Pl.'s Amd. Opp'n at 13.) Defendants argue that the addition of these grievances
17 does not "make any difference." (Defs.' P&A's in Supp. of Reply at 7.)

18 While the documentation supplied by Plaintiff is troubling, he has still failed to point to
19 any evidence in the record showing that there was any action on the part of Defendants that
20 caused him to bring his state law claims three months too late. Plaintiff's documentation
21 indicates that there were issues with these Defendants in hindering his access to the prison law
22 library in 2005 and 2006. However, Plaintiff did not file his state law claims until he filed this
23 action on June 4, 2007. Plaintiff does not point to any evidence in the record to support his
24 claim that these Defendants hindered his access to the courts when he filed his untimely state
25 law tort claims in 2007 or that they played any role in his access to the prison's law library
26 anytime after 2006.

27 The Court finds that no genuine issue of material fact exists to show that Defendants
28 Martinez, Valenzuela and Rangel violated Plaintiff's access to courts when his state law tort

1 claims were dismissed as untimely. “A plaintiff must allege facts, not simply conclusions, that
2 show that an individual was personally involved in the deprivation of his civil rights.” *Barren*
3 *v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). A person deprives another of a
4 constitutional right under section 1983, where that person ““does an affirmative act, participates
5 in another’ s affirmative acts, or omits to perform an act which [that person] is legally required
6 to do that causes the deprivation of which complaint is made.”” *Preschooler II v. Clark County*
7 *School Bd. of Trustees*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting *Johnson v. Duffy*, 588
8 F.2d 740, 743 (9th Cir. 1978)). The “requisite causal connection may be established” not only
9 by some kind of direct personal participation in the deprivation, but also by setting in motion “a
10 series of acts by others which the actor knows or reasonably should know would cause others
11 to inflict the constitutional injury.” *Id.* (citing *Johnson*, 588 F.2d at 743-44). Here, there is no
12 evidence in the record that demonstrates that any of these Defendants played any role in the
13 delay by Plaintiff in filing his state law tort claims. Moreover, Plaintiff has failed to show that
14 he suffered an “actual injury” as defined by *Lewis*. Thus, Defendants’ Martinez, Valenzuela and
15 Rangel’s Motion for Summary Judgment as to Plaintiff’s access to courts claim is **GRANTED**.

16 **V.**

17 **REMAINING CLAIMS AND DEFENDANTS**

18 The following will set forth the remaining claims and Defendants in this matter: (1)
19 Plaintiff’s Eighth Amendment excessive force claims against Zills, Schommer, Ortiz, Rodiles,
20 Mejia, Sandoval and Andalon; (2) Plaintiff’s Eighth Amendment failure to protect claims against
21 Defendants Jimenez, Zills, Schommer, Ortiz, Rodiles, Mejia, Sandoval, Castaneda and Bell; (3)
22 Plaintiff’s Eighth Amendment deliberate indifference to serious medical needs claims against
23 Ryan, Ochoa, Mejia, Bell and Stratton; and (4) Plaintiff’s First Amendment retaliation claims
24 against Defendants Zills, Schommer, Ortiz, Rodiles, Wells and Flores.

25 ///

26 ///

27 ///

28 ///

1 **VI.**

2 **CONCLUSION AND ORDER**

3 For all the reasons set forth above, the Court hereby:

4 (1) **GRANTS** Defendants' Motion for Summary Judgment as to Plaintiff's Eighth
5 Amendment failure to protect claims against Defendants Wells, Cosio and Andalon pursuant to
6 FED.R.CIV.P. 56;

7 (2) **DENIES** Defendants' Motion for Summary Judgment as to Plaintiff's Eighth
8 Amendment failure to protect claims against Defendants Castenada, Jimenez and Bell pursuant
9 to FED.R.CIV.P. 56;

10 (3) **GRANTS** Defendants' Motion for Summary Judgment as to Plaintiff's Eighth
11 Amendment excessive force claims against Defendant Castenada pursuant to FED.R.CIV.P. 56;

12 (4) **DENIES** Defendants' Motion for Summary Judgment as to Plaintiff's Eighth
13 Amendment deliberate indifference to serious medical needs claims against Defendants Bell,
14 Ryan, Ochoa and Stratton pursuant to FED.R.CIV.P. 56;

15 (5) **GRANTS** Defendants' Motion for Summary Judgment as to Plaintiff's Eighth
16 Amendment deliberate indifference to serious medical needs claims against Defendants Jimenez,
17 Wells, Castaneda, and Cosio pursuant to FED.R.CIV.P. 56;

18 (6) **GRANTS** Defendant Pegues' Motion for Summary Judgment as to all claims
19 against him pursuant to FED.R.CIV.P. 56;

20 (7) **GRANTS** Defendants' Motion for Summary Judgment as to Plaintiff's retaliation
21 claims against Defendants Jimenez, Ritter, Price, Martinez, Rangel and Valenzuela pursuant to
22 FED.R.CIV.P. 56; and

23 (8) **GRANTS** Defendants' Motion for Summary Judgment as to Plaintiff's access to
24 courts claims against Defendants Martinez, Valenzuela and Rangel pursuant to FED.R.CIV.P. 56.

25 ///

26 ///


27 ///

28

1 (9) Because there are no remaining claims against Defendants Pegues, Baily, Cosio,
2 Ritter, Harmon, Duarte, Price, Martinez, Valenzuela and Rangel, and there is no just reason for
3 delay, the Clerk of Court is directed to enter a final judgment as to these Defendants pursuant
4 to FED.R.CIV.P. 54(b).

5 **IT IS SO ORDERED.**

6 DATED: January 24, 2011

7 
8 Jan M. Adler
9 U.S. Magistrate Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28