

capacity. The defendants now seek clarification of the Final Judgment to determine whether any claims remain.

I. BACKGROUND

The background of the case is set out in the Court's prior Memorandum Opinion and Order (Dkt. No. 53). Kennard's claim against Treveno asserts that Treveno was escorting Kennard through the cell block, and that Treveno knew that another inmate had threatened Kennard and failed to take adequate precautions to protect Kennard from assault. Treveno has not moved to dismiss, but this Court may *sua sponte* dismiss the complaint if it fails to state a cognizable claim for relief. *See* 28 U.S.C. § 1915A.

II. ANALYSIS

As discussed in the previous Memorandum Opinion and Order, the Eleventh Amendment bars suit against Treveno for damages in his official capacity. For the reasons that follow, Kennard's claim against Treveno in his individual capacity also fails.

To state a claim for failure to protect under Section 1983, Kennard must show that Treveno's conduct rose to the level of deliberate indifference. To show deliberate indifference, Kennard must plead facts showing that Treveno "knew of and disregarded a substantial risk of serious harm." *Alderson v. Concordia Parrish Correctional Facility*, 848 F.3d 415, 420 (5th Cir. 2017)(citing *Domino v. Texas Dep't of Criminal Justice*, 239 F.3d 752, 755 (5th Cir. 2001)).

While Kennard alleges that Treveno was aware of the threats to Kennard, he does not contend that Treveno left him unattended in the presence of the other inmate. Rather, Kennard admits that Treveno was escorting him when he was attacked and that Treveno

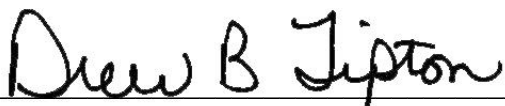
acknowledged the presence of the other inmate. Kennard contends that Treveno failed to treat the threats with sufficient seriousness and failed to adequately protect him. While these allegations might show that Treveno was negligent, they do not raise a reasonable inference that Treveno simply disregarded the threat to Kennard. Mere negligence does not rise to the level of a constitutional violation. *Farmer v. Brennan*, 511 U.S. 825, 835, 114 S.Ct. 1970, 1978, 128 L.Ed.2d 811 (1994).

III. CONCLUSION

The defendants' Motion for Clarification (Dkt. No. 55) is **GRANTED**. The Final Judgment (Dkt. No. 54) is clarified as discussed above to include any individual capacity claim for deliberate indifference against Defendant Brandon P. Treveno.

It is SO ORDERED.

Signed on April 4, 2023.



DREW B. TIPTON
UNITED STATES DISTRICT JUDGE