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

ALVARO HERNANDEZ,

Plaintiff,

No. 2:10-cv-2446 LKK CKD P

vs.

K. BOUWMAN, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a California prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. Plaintiff’s remaining claim is that defendant McDaniels (defendant) violated plaintiff’s rights arising under the Eighth Amendment by failing to protect plaintiff from inmate violence. Defendant has filed a motion for summary judgment.

I. Summary Judgment Standard

Summary judgment is appropriate when it is demonstrated that there exists “no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c).

Under summary judgment practice, the moving party always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of “the pleadings, depositions, answers to interrogatories, and admissions

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

3 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)). “[W]here the
4 nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary
5 judgment motion may properly be made in reliance solely on the ‘pleadings, depositions, answers
6 to interrogatories, and admissions on file.’” Id. Indeed, summary judgment should be entered,
7 after adequate time for discovery and upon motion, against a party who fails to make a showing
8 sufficient to establish the existence of an element essential to that party’s case, and on which that
9 party will bear the burden of proof at trial. See id. at 322. “[A] complete failure of proof
10 concerning an essential element of the nonmoving party’s case necessarily renders all other facts
11 immaterial.” Id. In such a circumstance, summary judgment should be granted, “so long as
12 whatever is before the district court demonstrates that the standard for entry of summary
13 judgment, as set forth in Rule 56(c), is satisfied.” Id. at 323.

14 If the moving party meets its initial responsibility, the burden then shifts to the
15 opposing party to establish that a genuine issue as to any material fact actually does exist. See
16 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to
17 establish the existence of this factual dispute, the opposing party may not rely upon the
18 allegations or denials of its pleadings but is required to tender evidence of specific facts in the
19 form of affidavits, and/or admissible discovery material, in support of its contention that the
20 dispute exists. See Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at 586 n.11. The opposing party
21 must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome
22 of the suit under the governing law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
23 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir.
24 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could
25 return a verdict for the nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433,
26 1436 (9th Cir. 1987).

1 In the endeavor to establish the existence of a factual dispute, the opposing party
2 need not establish a material issue of fact conclusively in its favor. It is sufficient that “the
3 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
4 versions of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631. Thus, the “purpose of summary
5 judgment is to ‘pierce the pleadings and to assess the proof in order to see whether there is a
6 genuine need for trial.’” Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory
7 committee’s note on 1963 amendments).

8 In resolving the summary judgment motion, the court examines the pleadings,
9 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
10 any. Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson,
11 477 U.S. at 255. All reasonable inferences that may be drawn from the facts placed before the
12 court must be drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587.
13 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to
14 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen
15 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir.
16 1987). Finally, to demonstrate a genuine issue, the opposing party “must do more than simply
17 show that there is some metaphysical doubt as to the material facts Where the record taken
18 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no
19 ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted).

20 II. Plaintiff’s Allegations

21 In his December 27, 2011 first amended complaint, plaintiff alleges as follows:

22 1. On June 10, 2008 defendant was the floor officer in charge of T-wing at the
23 California Medical Facility (CMF). T-wing is separated from other sections of CMF by a gate
24 that can only be opened by correctional staff.

25 2. At some point that day, inmate Hill spoke with defendant from outside the T-
26 wing gate. He appeared to be asking defendant to open the gate. Hill was housed in V-Wing and

1 was not permitted to be in T-wing. Defendant opened the gate, and allowed Hill to enter
2 unsupervised.

3 3. After gaining entrance, Hill attacked plaintiff. During the attack, Hill knocked
4 out two of plaintiff's teeth.

5 4. Defendant heard plaintiff yell, exited his office and found plaintiff lying on the
6 ground.

7 III. Eighth Amendment Standard For Protecting Inmates From Violence

8 The Eighth Amendment's prohibition of cruel and unusual punishment imposes
9 on prison officials, among other things, a duty to "take reasonable measures to guarantee the
10 safety of the inmates." Farmer v. Brennan, 511 U.S. 825, 832 (1991) (quoting Hudson v. Palmer,
11 468 U.S. 517, 526-27 (1984)). An inmate's Eighth Amendment rights can only be violated by a
12 prison official if that official exposes an inmate to a "substantial risk of serious harm," while
13 displaying "deliberate indifference" to that risk. Id. at 834. An official is deliberately indifferent
14 if he or she "knows of and disregards an excessive risk to inmate health or safety; the official
15 must both be aware of facts from which the inference could be drawn that a substantial risk of
16 serious harm exists, and he must also draw the inference. Id. at 837.

17 In the context of failure to protect an inmate from a known threat to safety,
18 deliberate indifference does not require an express intent to punish. Berg v. Kincheloe, 794 F.2d
19 457, 459 (9th Cir. 1986). The standard also does not require that the official believe "to a moral
20 certainty that one inmate intends to attack another at a given place at a time certain before that
21 officer is obligated to take steps to prevent such an assault. But, on the other hand, he must have
22 more than a mere suspicion that an attack will occur." Id.

23 IV. Defendant's Argument And Analysis

24 Defendant argues there is no genuine issue of material fact as to whether he was
25 deliberately indifferent to a serious risk of harm to plaintiff. Defendant presents his own
26 affidavit. In the affidavit, he asserts as follows:

1 1. On June 10, 2008, defendant worked as a housing officer in T-wing. He was
2 not normally assigned to T-wing. His duties included controlling the movements of inmates.
3 When inmates returned from breakfast that day, it was defendant who allowed the inmates to
4 enter through the T-wing gate. Because defendant was not normally assigned to T-wing he was
5 not familiar with the inmates living there. Defendant locked the gate behind the inmates that
6 entered after breakfast.

7 2. Defendant admits that inmates are generally not permitted inside housing units
8 other than their own, unless the inmate works in the housing unit. However, because he was not
9 regularly assigned to T-wing, it was difficult for defendant to determine who lived there.

10 3. At approximately 10:10 a.m., while working in the T-wing office, defendant
11 heard someone yell. Defendant and another officer exited the office and saw plaintiff lying on
12 the floor with inmate Hill standing across from him. Both inmates were handcuffed and
13 questioned and then taken to the Unit IV Sergeant.

14 4. Defendant does not remember letting inmate Hill into T-wing and was not
15 familiar with Hill before the altercation with plaintiff. Prior to the incident with plaintiff,
16 defendant had no knowledge of any animosity between plaintiff and inmate Hill, nor did
17 defendant know Hill was a threat to plaintiff's safety.

18 Defendant also presents plaintiff's answers to defendant's interrogatories in which
19 plaintiff admits as follows:

20 1. The altercation with inmate Hill took place in front of the T-wing office. Hill
21 attacked plaintiff without provocation. Resp. to Interrog. #13.

22 2. Plaintiff did not hear the conversation he alleges occurred between defendant
23 and inmate Hill prior to defendant admitting Hill into T-wing. Resp. to Interrog. #16.

24 Finally, defendant presents the transcript of plaintiff's deposition. At his
25 deposition, plaintiff indicated he had met inmate Hill previously at CMF, and he did not know
26 why Hill attacked plaintiff. RT 17.

1 Plaintiff does not present any evidence in opposition to defendant's motion.

2 For purposes of defendant's motion, the court accepts plaintiff's assertion that if
3 defendant had not permitted inmate Hill entrance into T-wing, plaintiff would not have been
4 attacked by Hill. However, defendant is still entitled to summary judgment as there is nothing
5 before the court suggesting defendant had any reason to suspect that allowing Hill to enter T-
6 wing posed a substantial risk of serious harm to plaintiff. Most importantly, there is nothing
7 before the court suggesting what Hill's motive for attacking plaintiff was or that Hill was known
8 to be dangerous in general, let alone that defendant knew that Hill posed a threat to plaintiff. For
9 these reasons, the court will recommend that defendant's motion for summary judgment be
10 granted, and this case be closed.

11 Accordingly, IT IS HEREBY RECOMMENDED that:

- 12 1. Defendant's motion for summary judgment (Dkt. No. 66) be granted;
- 13 2. Defendant McDaniels be dismissed from this action; and
- 14 3. This case be closed.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
17 days after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
20 shall be served and filed within fourteen days after service of the objections. The parties are
21 advised that failure to file objections within the specified time may waive the right to appeal the
22 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 Dated: November 27, 2012

24 
25 CAROLYN K. DELANEY
26 UNITED STATES MAGISTRATE JUDGE