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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GORDON BULLOCK,)	NO. CV 15-2070 PA (AS)
)	
Plaintiff,)	
)	
v.)	ORDER ACCEPTING FINDINGS,
)	
S. JOHNSON, et al.,)	CONCLUSIONS AND RECOMMENDATIONS
)	
Defendants.)	OF UNITED STATES MAGISTRATE JUDGE
)	

Pursuant to 28 U.S.C. section 636, the Court has reviewed the Third Amended Complaint, all of the records herein, and the Second Report and Recommendation of a United States Magistrate Judge. After having made a de novo determination of the portions of the Second Report and Recommendation to which Objections were directed, the Court finds that Defendant Johnson's Objections to the Second Report and Recommendation are without merit and do not cause the Court to reconsider its decision to accept the Magistrate Judge's conclusions and recommendations.

Johnson primarily objects to the Second Report and Recommendation's conclusion that there was a disputed issue of fact as to whether he

1 acted with a retaliatory motive. (Objections at 4-9; Dkt. No. 66).
2 Initially, Johnson asserts that Plaintiff failed to create a genuine
3 issue of material fact because he relies only on his "own self-serving
4 declaration." (Id. at 5). However, "declarations are often
5 self-serving, and this is properly so because the party submitting it
6 would use the declaration to support his or her position." Nigro v.
7 Sears, Roebuck & Co., 784 F.3d 495, 497 (9th Cir. 2015); Securities &
8 Exch. Comm'n v. Phan, 500 F.3d 895, 909 (9th Cir. 2007). As the Second
9 Report and Recommendation explained, this Court "may not disregard a
10 piece of evidence at the summary judgment stage solely based on its
11 self-serving nature." Nigro, 784 F.3d at 497; Phan, 500 F.3d at 909.
12 Rather, "[t]hat an affidavit is self-serving bears on its credibility,
13 not on its cognizability for purposes of establishing a genuine issue
14 of material fact[,]" United States v. Shumway, 199 F.3d 1093, 1104 (9th
15 Cir. 1999); Phan, 500 F.3d at 909, and "a court ruling on a motion for
16 summary judgment may not engage in '[c]redibility determinations' or
17 'the weighing of evidence,' as those are functions reserved for the
18 jury." Manley v. Rowley, 847 F.3d 705, 711 (9th Cir. 2017) (quoting
19 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)).
20

21 Johnson also complains that the Second Report and Recommendation
22 "relied almost exclusively on the proximity between Plaintiff's
23 submission of 602 Appeal 2732 and his placement in [administrative
24 segregation]" in concluding there was a genuine issue of material fact
25 as to Johnson's retaliatory intent even though "temporal proximity
26 alone is insufficient to establish retaliatory intent[.]" (Objections
27 at 5-6). But as the "almost exclusively" comment implicitly
28 acknowledges, the Second Report and Recommendation did not rely solely

1 on temporal proximity to conclude that Plaintiff raised a triable issue
2 of material fact as to Johnson's motive for placing Plaintiff in
3 administrative segregation. Instead, the Second Report and
4 Recommendation found that Plaintiff had presented evidence not just of
5 proximity in time between protected speech and the alleged retaliation,¹
6 but also evidence that Johnson expressed opposition to Plaintiff's
7 speech when he sought to have Plaintiff tear up a complaint to the
8 Warden and threatened Plaintiff when Plaintiff refused to do so, and
9 that a jury could reasonably conclude Johnson's stated reason for
10 placing Plaintiff in administrative segregation was pretextual.² (See
11 Dkt. No. 65 at 21-23). Such evidence is more than sufficient to create

12
13 ¹ Plaintiff's grievances and complaints about staff misconduct
14 constitute protected speech. Shepard v. Quillen, 840 F.3d 686, 689
15 (9th Cir. 2016); Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir.
2012).

16 ² The Objections reiterate Johnson's argument that 15 C.C.R. §
17 3335(a) required him to place Plaintiff in administrative segregation
18 because Plaintiff's 2732 Appeal included the phrase "possibility [of]
19 death" by staff. (Objections at 6-7). At the time of the events in
20 issue, Section 3335(a) provided:

21 When an inmate's presence in an institution's general inmate
22 population presents an immediate threat to the safety of the
23 inmate or others, endangers institution security or
24 jeopardizes the integrity of an investigation of an alleged
25 serious misconduct or criminal activity, the inmate shall be
26 immediately removed from general population and be placed in
27 administrative segregation.

28 15 C.C.R. § 3335(a) (2014). However, as the Second Report and
Recommendation explained, a fair reading of the 2732 Appeal does not
suggest that Plaintiff's presence in the general inmate population
presented a threat to Plaintiff or the institution. Rather, Plaintiff
was complaining about his work and cell assignments being detrimental
to his health, which are issues that could have been remedied without
Plaintiff's removal from the general prison population. A jury
therefore could reasonably conclude that Johnson's reliance on Section
3335(a) was pretextual. See Shepard, 840 F.3d at 689-90.

1 a genuine issue of material fact as to whether Johnson acted with
2 retaliatory intent in placing Plaintiff in administrative segregation.
3 Shepard v. Quillen, 840 F.3d 686, 690 (9th Cir. 2016); see also
4 McCollum v. Cal. Dep't of Corr. & Rehab., 647 F.3d 870, 882 (9th Cir.
5 2011) (Absent direct evidence of a retaliatory motive, "[t]o survive
6 summary judgment, [Plaintiff] was required to present circumstantial
7 evidence of motive, which usually includes: '(1) proximity in time
8 between protected speech and the alleged retaliation; (2) [that] the
9 [defendant] expressed opposition to the speech; [or] (3) other evidence
10 that the reasons proffered by the [defendant] for the adverse . . .
11 action were false and pretextual.'" (quoting Allen v. Iranon, 283 F.3d
12 1070, 1077 (9th Cir. 2002))); Slice v. Ferriter, 448 F. App'x 725, 727
13 (9th Cir. 2011) ("Evidence of pretextual justification for adverse
14 action is circumstantial evidence of retaliatory intent, and therefore
15 creates a genuine issue of material fact precluding summary judgment."
16 (citation omitted)).

17
18 Johnson's remaining objections are without merit and do not warrant
19 further discussion.

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21 No party challenges the denial of Plaintiff's summary judgment
22 motion or the dismissal of this action against Defendant T. Brekke
23 without prejudice.³

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27 ³ On October 1, 2018, Plaintiff filed a response to Defendant
28 Johnson's objections to the Second Report and Recommendation,
reiterating the arguments raised in his opposition to Defendant
Johnson's motion for summary judgment. (Dkt. No. 67).

