



1 assigned to the plant perform a variety of functions such as dismantling old electronics into  
2 their component parts so those parts can be recycled. Inmates are paid pursuant to an hourly  
3 wage scale which ranges from a low known as “Fifth Grade” to a high known as “First  
4 Grade.” Inmates begin at Fifth Grade and can improve to First Grade based on longevity and  
5 good performance.

6 Inmates assigned to the plant work with components that are valuable contraband  
7 within the general USP Atwater population. Inmates often attempt to smuggle parts from the  
8 plant into the general populace. Many smuggling attempts consist of an inmate bundling  
9 small components together to allow for easier concealment and transportation. At all  
10 relevant times, Defendants Sahota and Morris were Correctional Officers assigned to the  
11 plant as Recycling Factory Technicians.

12 Plaintiff began working at the plant in May 2005. In April 2006, Plaintiff resigned  
13 from his position. Plaintiff returned to the plant in May 2007. Upon his return, Plaintiff  
14 started at Fifth Grade. Plaintiff filed an administrative grievance on June 13, 2007, arguing  
15 he should have been allowed to return at the higher grade he obtained during his previous  
16 stint at the plant. The sequence of events following that grievance is disputed by the parties.

17 According to Defendants, on July 2, 2007, Defendant Sahota conducted an inspection  
18 of Plaintiff’s work area. In that work area, Defendant Sahota found two speakers, six  
19 magnets, and eight small electric motors wrapped in plastic. There was no legitimate reason  
20 for these items to be in Plaintiff’s work area and there was no legitimate reason for the items  
21 to be wrapped together. Sahota prepared a written memorandum to the Factory Manager and  
22 issued a verbal warning to Plaintiff. On August 22, 2007, Defendant Sahota conducted  
23 another inspection of Plaintiff’s work area and found two speakers, six small electric motors,  
24 one on/off switch, one small light, and some copper wire. These items were wrapped in  
25 plastic and concealed beneath other equipment. As a result of this discovery, Plaintiff was  
26 removed from his work assignment at the plant.

27 According to Plaintiff, Defendant Sahota did not locate contraband in his work area  
28 on July 2, 2007, did not issue him a verbal warning, and did not locate contraband in his

1 work area on August 2, 2007. Instead, *all* of these events are total fabrications by Defendant  
2 Sahota. Plaintiff believes Defendant Sahota fabricated these events in retaliation for Plaintiff  
3 filing a grievance regarding his pay.

4         Despite being dismissed from the plant in 2007, Plaintiff obtained reassignment to the  
5 plant in May 2008. Defendant Morris, who at that time was responsible for assigning  
6 inmates to particular duties, assigned Plaintiff to work at the copper cleaning station. The  
7 copper cleaning station is one of the less desirable assignments at the plant. Defendant  
8 Morris alleges Plaintiff received this assignment simply “because the plant needed a worker  
9 at that station at the time.” (Doc. 29-1 at 10). Plaintiff alleges, however, that Defendant  
10 Morris created the vacancy at the copper cleaning station by transferring the inmate  
11 occupying the position at that time just so she could place Plaintiff there “as reprisal for filing  
12 grievances.” (Doc. 32 at 10).

13         Plaintiff eventually filed suit against Defendants Sahota and Morris, asserting claims  
14 for retaliation in violation of the First Amendment.<sup>2</sup> The parties proceeded with discovery  
15 and Defendants now seek summary judgment. According to Defendant Sahota, the discovery  
16 of contraband at Plaintiff’s work station provided a legitimate correctional reason for  
17 Plaintiff’s dismissal from his employment at the plant. And according to Defendant Morris,  
18 Plaintiff had no right to a particular work assignment upon his return to the plant and his  
19 assignment to the copper cleaning station was permissible. Plaintiff filed an opposition  
20 arguing genuine disputes of material fact exist regarding the underlying events and the  
21 motivation for Defendants’ actions.

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27         <sup>2</sup> Plaintiff originally asserted a variety of other claims but those claims were  
28 previously dismissed.

1 ANALYSIS

2 **I. Standard For Summary Judgment**

3 Summary judgment is appropriate when “the movant shows that there is no genuine  
4 dispute as to any material fact.” Fed. R. Civ. P. 56(a). The Court must view the facts and  
5 draw reasonable inferences in the light most favorable to the party opposing the summary  
6 judgment motion. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 588  
7 (1986) (inferences drawn must be reasonable in light of competing inferences). If the non-  
8 moving party bears the burden of proof at trial, the moving party’s summary judgment  
9 motion need only highlight the absence of evidence supporting the non-moving party’s  
10 claims. *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001).

11 **II. Defendant Sahota Is Not Entitled To Summary Judgment**

12 “Within the prison context, a viable claim of First Amendment retaliation entails five  
13 basic elements: (1) An assertion that a state actor took some adverse action against an inmate  
14 (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the  
15 inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably  
16 advance a legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir.  
17 2005). Defendant Sahota seeks summary judgment by arguing Plaintiff cannot establish he  
18 was dismissed from employment at the plant “because of” the grievance he filed or that  
19 Plaintiff’s dismissal “lacked any correctional purpose.” (Doc. 29-1 at 14). Viewing the  
20 evidence in the light most favorable to Plaintiff requires Defendant Sahota’s motion be  
21 denied.

22 According to Plaintiff’s evidence, Defendant Sahota did not find any contraband at  
23 Plaintiff’s work station on July 2, 2007 or on August 2, 2007. Instead, Defendant Sahota  
24 wanted to retaliate against Plaintiff for filing grievances so he fabricated events and records  
25 to create a basis for dismissing Plaintiff from his employment. If Plaintiff’s version of events  
26 is believed (*i.e.*, contraband was never located at Plaintiff’s work station), Defendant Sahota  
27 had no basis to dismiss Plaintiff. Alternatively, if Defendant Sahota’s version of events is  
28 believed, Plaintiff’s claim fails. At summary judgment the Court cannot “make credibility

1 determinations or weigh conflicting evidence.” *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d  
2 978, 984 (9th Cir. 2007). A reasonable fact finder could accept Plaintiff’s version of events  
3 and conclude Plaintiff’s dismissal was “because of” his grievance and his dismissal did not  
4 advance a legitimate goal. Thus, summary judgment must be denied.<sup>3</sup>

### 5 **III. Defendant Morris Is Not Entitled To Summary Judgment**

6 Plaintiff claims Defendant Morris retaliated against him by assigning him to the  
7 copper cleaning station upon his return to the plant in May 2008. Defendant Morris seeks  
8 summary judgment by arguing Plaintiff had no right to a particular work assignment and his  
9 assignment was permissible. Thus, Defendant Morris argues Plaintiff cannot prove his work  
10 assignment was “because of” his grievance activity nor can he establish the work assignment  
11 lacked “a legitimate correctional goal.” *Rhodes*, 408 F.3d at 567-68.

12 Plaintiff’s declaration states Defendant Morris assigned him to the copper cleaning  
13 station “as reprisal for filing grievances.” (Doc. 34 at 7). Plaintiff also attached declarations  
14 by various other inmates indirectly supporting this claim. Those declarations allege  
15 Defendants Sahota and Morris threatened retaliation against inmates who submitted  
16 grievances. (*See, e.g.*, doc. 34 at 32). This is not direct evidence that Plaintiff’s undesirable  
17 work assignment was retaliatory, but it supports such an inference. *Easter v. Am. W.*  
18 *Financial*, 381 F.3d 948, 959 (9th Cir. 2004) (summary judgment is not appropriate when  
19 “contrary inferences may be drawn from the evidence as to material issues”); *Thomas v.*

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21 <sup>3</sup> Defendant Sahota also argues he is entitled to summary judgment based on qualified  
22 immunity. A government official “is not entitled to qualified immunity if: (1) the facts show  
23 that the officer’s conduct violated a plaintiff’s constitutional rights; and (2) those rights were  
24 clearly established at the time of the alleged violation.” *Millender v. County of Los Angeles*,  
25 620 F.3d 1016, 1023 (9th Cir. 2010). Given the fundamental factual disagreement regarding  
26 the existence of contraband in Plaintiff’s work area, Defendant Sahota is not entitled to  
27 qualified immunity. Viewing the facts in the light most favorable to Plaintiff, Defendant  
28 Sahota had no basis other than retaliation for dismissing Plaintiff from employment. If true,  
this constituted a violation of Plaintiff’s First Amendment rights. And the “prohibition  
against retaliatory punishment is clearly established law in the Ninth Circuit, for qualified  
immunity purposes.” *Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995). Therefore,  
Defendant Sahota is not entitled to summary judgment based on qualified immunity.

1 *Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010) (court must “construe liberally motion papers  
2 and pleadings filed by *pro se* inmates”). There is a genuine dispute of material fact regarding  
3 Defendant Morris’ rationale for assigning Plaintiff to the copper cleaning station and  
4 summary judgment will be denied.<sup>4</sup>

5 **IV. Defendants’ Motion to Strike Will Be Denied**

6 After Defendants filed their reply in support of the motion for summary judgment,  
7 Plaintiff filed a “Response to Defendants’ Reply” and a “Second Declaration.” These  
8 documents responded to statements in Defendants’ reply. Defendants are correct that these  
9 two filings were not authorized and were improper. But the Court did not rely on these  
10 filings when ruling on the motion for summary judgment. Thus, the motion to strike will be  
11 denied as moot.

12 **V. Plaintiff’s Motion Regarding Witness Intimidation**

13 Plaintiff seeks an order “directing the Defendants . . . to immediately refrain from  
14 witness intimidation on Plaintiff’s witnesses.” (Doc. 36 at 1). According to Plaintiff, a  
15 family member of another inmate informed Plaintiff’s family that officers at USP Atwater  
16 confronted one of Plaintiff’s witnesses and stated he would be fired from his work  
17 assignment if he assisted Plaintiff in prosecuting this suit. This evidence of witness  
18 intimidation is multiple levels of hearsay and is not sufficient evidence of improper behavior  
19 for the Court to conclude action is needed. The motion will be denied.

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26 <sup>4</sup> Like Defendant Sahota, Defendant Morris also claims she is entitled to summary  
27 judgment based on qualified immunity. Viewing the facts in the light most favorable to  
28 Plaintiff, Defendant Morris manipulated the work assignments to punish Plaintiff for his  
protected conduct. If true, these actions violated Plaintiff’s clearly established constitutional  
rights. Therefore, qualified immunity does not apply.

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Accordingly,

**IT IS ORDERED** the Motion for Summary Judgment (Doc. 29), Motion for Order Directing Defendants to Refrain from Witness Intimidation (Doc. 36), and Motion to Strike (Doc. 39) are **DENIED**.

Dated this 26th day of September, 2011.



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Roslyn O. Silver  
Chief United States District Judge