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7 **UNITED STATES DISTRICT COURT**
8 EASTERN DISTRICT OF CALIFORNIA
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10 IREN ANDERSON,
11 Plaintiff,

12 v.

13
14 RON D. HANSEN, et al.,
15 Defendants.
16

CASE No. 1:09-cv-01924-LJO-MJS (PC)

**FINDINGS AND RECOMMENDATIONS
GRANTING DEFENDANT HARTLEY'S
MOTION FOR SUMMARY JUDGMENT**

(ECF No. 62)

**FOURTEEN (14) DAY OBJECTION
DEADLINE**

17 **I. PROCEDURAL HISTORY**

18 Plaintiff Iren Anderson, a state prisoner proceeding pro se and in forma pauperis,
19 filed this civil rights action on November 2, 2009 pursuant to 42 U.S.C. § 1983. (ECF
20 No. 1.) This matter proceeds on the second amended complaint (ECF No. 19) on claims
21 of excessive force against Defendant Correctional Officer Hansen, failure to protect
22 against Defendant Warden Hartley, and failure to intervene against Defendant
23 Correctional Officer Lewis. (ECF No. 20.)

24 Pending before the Court is Defendant Hartley's motion for summary judgment.¹
25 (ECF No. 62.) Plaintiff has not filed opposition and the time to do so has expired. (ECF
26

27 ¹ Pursuant to Woods v. Carey, 684 F.3d 934 (9th Cir. 2012) and Rand v. Rowland, 154 F.3d 952 (9th Cir.
28 1998), Defendant notified Plaintiff of his rights, obligations and methods for opposing Defendant's motion.
(ECF No. 63.)

1 No. 73.)

2 The motion is now deemed submitted. Local Rule 230(l).

3 **II. FACTUAL BACKGROUND**

4 Plaintiff claims that during his incarceration at Avenal State Prison (ASP)
5 Defendant Correction Officer Hansen used excessive force against him, Defendant
6 Correctional Officer Lewis failed to intervene, and Defendant Warden Hartley failed to
7 protect him from Hansen's known propensity for excessive force.

8 Plaintiff alleges that:

9 On June 17, 2008, Plaintiff came to Work Exchange from Plant Ops. He was
10 strip-searched by Defendant Hansen. After the search was completed, Defendant
11 Hansen requested that Plaintiff turn around. Instead of complying, Plaintiff ran out of
12 Work Exchange to get rid of contraband (a letter and tobacco) he was carrying.

13 Defendant Lewis and another officer chased Plaintiff, who then went prone.
14 Defendant Hansen ran up and kicked Plaintiff in the face and stomped on his head.
15 Defendant Lewis placed Plaintiff in handcuffs. When asked why he had run away,
16 Plaintiff stated that he was carrying contraband. Defendant Hansen yelled at Plaintiff
17 and referred to him using derogatory terms. Defendant Hansen then proceeded to drag
18 Plaintiff by his feet through the yard on his face, slashing the left side of his face. He
19 also placed and kept his boot on Plaintiff's head until he was taken to the medical
20 treatment facility by another officer.

21 Plaintiff seeks a declaratory judgment, injunctive relief, punitive damages, and
22 compensatory damages.

23 **III. SUMMARY JUDGMENT STANDARD**

24 Any party may move for summary judgment, and the Court shall grant summary
25 judgment if the movant shows that there is no genuine dispute as to any material fact
26 and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a);
27 Washington Mutual Inc. v. U.S., 636 F.3d 1207, 1216 (9th Cir. 2011). Each party's
28 position, whether it be that a fact is disputed or undisputed, must be supported by (1)

1 citing to particular parts of materials in the record, including but not limited to
2 depositions, documents, declarations, or discovery; or (2) showing that the materials
3 cited do not establish the presence or absence of a genuine dispute or that the
4 opposing party cannot produce admissible evidence to support the fact. Fed. R. Civ. P.
5 56(c)(1). While the Court may consider other materials in the record not cited to by the
6 parties, it is not required to do so. Fed. R. Civ. P. 56(c)(3); Carmen v. San Francisco
7 Unified School Dist., 237 F.3d 1026, 1031 (9th Cir. 2001).

8 If the moving party meets its initial responsibility, the burden then shifts to the
9 opposing party to establish that a genuine issue as to any material fact actually does
10 exist. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

11 In attempting to establish the existence of this factual dispute, the opposing party
12 may not rely upon the denials of its pleadings, but is required to tender evidence of
13 specific facts in the form of affidavits, and/or admissible discovery material, in support of
14 its contention that the dispute exists. Fed. R. Civ. P. 56(c); Matsushita, 475 U.S. at 586
15 n.11. The opposing party must demonstrate that the fact in contention is material, i.e., a
16 fact that might affect the outcome of the suit under the governing law, Anderson v.
17 Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Thrifty Oil Co. v. Bank of Am. Nat'l Trust
18 & Sav. Ass'n, 322 F.3d 1039, 1046 (9th Cir. 2002), and that the dispute is genuine, i.e.,
19 the evidence is such that a reasonable jury could return a verdict for the nonmoving
20 party, Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006).

21 Summary judgment must be entered, “after adequate time for discovery and
22 upon motion, against a party who fails to make a showing sufficient to establish the
23 existence of an element essential to that party's case, and on which that party will bear
24 the burden of proof at trial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

25 **IV. UNDISPUTED FACT**²

26 1. Anderson is an inmate in the custody of the California Department of

27 ² All facts are taken from Defendant Hartley's unopposed separate statement of undisputed facts and the
28 evidence cited therein and are considered undisputed for purposes of this motion. Fed. R. Civ. P.
56(e)(2).

1 Corrections and Rehabilitation (“CDCR”).

2 2. At all times relevant to this lawsuit, Anderson was housed at ASP.

3 3. Defendant Hartley is the Warden at ASP.

4 4. Anderson has had no interaction with Warden Hartley.

5 5. Warden Hartley did not personally participate in the events of June 17,
6 2008, that give rise to this lawsuit.

7 6. Although Anderson claims that Warden Hartley knew or should have
8 known that Officer Hansen had assaulted other inmates before June 17,
9 2008, he has no evidence that Warden Hartley had any such knowledge.

10 7. Anderson never spoke to Warden Hartley about Officer Hansen, nor did
11 he write to Warden Hartley about Officer Hansen before the events of
12 June 17, 2008.

13 8. Anderson has no claim against Warden Hartley beyond his allegation that
14 Warden Hartley had prior knowledge of Officer Hansen’s tendency to use
15 excessive force.

16 9. Warden Hartley was not aware of any incidents in which Officer Hansen
17 was alleged to have used excessive force prior to June 17, 2008.

18 **V. ANALYSIS**

19 **A. Supervisor Liability Standard**

20 Under § 1983, Plaintiff must demonstrate that each named defendant personally
21 participated in the deprivation of his rights. Ashcroft v. Iqbal, 556 U.S. 662, 676–77, 129
22 S.Ct. 1937, 173 L.Ed.2d 868 (2009); Simmons v. Navajo County, Ariz., 609 F.3d 1011,
23 1020–21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009);
24 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Supervisors may only be held
25 liable if they “participated in or directed the violations, or knew of the violations and
26 failed to act to prevent them.”³ Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989);

27 _____
28 ³ Personnel are generally not liable under § 1983 for the actions of their employees under a theory of
respondeat superior. Monell v. Dep’t. of Soc. Servs., 436 U.S. 658, 691 (1978).

1 accord *Starr v. Baca*, 652 F.3d 1202, 1205–08 (9th Cir. 2011).

2 An inmate must allege facts to support that he was incarcerated under conditions
3 posing a substantial risk of harm, *Farmer v. Brennan*, 511 U.S. 825, 834 (1994), and
4 that defendant knew of, but disregarded this risk. *Id.* at 837. That is, “the official must
5 both [have been] aware of facts from which the inference could be drawn that a
6 substantial risk of serious harm exist[ed], and he must also [have] draw[n] the
7 inference.” *Id.* at 837.

8 “A prison official may be held liable for failing to protect an inmate from [a] prison
9 guard if he knew of an excessive risk to inmate health or safety posed by the . . . prison
10 guard and disregarded that risk.” *Jones v. Ruiz*, 2010 WL 3505119, *7 (W.D. Tex. Sept.
11 2, 2010).

12 **B. Hartley Not Linked to Alleged Violation⁴**

13 Hartley contends that he had no reason to believe or suspect that Hansen had
14 any propensity for or had used excessive force against inmates, that he did not
15 personally violate Plaintiff’s civil rights, and that he can not be held liable for the alleged
16 acts of Hansen and Lewis.

17 Hartley’s undisputed facts show that prior to the alleged June 17, 2008 excessive
18 force event, Hartley had no knowledge of, and no reason to know, Hansen presented an
19 excessive force risk. Hartley was unaware of any allegation Hansen had used excessive
20 force against inmates or of facts suggesting such a risk. Plaintiff admits he never
21 communicated with Hartley about Hansen and in fact never had any interaction with
22 Hartley prior to the June 17th event. Hartley’s undisputed facts demonstrate that he was
23 not present at, and did not participate in the alleged June 17th excessive force event.

24 Notwithstanding having been given multiple extensions of time to do so, Plaintiff
25 has not raised any dispute regarding Hartley’s facts or identified any facts which would
26 suggest liability on the part of Hartley. Fed. R. Civ. P. 56(e)(2).

27 _____
28 ⁴ The Court declines to reach the balance of Defendant’s argument and evidence and no opinion is
expressed thereon.

1 Defendant Hartley has shown by competent evidence that: he did not know of,
2 had no reason to know of, did not participate in, and did not direct the alleged violation
3 on June 17, 2008; that he had no reason to believe Hansen posed a risk of excessive
4 force to Plaintiff; and that he had no reason or opportunity to protect Plaintiff from the
5 alleged violation by Hansen. Hartley is not liable for a failure to protect Plaintiff from the
6 alleged excessive force event occurring on June 17, 2008.

7 Accordingly, Defendant Hartley's motion for summary judgment should be
8 granted.

9 **VI. LEGAL CONCLUSIONS AND RECOMMENDATIONS**

10 Defendant Hartley has carried his burden of demonstrating to the Court that there
11 is no genuine issue of material facts on the issue of failing to protect Plaintiff from
12 excessive force on June 17, 2008. Plaintiff has failed to oppose Hartley's motion and
13 has not made any evidentiary showing rebutting that of Hartley. On such a claim Plaintiff
14 bears the burden at trial. Therefore, no viable § 1983 failure to protect claim against
15 Defendant Hartley has been presented and summary judgment is appropriate on this
16 claim.

17 Accordingly, for the reasons set forth above, it is HEREBY RECOMMENDED
18 that Defendant Hartley's January 9, 2013 motion for summary judgment (ECF No. 62)
19 be GRANTED, the Clerk of the Court enter judgment thereon in favor of Defendant
20 Hartley against Plaintiff, and that this case remain open as to Defendants Hansen and
21 Lewis.

22 These findings and recommendations will be submitted to the United States
23 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. §
24 636(b)(1). Within fourteen (14) days after being served with these findings and
25 recommendations, the parties may file written objections with the Court. The document
26 should be captioned "Objections to Magistrate Judge's Findings and
27 Recommendations." A party may respond to another party's objections by filing a
28 response within fourteen (14) days after being served with a copy of that party's

1 objections. The parties are advised that failure to file objections within the specified time
2 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
3 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: August 29, 2013

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE