

1 Plaintiff so he could not have seen any interaction between Brandon and Plaintiff. (Doc. 35-2 at 50-
2 51)

3 In opposition to Defendants' motion for summary judgment, Plaintiff submitted declarations of
4 Noberto Medina (Doc. 38 at 61) and Miguel Palenzuela (Doc. 38 at 62) which predated those
5 proffered by Defendants. In his declaration, Medina asserted that Defendant Brandon "was acting as
6 if she was under the influence of some kind of drugs, with very sporadic speech and behavior." (Doc.
7 38 at 61) Medina asserted that Plaintiff "was not doing anything" but Brandon had Plaintiff "lined up
8 against the 6-yard gym outer [sic] doors '(roll-up),' [and] for no reason at all," she was "harassing
9 inmate Newman." Id. The declaration ends with the assertion that "I am a witness to these facts which
10 I do declare to be true and correct." Id.

11 Palenzuela's declaration asserts that Brandon "was harassing inmate Newman #V-179771 on
12 the 6-yard." (Doc. 38 at 62) Palenzuela asserted that Brandon "had Inmate Newman up against the
13 outer [sic] 'roll-up gym doors of the 6-yard gym with her hand in Inmate Newmans [sic] back.
14 '(lower back area.)'"

15 Given these wildly different accounts, the Court ordered an evidentiary hearing to be held.
16 (Doc. 44) Notice of the hearing was given to Plaintiff and counsel for Defendants. Id. Indeed,
17 counsel for Defendants reported that they spoke with Plaintiff days before the hearing and he indicated
18 an awareness of the hearing and stated that he intended to be present. Nonetheless, the Court
19 conducted the evidentiary hearing on October 9, 2012 but Plaintiff failed to appear.

20 **II. The evidentiary hearing**

21 At the hearing, both inmates, Medina and Palenzuela, denied having seen the content of the
22 declarations proffered by Plaintiff before being presented with them by counsel for Defendants. Mr.
23 Medina testified that on April 2, 2010, he was housed on the "6 yard" which is the same yard on which
24 Plaintiff was assigned. On that date, all 6-yard inmates were required to go to the exercise yard to
25 allow inspection of their cells. When they returned, Mr. Medina saw that Plaintiff's bunk had a
26 "mess" on it. He saw Plaintiff speak to Defendant Brandon who provided Plaintiff a 602 form. Mr.
27 Medina saw Plaintiff complete the form and asked him to be "his witness." Mr. Medina said he signed
28 a declaration that Plaintiff provided though Plaintiff did not permit him to review it. He denied that he

1 saw Brandon push Plaintiff or use any force on him at all. He denied that Brandon appeared to be
2 under the influence of drugs. He affirmed that the information contained in the declaration prepared
3 by the attorney for Defendants (Doc. 35-2 at 47-48) was accurate and the declaration provided by
4 Plaintiff (Doc. 38 at 61) was not.

5 Mr. Palenzuela testified though the signature on the declaration was his, he had no explanation
6 for how it came to be on the declaration. He testified that he was housed on the “5 yard” on April 2,
7 2010 which was an entirely different yard from the “6 yard” where Plaintiff was housed. He reported
8 that he did not witness any of the events on April 2, 2010 that gave rise to this litigation, including any
9 interaction between Plaintiff and Defendant Brandon. Indeed, Mr. Palenzuela testified that he had
10 never asserted to anyone that he was a witness to the events on April 2, 2010. He affirmed that the
11 information contained in the declaration prepared by the attorney for Defendants (Doc. 35-2 at 50-51)
12 was accurate and the one provided by Plaintiff (Doc. 38 at 62) was not.

13 Finally, Litigation Coordinator John Buck testified and verified that Plaintiff was housed on
14 the “6 yard” on April 2, 2010 and that Mr. Palenzuela was housed on the “5 yard” on that date. He
15 presented the “Offender/Movement History” for Palenzuela which further demonstrated this fact.

16 Based upon all this evidence, it appears clear that the declarations submitted by Plaintiff
17 purporting to be the sworn statements of inmates Medina and Palenzuela are false and that Plaintiff
18 knowingly filed these documents despite his knowledge of their falsity.

19 **III. Sanctions may be imposed for submitting false evidence**

20 Based upon the evidence, it was undisputed that the declarations submitted by Plaintiff are
21 falsified and there is no doubt that Plaintiff personally falsified the evidence. Federal courts have
22 broad powers to impose sanctions against parties or counsel for improper conduct in litigation. The
23 Court derives the power to impose sanctions on parties or their counsel from three primary sources of
24 authority, “(1) Federal Rule of Civil Procedure 11, which applies to signed writings filed with the
25 court, (2) 28 U.S.C. § 1927, which is aimed at penalizing conduct that unreasonably and vexatiously
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27
28

1 multiplies the proceedings¹, and (3) the court's inherent power.” Fink v. Gomez, 239 F.3d 989, 991
2 (9th Cir.2001).

3 **A. Rule 11**

4 Federal Rules of Civil Procedure Rule 11(b) provides that,

5 By presenting to the court a pleading, written motion, or other paper—whether by
6 signing, filing, submitting, or later advocating it—an attorney or unrepresented party
7 certifies that to the best of the person’s knowledge, information, and belief, formed
8 after an inquiry reasonable under the circumstances:

9 (1) it is not being presented for any improper purpose, such as to harass, cause
10 unnecessary delay, or needlessly increase the cost of litigation; ...

11 [¶]

12 (3) the factual contentions have evidentiary support or, if specifically so
13 identified, will likely have evidentiary support after a reasonable opportunity for further
14 investigation or discovery . . .

15 When evaluating the imposition of sanctions, Rule 11 requires the Court to consider not whether the
16 party demonstrated subjective good faith in filing the document, but whether the party acted
17 objectively reasonably in doing so. G.C. & K.B. Investments v. Wilson, 326 F.3d 1096, 1109 (9th
18 Cir.2003). “An order imposing a sanction must describe the sanctioned conduct and explain the basis
19 for the sanction.” Fed.R.Civ.P. 11(c)(6).

20 **B. The Court’s inherent power to sanction for filing false documents**

21 In addition, the Court has inherent power to sanction parties for improper conduct. Chambers
22 v. Nasco, Inc., 501 U.S. 32, 43–46, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991); Roadway Express, Inc. v.
23 Piper, 447 U.S. 752, 766, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980); Fink, 239 F.3d at 991. The Court’s
24 authority extends to the “inherent power to dismiss an action when a party has willfully deceived the
25 court and engaged in conduct utterly inconsistent with the orderly administration of justice.”
26 Anheuser–Busch, Inc. V. Natural Beverage Distrib., 69 F.3d 337, 348 (9th Cir.1995) (quoting Wyle v.
27 R.J. Reynolds Indus., Inc., 709 F.2d 585, 589 (9th Cir.1983)); see Combs v. Rockwell Intern. Corp.,
927 F.2d 486, 488 (9th Cir.1991) (“Dismissal is an appropriate sanction for falsifying a deposition.
Fed.R.Civ.P. 11, as well as the court's inherent powers, can be called upon to redress such

28 ¹ Because counsel do not seek fees as a result of the filing of the false declarations, the Court does not consider this source
of authority for imposing sanctions.

1 mendacity.”); Hutchinson v. Hensley Flying Serv., Inc., 210 F.3d 383, (9th Cir. 2000), (“Using a
2 falsified document in evidence is sufficient grounds for a dismissal sanction under Rule 11.”)
3 However, the harshness of an order dismissing a matter should be imposed only in extreme
4 circumstances. Wyle, 709 F.3d at 589. “It is well settled that dismissal is warranted where . . . a party
5 has engaged deliberately in deceptive practices that undermine the integrity of judicial proceedings . .
6 .” Anheuser–Busch, Inc., at 348.

7 C. Dismissal as Sanction

8 An order dismissing a case under the Court’s inherent powers is subject to the same
9 considerations as those under Rule 11. The Court “must determine (1) the existence of certain
10 extraordinary circumstances, (2) the presence of willfulness, bad faith, or fault by the offending party,
11 (3) the efficacy of lesser sanctions, (4) the relationship or nexus between the misconduct drawing the
12 dismissal sanction and the matters in controversy in the case, and finally, as optional considerations
13 where appropriate, (5) the prejudice to the party victim of the misconduct, and (6) the government
14 interests at stake.” Halaco Eng’g Co. v. Costle, 843 F.2d 376, 380 (9th Cir. 1988).

15 D. Analysis

16 The Court has reviewed the documents submitted by Plaintiff and is convinced that Plaintiff
17 knew they were false; indeed, Plaintiff prepared both declarations and included the false information.
18 As to Mr. Medina, he presented the declaration to him but Plaintiff did not allow Medina to read it.
19 The content of the declaration is markedly different from the events that Medina observed. More to
20 the point, Plaintiff represented that Mr. Medina saw Defendant Brandon use excessive and
21 unnecessary force on him—in the form of “harassing” conduct--when, in fact, Mr. Medina never saw
22 Brandon use *any* force on Plaintiff.

23 The declaration of Mr. Palenzuela is even more troubling. Mr. Palenzuela was not housed on
24 the same yard as Plaintiff *and could not have seen the events at issue here*. Despite this, Plaintiff
25 submitted a declaration bearing Mr. Palenzuela’s signature which supports Plaintiff’s claim that he
26 suffered excessive force. At the time of the preparation and submission of this declaration, Plaintiff
27 knew that the contents were false.

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1 Because Plaintiff himself drafted these false declarations and obtained signatures on them
2 using trickery, the Court finds that Plaintiff knew the documents were falsified. G.C. & K.B.
3 Investments, 326 F.3d at 1109. Thus, the Court has no hesitation in finding that Plaintiff’s actions
4 were willful and made in bad faith. It is clear that Plaintiff intended the Court to rely upon this
5 perjured testimony when evaluating Defendants’ motion for summary judgment. In addition, the
6 statements of the witnesses in these falsified declarations go to material issues in this case; whether
7 Defendant Brandon used excessive and unnecessary force against Plaintiff. Thus, clearly, submitting
8 these declarations was an act of bad faith which undermines the confidence placed in our system of
9 justice. In Arnold v. County of El Dorado, 2012 WL 3276979 at *4 (E.D. Cal. Aug. 9, 2012), this
10 Court recently held,

11 There need be no look at the merits of a lawsuit if material, substantial perjury is found.
12 Id at 489. As stated in Valley Engineers Inc. v. Electric Engineering Co., 158 F.3d at
13 1058: “There is no point to a lawsuit, if it merely applies law to lies. True facts must be
14 the foundation for any just result” . . . [W]hen a party falsely testifies to a fact material
15 to the substance of a litigation, such is anathema to the function of the courts. Perjury is
16 much more than simply a “gotcha,” harmful in effect only for the reason that one got
17 caught. Litigation is not a game in which perjury warrants a five yard penalty for a
18 minor untruth, fifteen yards if the perjury was really serious. Rather, perjury on any
19 material fact strikes at the core of the judicial function and warrants a dismissal of one's
20 right to participate at all in the truth seeking process. If one can be punished for perjury
21 with up to five years imprisonment, 18 U.S.C. § 1621, it should not seem out of place
22 that a civil action might be dismissed for the same conduct.

23 Id.

24 Nevertheless, the Court finds also that Plaintiff’s conduct interferes with a rightful decision in
25 this case. Adriana Int’l Corp. v. Thoeren, 913 F.2d 1406, 1412 (9th Cir.1990). For example, the Court
26 has no confidence that it can accept Plaintiff’s account of the events set forth in his own declarations
27 when deciding the motion for summary judgment, given he has shown his willingness to fabricate
28 evidence. Thus, submitting the falsified declarations of Medina and Palenzuela, impugns the integrity
of the Court’s decision-making processes and makes it unlikely that there can be any confidence in a
decision of the motion. Moreover, it does not appear that less drastic sanctions would be effective.
Plaintiff is newly released from prison. Given his presumed inability to pay substantial monetary
penalties, lesser sanctions are deemed ineffective to address the current wrongdoing or to deter future

1 wrongdoing. For all of these reasons, the Court recommends that terminating sanctions be issued and
2 the matter be **DISMISSED**.

3 **IV. Findings and Recommendation**

4 There is no doubt that the two declarations of Medina and Palenzuela are fabrications.
5 Likewise, there can be little doubt that Plaintiff falsified the declarations and submitted them willfully
6 and in bad faith for the purpose of misleading this Court.

7 Accordingly, it is **RECOMMENDED**:

- 8 1. Terminating sanctions be issued and the matter **DISMISSED WITH PREJUDICE**;
- 9 2. Defendant's motion for summary judgment (Doc. 35) be **DENIED** as moot.

10 These Findings and Recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
12 Rules of Practice for the United States District Court, Eastern District of California. Within 14 days
13 after being served with these Findings and Recommendations, any party may file written objections
14 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
15 Recommendations." The parties are advised that failure to file objections within the specified time
16 may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
17 1991).

18
19 IT IS SO ORDERED.

20 Dated: October 16, 2012

/s/ Jennifer L. Thurston
21 UNITED STATES MAGISTRATE JUDGE