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3 **UNITED STATES DISTRICT COURT**

4 EASTERN DISTRICT OF CALIFORNIA

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8 TIMOTHY HOWARD,

9 Plaintiff,

10 vs.

11 J. WANG, et al.,

12 Defendants.

) 1:10cv01783 AWI DLB PC

) ORDER ADOPTING FINDINGS AND  
) RECOMMENDATIONS AND GRANTING  
) IN PART AND DENYING IN PART  
) DEFENDANTS' MOTION FOR  
) SUMMARY JUDGMENT

) (Documents 56 & 77)

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14 Plaintiff Timothy Howard ("Plaintiff") is a prisoner in the custody of the California  
15 Department of Corrections and Rehabilitation. Plaintiff is proceeding pro se and in forma  
16 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The action is proceeding on  
17 Plaintiff's Eighth Amendment deliberate indifference claim against Defendants J. Wang and  
18 Edgar Clark.

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20 Defendants filed a motion for summary judgment on January 30, 2014. The matter was  
21 referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local  
22 Rule 302.

23 On July 24, 2014, the Court issued [Findings and Recommendations](#) that Defendants'  
24 motion for summary judgment be granted in part and denied in part. Specifically, the Court  
25 found that Defendant Wang is entitled to summary judgment on all claims, and that Defendant  
26 Clark is entitled to summary judgment on all claims except for Plaintiff's claim that he was  
27 deliberately indifferent in completing the Chrono without providing Plaintiff with wheelchair use  
28

1 outside of his cell. The Findings and Recommendations contained notice that any objections  
2 were to be filed within thirty (30) days. Plaintiff requested an extension of time and filed timely  
3 [objections](#) on September 29, 2014.<sup>1</sup> Defendants did not file a reply.

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted  
5 a de novo review of this case. Having carefully reviewed the entire file, including Plaintiff's  
6 objections, the Court finds that the Findings and Recommendations are supported by the record  
7 and by proper analysis.

8 Plaintiff first argues that Defendant Wang is not entitled to summary judgment because  
9 Defendant Wang did not dispute certain facts in Plaintiff's Second Amended Complaint.  
10 Plaintiff alleged that Defendant Wang told him that he knew that could not walk because he was  
11 paralyzed, but custody wanted his appliances taken. Plaintiff suggests that this shows that  
12 Defendant Wang's reclassification from DPW to DPO status was deliberately indifferent.<sup>2</sup>  
13 However, as the Magistrate Judge noted, Defendant Wang's notes from that examination also  
14 state that he was informed that Plaintiff was standing up when he attacked a correctional officer.  
15 Plaintiff has failed to raise a dispute of material fact concerning Defendants' reliance on the  
16 information that was given to them, and this reliance negates a finding of deliberate indifference.  
17 Defendant Wang's alleged statement does not change this result.

18 Plaintiff also points to an apparent inconsistency in a footnote overruling his attempt to  
19 dispute a fact, where the Magistrate Judge stated that Defendant Wang noted that Plaintiff was  
20 DPO status, rather than DPW status. ECF No. 77, at 10. Plaintiff is correct that Defendant  
21 Wang noted that Plaintiff was *DPW* status, but the inconsistency is irrelevant. The Magistrate  
22 Judge's ruling remains valid based on the additional factors cited, and the Magistrate Judge  
23 correctly used the terms throughout the decision when discussing the motion's merits.

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26 <sup>1</sup> Plaintiff signed his objections on September 21, 2014.

27 <sup>2</sup> As the Magistrate Judge explained, "DPW" stands for full-time wheelchair user, which requires wheelchair use in  
28 an inmate's cell. "DPO" stands for intermittent wheelchair user, which does not require the use of wheelchair inside  
the cell. Rather, "DPO" status requires the use of wheelchair outside of the inmate's cell.

1 Next, Plaintiff argues that staff went in search of officers to override Defendant Wang's  
2 orders (which were to release him *with* a wheelchair), and that Defendant Clark arrived "hostile  
3 and unprofessional. . ." ECF No. 80, at 12. He contends that this demonstrates that the  
4 reclassification from DPW to DPO was intentional, rather than a mistake. It was undisputed,  
5 however, that the reclassification was intentional, and based on information that Defendants were  
6 given about Plaintiff's attack on staff. Plaintiff's speculation does not create a disputed fact.

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8 The alleged mistake occurred when Defendants completed a Chrono that did not include  
9 wheelchair use outside of Plaintiff's cell. The Magistrate Judge properly analyzed whether a  
10 genuine dispute of material fact existed as to whether this was done with deliberate indifference.  
11 Both Defendants conceded that the reclassification should have included wheelchair use outside  
12 of Plaintiff's cell, yet only Defendant Clark's statement that Plaintiff could crawl on his belly  
13 created a genuine dispute as to whether the omission was a mistake.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The Findings and Recommendations, filed July 24, 2014 are ADOPTED in  
16 full;
- 17 2. Defendants' motion for summary judgment (Document 56) is GRANTED as to  
18 Defendant Wang on all claims and Defendant Clark on all claims except for  
19 Plaintiff's claim that Defendant Clark was deliberately indifferent in completing  
20 the Chrono without providing Plaintiff with wheelchair use outside of his cell; and  
21
- 22 3. This action SHALL therefore proceed against Defendant Clark on Plaintiff's  
23 claim that Defendant Clark was deliberately indifferent in completing the Chrono  
24 without providing Plaintiff with wheelchair use outside of his cell.

25 IT IS SO ORDERED.

26 Dated: October 29, 2014

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28 SENIOR DISTRICT JUDGE

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