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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARRISON JOHNSON,
Plaintiff,
v.
CATE, et al.,
Defendants.

Case No. 1:10-cv-02348-LJO-MJS
FINDINGS AND RECOMMENDATIONS
TO:
DENY PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT
(ECF NO. 64)
GRANT DEFENDANT DORAN'S CROSS-
MOTION FOR SUMMARY JUDGMENT
(ECF NO. 100)
GRANT, IN PART, AND DENY, IN PART,
PLAINTIFF'S MOTION FOR JUDICIAL
NOTICE
(ECF NO. 113)
DENY DEFENDANT'S MOTIONS TO
STRIKE AND PLAINTIFF'S NOTICE OF
ERRATA
(ECF NOS. 116, 119, 121)
FOURTEEN (14) DAY OBJECTION
DEADLINE

I. PROCEDURAL HISTORY

Plaintiff is a state prisoner proceeding *pro se* in this civil rights action brought pursuant to 28 U.S.C. § 1983. (ECF No. 8.) The action proceeds on Plaintiff's First

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1 Amended Complaint against Defendant Doran on a Fourteenth Amendment Equal
2 Protection claim. (ECF Nos. 8 & 9.)

3 Before the Court are Plaintiff's June 16, 2014 motion for summary judgment
4 (ECF No. 64.) and Defendant Doran's December 2, 2014 cross-motion for summary
5 judgment (ECF No. 100.). Both parties filed oppositions and replies. (ECF Nos. 100,
6 112, & 116.) Plaintiff filed a request for judicial notice of certain exhibits and a notice of
7 errata. (ECF Nos. 113 & 119.) Defendant objected to and moved to strike a number of
8 Plaintiff's declarations. (ECF Nos. 116 & 121.) Plaintiff responded to these objections.
9 (ECF Nos. 120 & 122.) The matters are deemed submitted. Local Rule 230(l).

10 **II. LEGAL STANDARD – MOTION FOR SUMMARY JUDGMENT**

11 Any party may move for summary judgment, and "[t]he [C]ourt shall grant
12 summary judgment if the movant shows that there is no genuine dispute as to any
13 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.
14 56(a). Each party's position, whether it be that a fact is disputed or undisputed, must be
15 supported by (1) citing to particular parts of materials in the record, including but not
16 limited to depositions, documents, declarations, or discovery; or (2) "showing that the
17 materials cited do not establish the absence or presence of a genuine dispute, or that
18 an adverse party cannot produce admissible evidence to support the fact." Fed R. Civ.
19 P. 56(c)(1).

20 "Where the moving party will have the burden of proof on an issue at trial, the
21 movant must affirmatively demonstrate that no reasonable trier of fact could find other
22 than for the moving party." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th
23 Cir. 2007). If the burden of proof at trial rests with the nonmoving party, then the
24 moving party need only point to "an absence of evidence to support the nonmoving
25 party's case." *Id.* Once the moving party has met its burden, the nonmoving party must
26 point to "specific facts showing that there is a genuine issue for trial." *Id.* (*quoting*
27 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)).
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1 In evaluating the evidence, “the [C]ourt does not make credibility determinations
2 or weigh conflicting evidence,” and “it draws all inferences in the light most favorable to
3 the nonmoving party.” *Id.*

4 **III. FACTUAL BACKGROUND**

5 The Court finds the following relevant facts are undisputed:

6 Plaintiff was an inmate at Kern Valley State Prison (“KVSP”) from February 2009
7 until October 2012. He currently is an inmate at California State Prison – Los Angeles
8 County. Defendant K. Doran was the Inmate Assignments Lieutenant at KVSP during
9 the relevant time period. Defendant’s position required her to ensure that inmate
10 assignments were filled and ethnically balanced.

11 Prior to an inmate receiving a job, he is placed on the eligibility waiting list. When
12 positions become available, Defendant reviews a computer printout of eligible inmates.
13 Defendant selects the first available inmate for the position. If that inmate has
14 requested another assignment, then Defendant will select the next eligible inmate for
15 the position. If no eligible inmates are on the waiting list, the supervisor for the
16 assignment may hire someone for the position. Once an inmate is assigned a job, he is
17 removed from all waiting lists except for Education or Vocational positions.

18 Plaintiff held a porter job while at KVSP. Plaintiff was never on the waiting list to
19 become a library clerk between 2009 and 2012. Defendant’s only interaction with
20 Plaintiff related to Plaintiff’s CDCR Form 602 grievance in which he requested that
21 inmate clerks in the C-Facility library be racially balanced. Defendant denied the
22 grievance, informing Plaintiff that there were currently no vacant clerk positions, that she
23 could not un-assign a current inmate to the position non-adversely, and that when a
24 position opened, she would see if the African American inmate on the waiting list met
25 the requirements.

1 **IV. DISCUSSION**

2 **A. Equal Protection**

3 The Equal Protection Clause of the Fourteenth Amendment requires that persons
4 who are similarly situated be treated alike. *City of Cleburne v. Cleburne Living Ctr., Inc.*,
5 473 U.S. 432, 439 (1985). An equal protection claim may be established in two ways.
6 The first method requires a plaintiff to show that the defendant has intentionally
7 discriminated against the plaintiff on the basis of the plaintiff's membership in a
8 protected class. See, e.g., *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir.
9 2001); *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003) (“Intentional
10 discrimination means that a defendant acted at least in part *because of* a plaintiff’s
11 protected status.”). Under this theory of equal protection, the plaintiff must show that
12 the defendant's actions were a result of the plaintiff's membership in a suspect class,
13 such as race, religion, or alienage. *Ball v. Massanari*, 254 F.3d 817, 823 (9th Cir.
14 2001).

15 If the action in question does not involve a suspect classification, a plaintiff may
16 establish an equal protection claim by showing that similarly situated individuals were
17 intentionally treated differently without a rational relationship to a legitimate state
18 purpose. *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *San Antonio Indep.*
19 *Sch. Dist. v. Rodriguez*, 411 U.S. 1, 40 (1973); *SeaRiver Mar. Fin. Holdings, Inc. v.*
20 *Mineta*, 309 F.3d 662, 679 (9th Cir. 2002). To state an equal protection claim under this
21 theory, a plaintiff must allege that: (1) the plaintiff is a member of an identifiable class;
22 (2) the plaintiff was intentionally treated differently from others similarly situated; and (3)
23 there is no rational basis for the difference in treatment. *Willowbrook*, 528 U.S. at 564.

24 **1. Parties’ Arguments**

25 Defendant argues that Plaintiff does not have standing to state an Equal
26 Protection claim because he has failed to prove an actual injury. Plaintiff never applied
27 for a law library clerk position. He stated that he did not want the assignment and did
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1 not want to be on the waitlist. As a "Pre-Transfer" designee (meaning he was soon to
2 be transferred out of KVSP) he was not eligible for that position. Plaintiff's race was
3 never a factor in any of these matters. Plaintiff has not proven Defendant acted with
4 discriminatory intent or purpose.

5 Plaintiff contends his grievance requesting that an African American be assigned
6 to the library clerk position implied he wanted the position, and as such he has standing.
7 Plaintiff disputes that his Pre-Transfer status prevented him from becoming a library
8 clerk, but argues that even if it did, he was removed from that status in January 2010,
9 and never placed on the clerk waitlist or given the position. Finally, Plaintiff argues that
10 no black inmates worked in the law library from November 8, 2009 to 2012, and
11 Defendant's failure to provide a legitimate penological explanation for this fact
12 demonstrates her discriminatory intent.

13 **2. Analysis**

14 Plaintiff lacks standing to state an Equal Protection claim.

15 At a bare minimum, standing requires that Plaintiff "show that [he] suffered an
16 injury in fact, there was a causal connection between the injury and the conduct
17 complained of, and the injury is likely to be redressed by a favorable decision." *Davis v.*
18 *Yageo Corp.*, 481 F.3d 661, 673 (9th Cir. 2007) (citing *Lujan v. Defenders of Wildlife*,
19 504 U.S. 555, 560-61 (1992)).

20 Plaintiff concedes that an inmate would need to be on the eligibility waiting list in
21 order to receive a library clerk position and that he was not on the list during the
22 relevant time period. Plaintiff has not demonstrated that he personally was injured by
23 the lack of African American library clerks or that Defendant denied him an available
24 position or a position on the waiting list.

25 Even if Plaintiff's grievance could be construed as a request for the position or to
26 be placed on the waiting list, which Defendant disputes, neither of these results was
27 available. There were no vacant positions at the time, and Plaintiff does not dispute that
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1 he held a porter job while at KVSP and that inmates with a job assignment are removed
2 from all waiting lists except for Education or Vocational positions.

3 The Court therefore recommends that Plaintiff's motion for summary judgment be
4 DENIED and Defendant's cross-motion for summary judgment be GRANTED.

5 **B. Mental and Emotional Distress**

6 Defendant argues that Plaintiff is not entitled to damages for mental or emotion
7 injuries because he has not proven a physical injury. See 42 U.S.C. § 1997e(e).
8 Plaintiff agrees that he has not suffered any physical injury but contends that he
9 nonetheless would be entitled to compensatory damages for the violation of his
10 constitutional rights.

11 As discussed above, Plaintiff has not suffered any injury. Therefore, he is not
12 entitled to damages.

13 **C. Injunctive Relief**

14 Defendant argues that Plaintiff is not entitled to injunctive relief because he no
15 longer is an inmate at the prison where she works and there is no evidence that he will
16 return to that facility. Plaintiff does not respond to this argument.

17 It is undisputed that Plaintiff is no longer housed at KVSP, rendering moot
18 injunctive relief against Defendant. See *Preiser v. Newkirk*, 422 U.S. 395, 402-03
19 (1975); see also *Johnson v. Moore*, 948 F.2d 517, 519 (9th Cir. 1991). Exposure to
20 past harm is not a basis for injunctive relief. See *City of Los Angeles v. Lyons*, 461 U.S.
21 95, 101-02 (1983) (“[p]ast exposure to illegal conduct does not in itself show a present
22 case or controversy regarding injunctive relief . . . if unaccompanied by any continuing,
23 present adverse effects.” (quotations and citation omitted)).

24 **D. Qualified Immunity**

25 Defendant argues that she should be granted qualified immunity because she did
26 not violate Plaintiff's constitutional rights and acted reasonably under the circumstances.
27 Plaintiff argues that Defendant Doran is not immune from liability because there is
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1 evidence that she violated his constitutional rights.

2 Government officials enjoy qualified immunity from civil damages unless their
3 conduct violates “clearly established statutory or constitutional rights of which a
4 reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).
5 In ruling upon the issue of qualified immunity, one inquiry is whether, “[t]aken in the light
6 most favorable to the party asserting the injury, do the facts alleged show the
7 [defendant’s] conduct violated a constitutional right.” *Saucier v. Katz*, 533 U.S. 194, 201
8 (2001), overruled in part by *Pearson v. Callahan*, 555 U.S. 223 (2009) (“*Saucier*
9 procedure should not be regarded as an inflexible requirement”). The other inquiry is
10 “whether the right was clearly established.” *Id.* The inquiry “must be undertaken in light
11 of the specific context of the case, not as a broad general proposition” *Id.* “[T]he
12 right the official is alleged to have violated must have been ‘clearly established’ in a
13 more particularized, and hence more relevant, sense: The contours of the right must be
14 sufficiently clear that a reasonable official would understand that what he is doing
15 violates that right.” *Id.* at 202 (citation omitted). In resolving these issues, the Court
16 must view the evidence in the light most favorable to Plaintiff and resolve all material
17 factual disputes in favor of Plaintiff. *Martinez v. Stanford*, 323 F.3d 1178, 1184 (9th Cir.
18 2003). Qualified immunity protects “all but the plainly incompetent or those who
19 knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

20 Given the Court’s recommendation that Defendant’s motion for summary
21 judgment be granted, the Court need not address the issue of qualified immunity.

22 **V. MOTION FOR JUDICIAL NOTICE**

23 In relation to his opposition to Defendant’s cross-motion for summary judgment
24 and his reply to his motion for summary judgment, Plaintiff asks the Court to take
25 judicial notice of four exhibits: three different sections of the California Code of
26 Regulations and a KVSP Post Order regarding inmate assignments. (ECF No. 113.)
27 Defendant did not respond to the request.

1 Federal Rule of Evidence 201 authorizes the Court to take notice of facts that
2 are “not subject to reasonable dispute because . . . [they] can be accurately and readily
3 determined from sources whose accuracy cannot reasonably be questioned. Fed. R.
4 Evid. 201(a)-(b)(2). This authority includes laws, city ordinances, and opinion
5 letters. See *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022,
6 1025 n.2 (9th Cir. 2006). The Court did not consider or find relevant the California
7 Code sections in Exhibits B and C, and therefore the Court declines to take judicial
8 notice of those documents. The Court takes judicial notice of Exhibits A and D, which
9 discuss the process for filling vacant paid inmate assignments and the duties and
10 responsibilities of an inmate assignment Lieutenant.

11 **VI. MOTIONS TO STRIKE**

12 Plaintiff submitted a declaration with his opposition to Defendant’s cross-motion
13 for summary judgment and reply to his motion for summary judgment. (ECF No. 112.)
14 Defendant objects and moves to strike paragraphs 11, 13, 14, 15, and 16 of Plaintiff’s
15 declaration on grounds that: 1) whether anyone informed Plaintiff that he was qualified
16 to be on the clerk’s waiting list is irrelevant given there were no vacant positions at the
17 time of Plaintiff’s grievance; 2) Plaintiff’s synopsis of what other inmates would testify to
18 at trial is inadmissible hearsay; and 3) Plaintiff lacks personal knowledge of the fact that
19 there were available clerk positions in 2010, that Defendant failed to fill them with an
20 African American, and that she began excluding African American’s from the library
21 after a sexual misconduct and racketeering incident. (ECF No. 116.)

22 Plaintiff responds that: 1) whether anyone informed him that he qualified to be on
23 the clerk’s waiting list disputes Defendant’s contention that he was required to request
24 placement on the list; 2) he has now attached a declaration from one of the inmates
25 who plans to testify along with his own declaration in support of the other inmate’s
26 proposed testimony; and 3) he has personal knowledge of the other facts as evidenced
27 by one of his fellow inmate’s attached affidavits and the exhibits attached to his
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1 opposition to Defendant's motion for summary judgment.

2 On January 30, 2015, Plaintiff filed a Notice of Errata, requesting that two
3 additional declarations be considered in support of his opposition to Defendant's motion
4 for summary judgment and correcting the inmate ID number for inmate Burch who
5 submitted one of the declarations on behalf of Plaintiff. (ECF No. 119.) Defendant
6 objects to the evidence as irrelevant, inadmissible character evidence, inadmissible
7 hearsay, and not based on personal knowledge. (ECF No. 121.) Plaintiff responds that
8 the declarations are evidence of Defendant's discriminatory intent, that they are
9 admissible to show plan or design, and that they are made on the personal knowledge
10 of what he witnessed and what inmate Burch heard inmate Braggs tell him. (ECF No.
11 122.)

12 None of these declarations are relevant to the issue of Plaintiff's standing in the
13 case, which is the basis for the Court's recommendation to grant Defendant's cross-
14 motion for summary judgment and deny Plaintiff's motion for summary judgment.
15 Plaintiff concedes that he was required to be on a waitlist to be considered for the library
16 clerk position, and that he was never on such a waitlist. Defendant's objections are well
17 taken but the declarations have no bearing on these undisputed facts. Therefore, the
18 Court recommends that Defendant's motions and Plaintiff's notice of errata be DENIED
19 as unnecessary.

20 **VII. CONCLUSION AND RECOMMENDATIONS**

21 The Court finds that there is no genuine issue of material fact as to Defendant
22 Doran's liability. Based on the foregoing, the Court HEREBY RECOMMENDS that
23 Defendant's cross-motion for summary judgment (ECF No. 100.) be GRANTED and
24 Plaintiff's motion for summary judgment (ECF No. 64.) be DENIED.

25 The Court also recommends that Plaintiff's motion for judicial notice of Exhibits A
26 and D to his motion (ECF No. 113) be GRANTED and Exhibits B and C be DENIED.
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1 Finally, the Court recommends Defendant's motions to strike and Plaintiff's notice
2 of errata be DENIED. (ECF Nos. 116, 119, 121.)

3 These Findings and Recommendations are submitted to the United States
4 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).
5 Within **fourteen** (14) days after being served with these Findings and
6 Recommendations, any party may file written objections with the Court and serve a
7 copy on all parties. Such a document should be captioned "Objections to Magistrate
8 Judge's Findings and Recommendations." Any reply to the objections shall be served
9 and filed within **fourteen** (14) days after service of the objections. The parties are
10 advised that failure to file objections within the specified time may result in the waiver of
11 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (*citing Baxter*
12 *v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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14 IT IS SO ORDERED.

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16 Dated: March 19, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE