

1 transcripts in an effort to have him labeled as a snitch which may subject him to assault by other
2 inmates.

3 On March 21, 2017, the undersigned issued Findings and Recommendations recommending
4 that Defendants' motion for summary judgment be granted and the action be dismissed, without
5 prejudice, for failure to exhaust the administrative remedies.

6 **II.**
7 **DISCUSSION**

8 Any party may move for summary judgment, and the Court shall grant summary judgment if
9 the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to
10 judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks omitted); Washington Mut. Inc. v.
11 U.S., 636 F.3d 1207, 1216 (9th Cir. 2011). Each party's position, whether it be that a fact is disputed
12 or undisputed, must be supported by (1) citing to particular parts of materials in the record, including
13 but not limited to depositions, documents, declarations, or discovery; or (2) showing that the materials
14 cited do not establish the presence or absence of a genuine dispute or that the opposing party cannot
15 produce admissible evidence to support the fact. Fed. R. Civ. P. 56(c)(1) (quotation marks omitted).
16 The Court may consider other materials in the record not cited to by the parties, but it is not required
17 to do so. Fed. R. Civ. P. 56(c)(3); Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1031
18 (9th Cir. 2001); accord Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010).

19 In judging the evidence at the summary judgment stage, the Court does not make credibility
20 determinations or weigh conflicting evidence, Soremekun, 509 F.3d at 984 (quotation marks and
21 citation omitted), and it must draw all inferences in the light most favorable to the nonmoving party
22 and determine whether a genuine issue of material fact precludes entry of judgment, Comite de
23 Jornaleros de Redondo Beach v. City of Redondo Beach, 657 F.3d at 942 (quotation marks and
24 citation omitted).

25 With regard to Plaintiff's motion for summary judgment, as the party with the burden of
26 persuasion at trial, Plaintiff must establish "beyond controversy every essential element of" his
27 affirmative claims. S. Cal. Gas Co. v. City of Santa Ana, 336 F.3d 885, 888 (9th Cir. 2003) (quoting
28 W. Shwarzer, California Practice Guide: Federal Civil Procedure Before Trial § 14:124-127 (2001)).

1 The moving party’s evidence is judged by the same standard of proof applicable at trial. Anderson v.
2 Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

3 Plaintiff has failed to meet his burden of proof as the moving party on summary judgment.
4 Plaintiff fails to reference the allegations in the operative complaint, and refers only to evidence that
5 he was involved in a fight with another inmate on February 17, 2017-well after this action was filed
6 and after the allegations upon which this action is proceeding took place. Plaintiff, as the moving
7 party, is required to establish every element of his claim, showing that there are no disputed issues of
8 facts. Plaintiff’s motion consists of generalized and *irrelevant* arguments and complaints about an
9 incident which took place one month ago.

10 Further, Plaintiff has failed to refer to any specific undisputed facts, and has failed to submit a
11 separate statement of undisputed facts. Such a statement “shall enumerate discretely each of the
12 specific material facts relied upon in support of the motion and cite the particular portions of any
13 pleading, affidavit, deposition, interrogatory, answer, admission or other document relied upon to
14 establish that fact.” Local Rule 260(a). Accordingly, Plaintiff has failed to meet his burden on
15 summary judgment and his motion must be denied.

16 **III.**

17 **RECOMMENDATION**

18 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff’s motion for summary
19 judgment be denied.

20 This Findings and Recommendation will be submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after
22 being served with this Findings and Recommendation, the parties may file written objections with the
23 Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
24 Recommendation.” The parties are advised that failure to file objections within the specified time may

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result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: April 5, 2017


UNITED STATES MAGISTRATE JUDGE