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6 UNITED STATES DISTRICT COURT
7 FOR THE EASTERN DISTRICT OF CALIFORNIA
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9 REAMEL CURTIS,

10 Plaintiff,

11 v.

12 J. GONZALES and J. BUGARIN,¹

13 Defendants.
14

Case No. 1:15-cv-00553-LJO-JDP

FINDINGS AND RECOMMENDATIONS
THAT COURT GRANT DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

OBJECTIONS DUE IN 14 DAYS

ECF No. 66

15 Plaintiff Reamel Curtis proceeds without counsel in this civil rights action brought under
16 42 U.S.C. § 1983. While plaintiff was an inmate at Corcoran State Prison (“Corcoran”), he had
17 physical altercations with another inmate. Prison officials later transferred plaintiff to a new
18 housing unit at Corcoran, but three weeks later the same inmate attacked plaintiff at his new
19 housing unit. According to plaintiff, defendant J. Bugarin, a correctional counselor at
20 Corcoran, approved plaintiff’s transfer to the new housing unit and escorted him there, putting
21 plaintiff at risk. Plaintiff alleges that defendant J. Gonzales, a correctional officer who
22 supervised the new housing unit, ignored plaintiff’s warnings that his safety was at risk.

23 Defendants move for summary judgment. Plaintiff presents no evidence that Bugarin
24 approved plaintiff’s transfer to the new housing unit and, although plaintiff alleges that
25 Bugarin personally escorted him to the new unit, this, without more, cannot show Bugarin’s
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27 ¹ Defendant J. Bugarin’s last name was captioned “Burgarin” in the case caption. The
28 undersigned will direct the clerk of court to amend the caption to reflect the correct spelling of
his name.

1 deliberately indifference to plaintiff's safety. As regards defendant Gonzalez, plaintiff presents
2 no evidence that he warned Gonzales of any safety risk. We therefore find that there is no
3 genuine dispute of material fact and recommend summary judgment in defendants' favor.

4 **I. Facts²**

5 In October 2011, plaintiff had two physical altercations with Butler, another inmate at
6 Corcoran. ECF No. 12 at 7, 14; ECF No. 66-3 ¶ 2-3. As a result, prison officials designated
7 plaintiff and Butler as documented enemies and placed plaintiff in a security housing unit at
8 Corcoran. ECF No. 12 at 19. In December 2011, plaintiff was released to the general
9 population in Facility 3-B at Corcoran. ECF No. 66-4 at 10. In January 2012, Bugarin and
10 two other prison officials recommended that plaintiff be transferred to another prison and that
11 plaintiff stay in Facility 3-B at Corcoran pending his transfer. ECF No. 66-4 at 2, 8. Until
12 April 2012, plaintiff stayed in Facility 3-B, and Butler stayed in Facility 3-A. ECF No. 12 at
13 19; ECF 66-4 at 10-11.

14 In April 2012, plaintiff was transferred to Facility 3-A. ECF No. 66-4 at 10-11. Officer
15 Noland, who is not a party to this case, requested plaintiff's transfer to Facility 3-A, and
16 Sergeant Rasley, another nonparty, approved the transfer. ECF No. 66-4 at 2-3, 10-11.
17 Bugarin states in his declaration that as a correctional counselor, he had no authority to move
18 an inmate between facilities, ECF No. 66-4 at 3, and plaintiff presents no evidence to the
19 contrary. Plaintiff also presents no evidence that Bugarin approved plaintiff's transfer from
20 Facility 3-B to Facility 3-A.

21 The parties dispute whether Bugarin escorted plaintiff to Facility 3-A. Plaintiff states in
22 his declaration that Bugarin personally escorted him to a yard within Facility 3-A on April 5,
23 2012. ECF No. 77 at 6. According to plaintiff, Bugarin told him during the escort that he
24 would stay in the Facility 3-A yard pending transfer to another prison. *Id.* Bugarin states in
25 his declaration that he did not escort plaintiff to the Facility 3-A yard on April 5, 2012, and that
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27 ² The parties raise no evidentiary objections, so the court need not decide the admissibility of
28 the parties' evidence.

1 he has never escorted an inmate during a housing transfer. ECF No. 66-4 at 3; *see also*
2 ECF No. 66-4 at 5-6 (correctional counselor’s duty descriptions).

3 While at Facility 3-A, plaintiff sent two interview-request forms to Gonzales, a sergeant
4 who supervised Facility 3-A. ECF No. 66-6 at 9:2-10, 10:5-7. On one interview-request form,
5 dated April 6, 2012, plaintiff wrote, “I would like to speak to a supieor [superior] regarding my
6 housing. Thank you!” ECF No. 77 at 11. Plaintiff did not file the other interview-request
7 form with this court, but he testified during his deposition that he “most likely” wrote the same
8 message in an interview-request form dated April 8, 2012. ECF No. 66-6 at 9:15-22.

9 Gonzales states in his declaration that he does not recall receiving an interview-request form or
10 having any personal interaction with plaintiff about housing assignment. ECF No. 66-5 ¶ 3.

11 Gonzales also states that between April 5, 2012, and April 26, 2012, he had no knowledge that
12 plaintiff was staying in the same facility as a documented enemy. *Id.* ¶ 4. On April 26, 2012,
13 plaintiff and Butler had another physical altercation. ECF No. 66-6 at 9:23-25.

14 **II. Discussion**

15 A district court will grant summary judgment when “there is no genuine dispute as to any
16 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).
17 A factual dispute is genuine if a reasonable trier of fact could find in favor of either party at
18 trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). The disputed fact is
19 material if it “might affect the outcome of the suit under the governing law.” *See Anderson*,
20 477 U.S. at 248; *accord Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
21 (1986). Entitlement to summary judgment depends on the movant’s burden at trial: a movant
22 who has the burden of persuasion must present evidence supporting every element of a claim
23 or defense; the movant without that burden can prevail by showing that the opponent cannot
24 prove an element of a claim or defense.³ The court must view the record in the light most
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26 ³ *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *compare Barnes v. Sea Hawaii*
27 *Rafting, LLC*, 889 F.3d 517, 537 (9th Cir. 2018) (movant with burden of persuasion at trial),
28 *with Friedman v. Live Nation Merch., Inc.*, 833 F.3d 1180, 1188 (9th Cir. 2016) (non-moving
party without burden of persuasion at trial).

1 favorable for the nonmoving party. *See Zetwick v. Cty. of Yolo*, 850 F.3d 436, 441 (9th Cir.
2 2017).

3 Familiar standards govern burden-shifting for summary judgment. *See Celotex Corp. v.*
4 *Catrett*, 477 U.S. 317, 323-27 (1986). The movant bears the initial burden to show prima facie
5 entitlement to summary judgment. *See id.*; *Friedman v. Live Nation Merch., Inc.*, 833 F.3d
6 1180, 1188 (9th Cir. 2016). The burden then shifts to the party opposing summary judgment to
7 produce evidence showing a genuine dispute of a material fact. *See Friedman*, 833 F.3d at
8 1188. The movant bears the ultimate burden of persuasion. *Id.*

9 **a. Preliminary matters**

10 We begin with two preliminary matters. First, plaintiff suggests that the court should not
11 consider defendants' motion for summary judgment because the court has already denied one
12 motion for summary judgment. *See* ECF No. 77 at 1-2. Plaintiff is mistaken. A district court
13 may grant a successive motion for summary judgment. *See Hoffman v. Tonnemacher*, 593
14 F.3d 908, 911-12 (9th Cir. 2010). Plaintiff also mischaracterizes the procedural history of this
15 case. Defendants moved for summary judgment earlier in the case, arguing that plaintiff failed
16 to exhaust administrative remedies and that Bugarin had no personal involvement in
17 transferring plaintiff to Facility 3-A. ECF No. 35-3. The court denied defendants' motion for
18 summary judgment, adopting the reasoning of United States Magistrate Judge Erica P.
19 Grosjean that plaintiff had exhausted his administrative remedies and that Bugarin escorting
20 plaintiff to Facility 3-A could show Bugarin's personal involvement. ECF No. 54 at 6-10.
21 However, showing personal involvement differs from showing deliberate indifference. Judge
22 Grosjean recognized this and warned plaintiff at a status conference after the first summary
23 judgment decision that defendants could move for summary judgment again.⁴ After the status

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25 ⁴ Judge Grosjean explained that plaintiff needed to produce evidence of Bugarin's involvement
26 beyond merely escorting plaintiff to Facility 3-A *See* Audio Recording, Telephonic Status
27 Conference, 1:41:30-1:42:17 (Mar. 7, 2018) ("You need to do it [produce evidence] for
28 yourself. What I mean is, right now, I know it's going to happen. . . . It will actually be a
motion for summary judgment. They will say that you do not have enough facts to say that
defendant Bugarin failed to protect you. What they will say is all you got is Bugarin personally
escorted you and that that's not enough."). The audio recording does not appear on the docket,

1 conference, she extended the deadline for dispositive motions. *See* ECF No. 61 at 3. Thus, the
2 first summary judgment decision does not preclude the court from considering defendants'
3 successive motion for summary judgment. We now find that the court should grant summary
4 judgment for the reason discussed at the status conference: plaintiff's allegation that Bugarin
5 escorted him to Facility 3-A, without more, does not establish deliberate indifference.

6 Second, Bugarin argues that no reasonable jury could find that he escorted plaintiff to
7 Facility 3-A. ECF No. 66-2 at 6-7. If no reasonable jury could find by a preponderance of the
8 evidence that Bugarin escorted plaintiff to Facility 3-A, the court should grant summary
9 judgment.⁵ The court, however, need not assess plaintiff's evidence because plaintiff could not
10 prevail even if the court were to accept his factual assertions as true, for the reasons discussed
11 below.

12 **b. Failure-to-protect claim against Bugarin**

13 Plaintiff advances two theories against Bugarin. First, he alleges that Bugarin approved
14 plaintiff's transfer to Facility 3-A. *See* ECF No. 13 at 6; *see also* ECF No. 12 at 8. Second, he
15 alleges that that Bugarin personally escorted plaintiff to Facility 3-A. *See* ECF No. 44;
16 ECF No. 77.⁶ Neither allegation, even accepted as true, can withstand summary judgment.

17 but any party may purchase a copy of the audio recording from the clerk of court by submitted a
18 Form CAED 436.

19 ⁵ Although courts rarely weigh evidence at summary judgment, a party cannot withstand
20 summary judgment if the "quantum and quality" of his evidence does not allow a reasonable
21 jury to find in his favor at trial. *See Anderson*, 477 U.S. at 252 ("[T]he inquiry involved in a
22 ruling on a motion for summary judgment or for a directed verdict necessarily implicates the
23 substantive evidentiary standard of proof that would apply at the trial on the merits."); *accord*
24 *Estate of Lopez by & through Lopez v. Gelhaus*, 871 F.3d 998, 1008 (9th Cir. 2017). The
25 requisite quantum and quality of evidence depends on the party's burden of proof at trial. *See*
26 *Anderson*, 477 U.S. at 252 (preponderance of the evidence for libel). The standard for showing
27 deliberate indifference at trial is a preponderance of the evidence. *See Mellen v. Winn*, 900 F.3d
28 1085, 1101 (9th Cir. 2018); *Clem v. Lomeli*, 566 F.3d 1177, 1183 (9th Cir. 2009); 9th
Cir. Model Civ. Jury Instr. 9.27 (2018).

⁶ The court has allowed plaintiff to proceed only on the first allegation, and plaintiff has not
amended his complaint to include his second allegation that Bugarin escorted plaintiff to
Facility 3-A. It might be too late for plaintiff to amend his complaint, as discovery has already
closed. ECF No. 34; ECF No. 50; *see also* ECF No. 63 (denial of leave to amend complaint for
undue delay and prejudice). For the sake of efficiency, the court should address the merits
without assessing whether plaintiff needed to amend his complaint to assert a new fact.

1 As for plaintiff’s first allegation—that Bugarin approved the transfer to Facility 3-A—the
2 parties no longer dispute that Officer Noland requested plaintiff’s transfer to Facility 3-A and
3 that Sergeant Rasley approved the transfer. ECF No. 66-3 ¶¶ 12-13; ECF No. 66-4 at 3, 12.
4 Indeed, plaintiff does not argue that Bugarin participated in that decision in any way. *See*
5 ECF No. 77 at 1-4. Since plaintiff adduces no evidence that Bugarin caused the transfer and
6 the alleged deprivation of his rights, plaintiff cannot prevail on the basis that Bugarin approved
7 his transfer to Facility 3-A. *See Felarca v. Birgeneau*, 891 F.3d 809, 820 (9th Cir. 2018)
8 (reversing denial of summary judgment when plaintiff failed to show that defendant caused
9 alleged deprivation in Section 1983 action).

10 Plaintiff cannot withstand summary judgment on his second allegation, either. Plaintiff
11 contends that Bugarin caused injury—specifically, the attack by Butler three weeks later—by
12 escorting plaintiff to Facility 3-A. ECF No. 77 at 3. The court has already found that a
13 reasonable jury could find causation based on Bugarin’s escort of plaintiff to Facility 3-A, *see*
14 ECF No. 54 at 6-8, and whether Bugarin escorted plaintiff to Facility 3-A is genuinely
15 disputed, *see* ECF No. 66-4 at 3; ECF No. 77 at 6. This dispute of fact, however, is
16 immaterial: even if the court were to accept plaintiff’s allegation as true, he cannot establish
17 deliberate indifference.

18 Prison officials have a duty “to protect prisoners from violence at the hands of other
19 prisoners,” and failure to do so can violate the Eighth Amendment’s prohibition against cruel
20 and unusual punishment. *See Hearnns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005) (citation
21 omitted). The deliberate-indifference standard of *Farmer v. Brennan*, 511 U.S. 825, governs
22 failure-to-protect claims. *See Hearnns*, 413 F.3d at 1040. Under the deliberate-indifference
23 standard, a defendant violates the Eighth Amendment when two requirements are satisfied:
24 (1) the alleged deprivation is objectively serious; and (2) the defendant is deliberately
25 indifferent to the deprivation. *See Farmer*, 511 U.S. 825, 834 (1994); *Hearnns*, 413 F.3d at
26 1040. As for the first requirement, the parties do not dispute that placing an inmate in a
27 housing unit with his documented enemy is an objectively serious deprivation. The second
28 requirement, deliberate indifference, requires that a defendant subjectively know of and

1 disregard “an excessive risk to inmate health or safety.” *Farmer*, 511 U.S. at 837. The
2 defendant must be “aware of facts from which the inference could be drawn that a substantial
3 risk of serious harm exists,” and the defendant must actually draw that inference. *See id.*;
4 *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1068 (9th Cir. 2016).

5 Here, plaintiff cannot show deliberate indifference even if Bugarin escorted plaintiff to a
6 yard within Facility 3-A. According to plaintiff, Bugarin escorted him there on April 5, 2012
7 because there was no bus scheduled to transport him to a different prison. ECF No. 77 at 6.
8 The first issue is whether Bugarin knew that he was escorting plaintiff to a location where
9 plaintiff would be in contact with a documented enemy, Butler.

10 Although plaintiff does not address the issue of Bugarin’s knowledge at summary
11 judgment, some evidence supports the inference that Bugarin *should have* known that Butler
12 was in Facility 3-A. On January 12, 2012, Bugarin signed a DC 812-A form, designating
13 Butler as plaintiff’s documented enemy and indicating in the “Current Location” column that
14 Butler was located in Facility 3-A as of January 12, 2012. *See* ECF No. 12 at 19. Still, the fact
15 that Bugarin signed the form about four months before allegedly escorting plaintiff to Facility
16 3-A—without more—does not show Bugarin’s knowledge that plaintiff faced a safety risk on
17 April 5, 2012. Plaintiff provides no evidence that Bugarin monitored Butler’s location after
18 January 12, 2012 or that Bugarin knew Butler’s location as of April 5, 2012. Bugarin—a
19 correctional counselor responsible for about 160 inmates—was not plaintiff’s counselor when
20 he allegedly escorted plaintiff to Facility 3-A. *See* ECF No. 66-4 ¶¶ 2, 6-7. Furthermore,
21 plaintiff insists that there were “mass transfers . . . rapidly being taken place” at Corcoran and
22 that the decision to move plaintiff to a different facility within Corcoran was “urgent.”
23 ECF No. 77 at 6. Under these circumstances, it is doubtful at best that Bugarin, a correctional
24 counselor responsible for many inmates, would have known or remembered for four months
25 the location of a documented enemy of one inmate.

26 Even if a reasonable jury could find that Bugarin knew Butler’s location on April 5,
27 2012, plaintiff still could not withstand summary judgment because he cannot show that
28 Bugarin knew of and disregarded an “excessive risk” to plaintiff’s safety. *See Farmer*, 511

1 U.S. at 837. Plaintiff states that Bugarin told him that he would stay in the Facility 3-A yard
2 until a bus arrived to transport him. ECF No. 77 at 6. Plaintiff presents no evidence that
3 Bugarin knew plaintiff would have a prolonged stay in Facility 3-A or that he perceived
4 plaintiff's temporary stay in Facility 3-A to present safety issues. Bugarin's decision to leave
5 plaintiff in Facility 3-A was negligence at best, not cruel and unusual punishment. *See*
6 *Farmer*, 511 U.S. at 838 (“[A]n official’s failure to alleviate a significant risk that he should
7 have perceived but did not, while no cause for commendation, cannot under our cases be
8 condemned as the infliction of punishment.”). In sum, there is no genuine dispute of any
9 material fact, and Bugarin is entitled to summary judgment.

10 **c. Failure-to-protect claim against Gonzales**

11 Plaintiff proceeds on a failure-to-protect claim under the Eighth Amendment against
12 defendant Gonzales. Plaintiff contends that Gonzales ignored his warnings that he was being
13 housed in the same facility as a documented enemy. ECF No. 12 ¶¶ 11-13; ECF No. 13 at 6.
14 The deliberate-indifference standard discussed above applies to plaintiff's failure-to-protect
15 claim against Gonzales.

16 Again, plaintiff offers no evidence that Gonzalez knew that plaintiff was staying in
17 Facility 3-A with a documented enemy. Plaintiff conceded during his deposition that he never
18 had any personal interaction with Gonzales. ECF No. 66-6:11-13. He testified that he sent
19 Gonzales two interview-request forms, one on April 6, 2012 and another on April 8, 2012,
20 asking to discuss “housing.” *Id.* at 8:18-10:7; ECF No. 66-5 ¶ 4. Those two forms might have
21 informed Gonzales of an unidentified problem with his housing in the general sense (“I would
22 like to speak to a superior [superior] regarding my housing”), but they do not show that
23 plaintiff informed Gonzales of any safety risk. ECF No. 77 at 11.

24 After testifying in his deposition that he sent only two interview-request forms, plaintiff
25 now states for the first time in his declaration that he “wrote several request forms regarding
26 [his] housing to the supieor [superior] SGT but to no avail.” ECF No. 77 at 9 (emphasis
27 added). This statement suggests that plaintiff sent interview-request forms to an unidentified
28 sergeant—in addition to the forms he sent to Gonzales. Still, the statement does not support a

1 finding that plaintiff informed Gonzales of any safety risk, so plaintiff's declaration does not
2 raise a genuine dispute. Thus, there is no genuine dispute of any material fact as to plaintiff's
3 claim against Gonzales, and Gonzales is entitled to summary judgment. No other claim
4 remains, and granting defendants' motion for summary judgment concludes this case.

5 **III. Findings and recommendations**

6 We recommend that the court grant defendants J. Gonzales and J. Bugarin's motion for
7 summary judgment. ECF No. 66. These findings and recommendations are submitted to
8 United States District Judge Lawrence J. O'Neill under 28 U.S.C. § 636(b)(1)(B) and Local
9 Rule 304. Within 14 days of the service of the findings and recommendations, the parties may
10 file written objections to the findings and recommendations with the court and serve a copy on
11 all parties.⁷ That document must be captioned "Objections to Magistrate Judge's Findings and
12 Recommendations." The presiding district judge will then review the findings and
13 recommendations under 28 U.S.C. § 636(b)(1)(C). A party's failure to object within the
14 specified time may waive rights on appeal. *See Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th
15 Cir. 2014).

16 **IV. Order**

17 The clerk of court is directed to amend the case caption to reflect the correct spelling of
18 defendant J. Bugarin's last name.

21 ⁷ In any future filings, plaintiff should bear in mind that he has a duty to be truthful. A court
22 may impose sanctions if a litigant is not truthful in court submissions. *See*
23 *Fed. R. Civ. P. 11(b); Truesdell v. S. California Permanente Med. Grp.*, 293 F.3d 1146, 1153
24 (9th Cir. 2002). Certain of plaintiff's statements raise concerns about plaintiff's candor. For
25 example, plaintiff stated in his declaration that he had not timely filed his opposition to
26 defendants' motion for summary judgment because he did not know that defendants could
27 move for summary judgment again. ECF No. 77 at 7. However, when Judge Grosjean
28 explained to plaintiff that his evidence against Bugarin was too thin, she explained that
defendants would likely move for summary judgment again. *See* Audio Recording, Telephonic
Status Conference, 1:41:30-1:42:17 (Mar. 7, 2018). Plaintiff also testified during his
deposition that he took no action regarding his housing in Facility 3-A other than sending two
interview-request forms to Gonzales. ECF No. 66-6 at 9:2-10, 10:5-7. However, plaintiff later
stated in his declaration that he "wrote several request forms regarding [his] housing to the
supieor [superior] SGT" ECF No. 77 at 9. These statements are difficult to reconcile.

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IT IS SO ORDERED.

Dated: October 24, 2018


UNITED STATES MAGISTRATE JUDGE