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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OUSSAMA SAHIBI,
Plaintiff,
v.
BORJAS GONZAES, et al.,
Defendants.

Case No. 1:15-cv-01581-LJO-MJS (PC)

**FINDINGS AND RECOMMENDATIONS
TO GRANT IN PART AND DENY IN
PART DEFENDANT CROUNSE'S
MOTION FOR SUMMARY JUDGMENT**

(ECF No. 92)

**FOURTEEN (14) DAY OBJECTION
DEADLINE**

I. Procedural History

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. The action proceeds on Plaintiff's Eighth Amendment excessive force claim against Defendants Brandon Cope, Borjas Gonzales, Mario Lozano, Howard Smith, and Stan, and on a Fourteenth Amendment due process claim against Defendant Crouse.

Before the Court is Defendant Crouse's motion for summary judgment. (ECF No. 92.) Plaintiff filed an opposition. (ECF No. 108.) Defendant filed a reply. (ECF No. 111.) The matter is submitted. Local Rule 230(*l*).

II. Legal Standard

The Court shall grant summary judgment if the movant shows that there is no

1 genuine dispute as to any material fact and the movant is entitled to judgment as a
2 matter of law. Fed. R. Civ. P. 56(a); Wash. Mut. Inc. v. United States, 636 F.3d 1207,
3 1216 (9th Cir. 2011). “If undisputed evidence viewed in the light most favorable to the
4 prisoner shows a failure to exhaust, a defendant is entitled to summary judgment under
5 Rule 56.” Albino, 747 F.3d at 1166. If material facts are disputed, summary judgment
6 should be denied, and the Court should decide disputed factual questions relevant to
7 exhaustion “in the same manner a judge rather than a jury decides disputed factual
8 questions relevant to jurisdiction and venue.” Id. at 1169-71.

9 Each party’s position, whether it be that a fact is disputed or undisputed, must be
10 supported by (1) citing to particular parts of materials in the record, including but not
11 limited to depositions, documents, declarations, or discovery; or (2) showing that the
12 materials cited do not establish the presence or absence of a genuine dispute or that
13 the opposing party cannot produce admissible evidence to support the fact. Fed R. Civ.
14 P. 56(c)(1). In judging the evidence at the summary judgment stage, the Court may not
15 make credibility determinations or weigh conflicting evidence, Soremekun v. Thrifty
16 Payless, Inc., 509 F.3d 978, 984 (9th Cir. 2007), and it must draw all inferences in the
17 light most favorable to the nonmoving party, Comite de Jornaleros de Redondo Beach
18 v. City of Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011).

19 **III. Plaintiff’s Complaint**

20 Plaintiff’s claims arise out of a July 13, 2013 incident at California Correctional
21 Institution. Plaintiff claims that, on that date, he was released from his cell for Ramadan
22 services when Defendant Gonzales began to make disparaging remarks toward him. An
23 altercation occurred between Plaintiff and Defendant Gonzales. Plaintiff was subdued
24 and handcuffed. Plaintiff alleges various acts by Defendant Gonzales and others during
25 the encounter were excessive. Based on these allegations, the Court has permitted
26 Plaintiff to proceed on an excessive force claim against Defendants Gonzales, Smith,
27 Cope, Lozano and Stan. Such claim, however, is limited to Defendants’ actions after
28 Plaintiff was handcuffed.

1 Plaintiff received a Rules Violation Report (“RVR”) in relation to this incident. On
2 November 14, 2013, he appeared before Defendant Crouse for his disciplinary
3 hearing. He asked Defendant Crouse to call Defendants Gonzales, Smith, Stan, Cope
4 and Lozano as witnesses. He alleges Defendant Crouse stated that he would not be
5 calling anyone “as staff reports gave a full account of the incident.” Plaintiff pointed out
6 that Defendant Gonzales’ report was missing and was critical as he was the primary
7 officer. Plaintiff contends he was ignored and subsequently found guilty without being
8 afforded a meaningful hearing. The Court has permitted him to proceed on a Fourteenth
9 Amendment claim against Defendant Crouse based on the denial of his right to call
10 witnesses at his disciplinary hearing.

11 **IV. Analysis**

12 **A. Due Process Claim**

13 **1. Applicable Law Regarding Disciplinary Hearings**

14 The Due Process Clause protects prisoners from being deprived of liberty without
15 due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). Under the due
16 process clause, minimum procedural protections are required for prison disciplinary
17 proceedings. These include: (1) written notice of the charges; (2) at least 24 hours
18 between the time the prisoner receives written notice and the time of the hearing, so
19 that the prisoner may prepare his defense; (3) a written statement by the fact finders of
20 the evidence they rely on and reasons for taking disciplinary action; (4) the right of the
21 prisoner to call witnesses in his defense, when permitting him to do so would not be
22 unduly hazardous to institutional safety or correctional goals; and (5) legal assistance to
23 the prisoner where the prisoner is illiterate or the issues presented are legally complex.
24 Id. at 563-71. As long as the five minimum Wolff requirements are met, due process has
25 been satisfied. Walker v. Sumner, 14 F.3d 1415, 1420 (9th Cir. 1994), abrogated on
26 other grounds by Sandin v. Connor, 515 U.S. 472 (1995).

27 In addition, “some evidence” must support the decision of the hearing officer,
28 Superintendent v. Hill, 472 U.S. 445, 455 (1985), and the evidence must have some

1 indicia of reliability, Cato v. Rushen, 824 F.2d 703, 705 (9th Cir. 1987). The “some
2 evidence” standard is not particularly stringent and the relevant inquiry is whether “there
3 is any evidence in the record that could support the conclusion reached. . . .” Hill, 472
4 U.S. at 455-56 (emphasis added).

5 **2. Discussion**

6 As a result of the disciplinary hearing at issue here, Plaintiff was assessed a loss
7 of good time credits and received a four-year SHU term. Nevertheless, Defendant
8 contends that Plaintiff was not entitled to the due process protections mandated by
9 Wolff because (1) Plaintiff, as a life prisoner, had no liberty interest in any loss of good
10 time credits, and (2) although Plaintiff received a SHU term as a result of the disciplinary
11 violation, the SHU term was not imposed by Crouse. The Court finds it necessary to
12 address only the second of these contentions.¹

13 It is well settled that a prisoner is entitled to the protections articulated in Wolff
14 where the sanction resulting from the disciplinary hearing is segregation in a security
15 housing unit. See Wolff, 418 U.S. at 571, n.19. Defendant does not argue otherwise.
16 Here, it is undisputed that Plaintiff was assessed a SHU term in relation to the
17 disciplinary proceeding conducted by Crouse. (See ECF No. 92-2.) Thus, he was
18 entitled to the Wolff protections. That someone other than Crouse ultimately imposed
19 the SHU term is not relevant to the question of whether Plaintiff was entitled to due
20 process in the disciplinary proceeding. See Wolff, 418 U.S. at 571 n.19 (“[T]here should
21 be minimum procedural safeguards as a hedge against arbitrary determination of the
22 factual predicate for imposition of the sanction.” (Emphasis added)).

23 Crouse cites general case law standing for the proposition that, under section
24 1983, an individual may be held liable only for his own misconduct, and thus a Plaintiff
25 must link a defendant to a constitutional violation. (ECF No. 92 at 12-13.) Crouse
26 argues that he was not involved in the decision to impose a SHU term, and thus he has

27
28 ¹ As such, the Court also finds it unnecessary to address Defendant Crouse’s qualified immunity
argument, which is premised only on the revocation of good time credits.

1 not violated Plaintiff's rights. This argument is unavailing. Plaintiff has not sued
2 Defendant Crouse for assessing him a SHU term. Plaintiff has sued Defendant Crouse
3 for denying him due process in relation to his disciplinary hearing. He has adequately
4 linked Defendant Crouse, the hearing officer, to this alleged violation of his due
5 process rights.

6 Based on the foregoing, the Court concludes that Plaintiff was entitled to due
7 process protections in relation to his disciplinary hearing. Defendant has not presented
8 any argument or evidence to suggest that he was afforded those protections or to
9 controvert the allegations of the complaint. Accordingly, he is not entitled to summary
10 judgment on this claim.

11 **B. Relief Sought**

12 In this action, Plaintiff seeks compensatory damages against Defendant Crouse
13 for "punishment and emotional injuries." (ECF No. 1 at 11.) He also seeks punitive
14 damages in the amount of \$15,000.

15 Defendant Crouse asks the Court to grant summary judgment on Plaintiff's
16 claim for compensatory damages "for the punishment and emotional injuries." This
17 argument is based on 42 U.S.C. § 1997e(e), which provides: "No Federal civil action
18 may be brought by a prisoner confined in a jail, prison, or other correctional facility, for
19 mental or emotional injury suffered while in custody without a prior showing of physical
20 injury or the commission of a sexual act (as defined in section 2246 of Title 18)."

21 Defendant Crouse is correct that, under the plain language of 42 U.S.C.
22 § 1997e(e), Plaintiff cannot maintain a claim for emotional injuries absent physical
23 injury. There is no allegation that Plaintiff suffered a physical injury stemming from the
24 disciplinary proceeding. Thus, summary judgment should be granted in Defendant
25 Crouse's favor on Plaintiff's claim for compensatory damages for emotional injuries.

26 However, Plaintiff's claim for compensatory damages for "punishment" is less
27 clear. Construing Plaintiff's complaint liberally, as the Court is required to do, Resnick v.
28 Hayes, 213 F.3d 443, 447 (9th Cir. 2000), the complaint may be read to suggest that

1 Plaintiff seeks damages in relation to his confinement in the SHU. The parties do not
2 address whether any such damages may be available to Plaintiff. Accordingly,
3 Defendant has not shown that he is entitled to summary judgment on this aspect of
4 Plaintiff's claim.

5 **VI. Conclusion and Recommendation**

6 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 7 1. Defendant Crouse's motion for summary judgment be granted in part
8 and denied in part; and
- 9 2. Summary judgment be granted in favor of Defendant Crouse on
10 Plaintiff's claim for compensatory damages for emotional injuries.

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

21
22 IT IS SO ORDERED.

23 Dated: July 11, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE