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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN JOSEPH STOLTIE,

Plaintiff,

No. CIV S-08-2584 GEB DAD P

vs.

JANETTA GERINGSON, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a former state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. On November 19, 2010, defendants Lipon and Geringson filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Plaintiff has not opposed the motion.<sup>1</sup>

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<sup>1</sup> On January 13, 2011, the undersigned issued an order to show cause, ordering plaintiff to file an opposition to defendants’ motion for summary judgment and warning plaintiff that failure to do so could “be deemed a waiver of any opposition to the granting of the motion.” Plaintiff still has not filed an opposition to defendants’ motion. Accordingly, dismissal pursuant to Federal Rule of Civil Procedure 41(b) would be justified.

1 **BACKGROUND**

2 Plaintiff is proceeding on his original complaint against defendants Lipon,  
3 Geringson, and Ziga.<sup>2</sup> Therein, plaintiff alleges as follows. Plaintiff has an extensive history of  
4 self-injurious behavior and has serious mental health needs. While incarcerated he was referred  
5 to a higher level of care for close observation and intense therapy but while awaiting his custody  
6 clearance he became extremely agitated and presented a “behavioral problem.” According to  
7 plaintiff, on February 19, 2008, at his Interdisciplinary Treatment Team meeting, defendant  
8 Geringson asked plaintiff to take an increased dose of his Geodon medication and informed  
9 plaintiff that if he refused she would seek a court order requiring him to accept the increased  
10 dose, which in turn would delay his referral to a higher level of care. Defendants Ziga and Lipon  
11 were also present at this meeting as part of plaintiff’s “treatment team.” Plaintiff refused to take  
12 the increased dose of medication, explaining that it made him feel disgusting and filthy. Plaintiff  
13 also expressed his desire to let the courts decide the matter. (Compl. at 5, Attach. at 2 & Ex. 3.)

14 The following day, defendant Geringson told plaintiff not to worry about the  
15 medication increase and that she would discharge him to wherever he wanted to go, which led  
16 plaintiff to believe that he would eventually be transferred to a higher level of care. However, on  
17 or about February 21, 2009, plaintiff was instead transferred to the Enhanced Outpatient  
18 Program/Administrative Segregation Unit. In plaintiff’s view, defendants Ziga, Lipon, and  
19 Geringson discharged him to this lower level of care knowing the dangers it would pose him.  
20 Plaintiff informed Dr. Gross, his psychologist, of his new housing unit, and she quickly referred  
21 plaintiff back to a higher level of care because she believed the Enhanced Outpatient Program did  
22 not provide plaintiff with the level of care that he needed. However, despite Dr. Gross’ efforts,  
23 plaintiff obtained an instrument and cut himself. He received treatment and approximately three

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24 <sup>2</sup> Defendants Lipon and Geringson are represented by attorneys with the firm of Williams  
25 & Associates. Defendant Ziga is represented by attorneys with the firm of Moreno & Rivera and  
26 has also filed a motion for summary judgment which the court will address in separate findings  
and recommendations.

1 sutures. Plaintiff was then placed in a crisis unit cell with a razor blade in plain sight on the  
2 floor. Plaintiff used the razor blade to inflict additional lacerations on himself. He was then  
3 treated again and transferred to the acute care unit. (Compl. Attach. at 2-2b.)

4 Plaintiff claims that the defendants have been deliberately indifferent to his  
5 serious mental health needs in violation of the Eighth Amendment. In terms of relief, plaintiff  
6 requests monetary damages. (Compl. at 5, Attach. at 2a.)

### 7 SUMMARY JUDGMENT STANDARDS UNDER RULE 56

8 Summary judgment is appropriate when it is demonstrated that there exists “no  
9 genuine issue as to any material fact and that the moving party is entitled to a judgment as a  
10 matter of law.” Fed. R. Civ. P. 56(c).

11 Under summary judgment practice, the moving party  
12 always bears the initial responsibility of informing the district court  
13 of the basis for its motion, and identifying those portions of “the  
14 pleadings, depositions, answers to interrogatories, and admissions  
15 on file, together with the affidavits, if any,” which it believes  
16 demonstrate the absence of a genuine issue of material fact.

15 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)). “[W]here the  
16 nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary  
17 judgment motion may properly be made in reliance solely on the ‘pleadings, depositions, answers  
18 to interrogatories, and admissions on file.’” Id. Indeed, summary judgment should be entered,  
19 after adequate time for discovery and upon motion, against a party who fails to make a showing  
20 sufficient to establish the existence of an element essential to that party’s case, and on which that  
21 party will bear the burden of proof at trial. See id. at 322. “[A] complete failure of proof  
22 concerning an essential element of the nonmoving party’s case necessarily renders all other facts  
23 immaterial.” Id. In such a circumstance, summary judgment should be granted, “so long as  
24 whatever is before the district court demonstrates that the standard for entry of summary  
25 judgment, as set forth in Rule 56(c), is satisfied.” Id. at 323.

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1           If the moving party meets its initial responsibility, the burden then shifts to the  
2 opposing party to establish that a genuine issue as to any material fact actually does exist. See  
3 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to  
4 establish the existence of this factual dispute, the opposing party may not rely upon the  
5 allegations or denials of its pleadings but is required to tender evidence of specific facts in the  
6 form of affidavits, and/or admissible discovery material, in support of its contention that the  
7 dispute exists. See Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at 586 n.11. The opposing party  
8 must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome  
9 of the suit under the governing law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248  
10 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir.  
11 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could  
12 return a verdict for the nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433,  
13 1436 (9th Cir. 1987).

14           In the endeavor to establish the existence of a factual dispute, the opposing party  
15 need not establish a material issue of fact conclusively in its favor. It is sufficient that “the  
16 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing  
17 versions of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631. Thus, the “purpose of summary  
18 judgment is to ‘pierce the pleadings and to assess the proof in order to see whether there is a  
19 genuine need for trial.’” Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory  
20 committee’s note on 1963 amendments).

21           In resolving the summary judgment motion, the court examines the pleadings,  
22 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if  
23 any. Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson,  
24 477 U.S. at 255. All reasonable inferences that may be drawn from the facts placed before the  
25 court must be drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587.  
26 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to

1 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen  
2 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898, 902 (9th Cir.  
3 1987). Finally, to demonstrate a genuine issue, the opposing party “must do more than simply  
4 show that there is some metaphysical doubt as to the material facts . . . . Where the record taken  
5 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no  
6 ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted).

### 7 **OTHER APPLICABLE LEGAL STANDARDS**

#### 8 I. Civil Rights Act Pursuant to 42 U.S.C. § 1983

9 The Civil Rights Act under which this action was filed provides as follows:

10 Every person who, under color of [state law] . . . subjects, or causes  
11 to be subjected, any citizen of the United States . . . to the  
12 deprivation of any rights, privileges, or immunities secured by the  
13 Constitution . . . shall be liable to the party injured in an action at  
14 law, suit in equity, or other proper proceeding for redress.

15 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
16 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
17 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
18 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
19 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or  
20 omits to perform an act which he is legally required to do that causes the deprivation of which  
21 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

22 Moreover, supervisory personnel are generally not liable under § 1983 for the  
23 actions of their employees under a theory of respondeat superior and, therefore, when a named  
24 defendant holds a supervisory position, the causal link between him and the claimed  
25 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862  
26 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory  
allegations concerning the involvement of official personnel in civil rights violations are not  
sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

1 II. Eighth Amendment and Adequate Medical Care

2 The unnecessary and wanton infliction of pain constitutes cruel and unusual  
3 punishment prohibited by the Eighth Amendment. Whitley v. Albers, 475 U.S. 312, 319 (1986);  
4 Ingraham v. Wright, 430 U.S. 651, 670 (1977); Estelle v. Gamble, 429 U.S. 97, 105-06 (1976).  
5 In order to prevail on a claim of cruel and unusual punishment, a prisoner must allege and prove  
6 that objectively he suffered a sufficiently serious deprivation and that subjectively prison officials  
7 acted with deliberate indifference in allowing or causing the deprivation to occur. Wilson v.  
8 Seiter, 501 U.S. 294, 298-99 (1991).

9 Where a prisoner's Eighth Amendment claims arise in the context of medical  
10 care, including mental health care, the prisoner must allege and prove "acts or omissions  
11 sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle, 429  
12 U.S. at 106. See also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994); Hoptowit v.  
13 Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An Eighth Amendment medical claim has two  
14 elements: "the seriousness of the prisoner's medical need and the nature of the defendant's  
15 response to that need." McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1991), overruled on  
16 other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc).

17 A medical need is serious "if the failure to treat the prisoner's condition could  
18 result in further significant injury or the 'unnecessary and wanton infliction of pain.'" McGuckin, 974 F.2d at 1059 (quoting Estelle v. Gamble, 429 U.S. at 104). Indications of a  
19 serious medical need include "the presence of a medical condition that significantly affects an  
20 individual's daily activities." Id. at 1059-60. By establishing the existence of a serious medical  
21 need, a prisoner satisfies the objective requirement for proving an Eighth Amendment violation.  
22 Farmer v. Brennan, 511 U.S. 825, 834 (1994).

23 If a prisoner establishes the existence of a serious medical need, he must then  
24 show that prison officials responded to the serious medical need with deliberate indifference.  
25 Farmer, 511 U.S. at 834. In general, deliberate indifference may be shown when prison officials  
26

1 deny, delay, or intentionally interfere with medical treatment, or may be shown by the way in  
2 which prison officials provide medical care. Hutchinson v. United States, 838 F.2d 390, 393-94  
3 (9th Cir. 1988). Before it can be said that a prisoner’s civil rights have been abridged with regard  
4 to medical care, however, “the indifference to his medical needs must be substantial. Mere  
5 ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.”  
6 Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at  
7 105-06). See also Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (“Mere negligence in  
8 diagnosing or treating a medical condition, without more, does not violate a prisoner’s Eighth  
9 Amendment rights.”); McGuckin, 974 F.2d at 1059 (same).

## 10 DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

### 11 I. Defendants’ Statement of Undisputed Facts and Evidence

12 The defendants’ statement of undisputed facts is supported by citations to  
13 declarations signed under penalty of perjury by defendants Lipon and Geringson. It is also  
14 supported by citations to copies of plaintiff’s medical records and complaint, and copies of  
15 defendants’ discovery requests to plaintiff.

16 The evidence submitted by the defendants establishes the following. Defendant  
17 Geringson is a licensed physician and surgeon who has been employed by the Department of  
18 Mental Health (“DMH”) as a staff psychiatrist at CMF since 2007. Defendant Lipon is a  
19 licensed physician and surgeon who was employed by DMH as a senior staff psychiatrist at CMF  
20 from February 2008 through December 2008. In December 2008, defendant Lipon was  
21 promoted to the Acting Medical Director at CMF for the Vacaville Psychiatric Program. (Defs.’  
22 SUDF 1-2, Geringson Decl., Lipon Decl.)

23 As a senior psychiatrist at CMF, defendant Lipon supervised the work of other  
24 mental healthcare professionals and did not typically treat inmates himself. He did not provide  
25 direct mental health care or services to plaintiff during plaintiff’s incarceration at CMF in 2008.  
26 Defendant Lipon’s only involvement with plaintiff during the period relevant to the complaint in

1 this action was his attendance at plaintiff's treatment team meeting on February 19, 2008.  
2 (Defs.' SUDF 3-5, Lipon Decl.)

3 Plaintiff was an inmate at CMF at all times relevant to this lawsuit. He has been  
4 diagnosed as suffering from bipolar disease and has a history of cutting himself. Plaintiff  
5 functions well when taking medication. However, plaintiff has a history of initially consenting to  
6 medications, then refusing them and deteriorating when he stops taking those medications.  
7 (Defs.' SUDF 6-9, Geringson Decl., Lipon Decl., Storrie Decl. & Ex. A.)

8 CMF is a California Department of Corrections and Rehabilitation ("CDCR")  
9 medical psychiatric institution for male prisoners with inpatient and outpatient facilities. DMH  
10 operates a licensed, acute care psychiatric hospital within CMF called the Vacaville Psychiatric  
11 Program. Plaintiff was a patient at the DMH psychiatric hospital on two prior occasions in 2006  
12 and 2007. Both times he was discharged back to the CDCR Enhanced Outpatient Program after  
13 his mental health had stabilized. (Defs.' SUDF 10-12, Geringson Decl., Lipon Decl., Storrie  
14 Decl. & Ex. A.)

15 Upon his arrival at CMF on January 15, 2008, plaintiff was placed in the  
16 Enhanced Outpatient Program in Administrative Segregation. On January 18, 2008, plaintiff cut  
17 himself and was admitted to a Mental Health Crisis Bed in the DMH psychiatric hospital at  
18 CMF. Defendant Geringson was his treating psychiatrist there. At the beginning of his stay in  
19 the Mental Health Crisis Bed, a referral to the Intermediate Facility at DMH-Vacaville was  
20 discussed, but plaintiff later changed his mind and asked for a transfer back to the Enhanced  
21 Outpatient Program in Administrative Segregation. Plaintiff's subsequent behavioral issues and  
22 lack of cooperation indicated that plaintiff was not a good candidate for the Intermediate Care  
23 Facility in any event. (Defs.' SUDF 13-18, Geringson Decl., Lipon Decl., Hrbacek Decl. & Ex.  
24 A., Pl.'s Compl.)

25 While in the Mental Health Crisis Bed, plaintiff started taking Lithium, Tegretol,  
26 Seroquel, Geodon, and Vistaril. Lithium, Tegretol, Seroquel, and Geodon treat bipolar disease,

1 and Vistaril treats anxiety. On February 15, 2008, plaintiff denied suicidal and homicidal  
2 ideations and reported that his ten-current dose of Geodon was helpful. (Defs.' SUDF 19-21,  
3 Lipon Decl.)

4           At the treatment team meeting on February 19, 2008, plaintiff asked to be  
5 transferred back to the CDCR Enhanced Outpatient Program. Defendants Geringson and Lipon,  
6 Nurse Balmaceda, and Dr. Sharma were all present at the meeting and concurred in the decision  
7 to release plaintiff back to the Enhanced Outpatient Program as plaintiff had requested. Plaintiff  
8 consistently denied wanting to kill himself and had not cut himself since January 18, 2008.  
9 Plaintiff was discharged to the Enhanced Outpatient Program because his condition had  
10 improved with medication to the degree that he no longer required the inpatient level of care, and  
11 because he denied suicidal, homicidal, or self-injurious thoughts. Unless a patient is clearly not  
12 in control of himself, mental health treatment is often necessarily based largely on the patient's  
13 subjective reporting of his own symptoms or lack of symptoms. Plaintiff was taking Lithium,  
14 Tegretol, Seroquel, Geodon, and Vistaril when he was discharged to the CDCR Enhanced  
15 Outpatient Program on February 21, 2008. (Defs.' SUDF 19-26, Geringson Decl., Lipon Decl.,  
16 Storrie Decl. & Ex. A., Pl.'s Compl.)

17           There are two mental health programs within the CDCR Mental Health Services  
18 Delivery System - the Enhanced Outpatient Program and the Correctional Clinical Case  
19 Management System ("CCCMS"). The Enhanced Outpatient Program provides a higher level of  
20 mental health care than CCCMS. In the majority of cases, an inmate who improves from a  
21 Mental Health Crisis Bed placement will be placed in the Enhanced Outpatient Program.  
22 However, each discharge decision is based on professional judgment on a case-by-case basis.  
23 (Defs.' SUDF 27-30, Geringson Decl., Lipon Decl.)

24           Multiple mental health staff members noted that plaintiff appeared stable with a  
25 low risk of suicide before and after he was released to the Enhanced Outpatient Program on  
26 February 21, 2008. In this regard, on February 20, 2008, Dr. Steele indicated that plaintiff's

1 suicide risk was “low” on a CDCR Suicide Risk Assessment Checklist. On February 21, 2008,  
2 Dr. Sutton psychiatrically cleared plaintiff for Administrative Segregation placement. On  
3 February 22, 2008, Dr. DeAlmeida reported on a Suicide Risk Assessment Checklist that  
4 plaintiff presented a low risk of suicide. On February 25, 2008, Dr. Bruce indicated on a Suicide  
5 Risk Assessment Checklist that plaintiff presented “No Apparent/Significant Risk” of suicide  
6 and concluded that a referral to DMH or a higher level of care was unnecessary. (Defs.’ SUDF  
7 31-35, Geringson Decl., Lipon Decl., Storrie Decl. & Ex. A.)

8           On March 4, 2008, Dr. Gross indicated that plaintiff was “maintained at the EOP  
9 level of care to monitor his self-injurious behavior,” that he was “currently stable in the ASU  
10 environment,” and that plaintiff had decided to stop taking his Lithium. On March 6, 2008, Dr.  
11 Gross noted that plaintiff’s suicide risk was “low,” his self-injury risk was “medium,” his self-  
12 mutilation problem was stable, and his last suicide attempt was back in 1997. According to  
13 plaintiff’s medical records, on March 6, 2008, plaintiff told Dr. Gross that he felt no desire to cut  
14 himself but did not want to go to Mule Creek State Prison and that he was “conflicted about how  
15 to get his needs met without injuring self . . . feels an urgent need for treatment at the  
16 intermediate level of care . . . and feels going [back to a DMH Mental Health Crisis Bed] will  
17 expedite his referral.” (Defs.’ SUDF 36-38, Geringson Decl., Lipon Decl., Storrie Decl. & Ex.  
18 A.)

19           On March 7, 2008, plaintiff was re-admitted to a DMH Mental Health Crisis Bed  
20 after he cut himself on his upper left forearm with a spoon and called an officer to show him the  
21 cut. In October 2009, plaintiff told a prison social worker that he claimed to be suicidal in order  
22 to get out of prison and go to a DMH hospital. (Defs.’ SUDF 39-40, Lipon Decl., Hrbacek Decl.  
23 & Ex. A., Storrie Decl. & Ex. A.)

24           Defendants Lipon and Geringson contend that by not responding to their requests  
25 for admissions, plaintiff has admitted that he has no evidence that defendants Lipon and  
26 Geringson were deliberately indifferent to his medical needs; that they did not act with gross

1 negligence or violate any of plaintiff's constitutional rights; that he suffered no injuries as a result  
2 of their actions or inactions, that in October of 2009 he admitted to a social worker that he was  
3 never suicidal but pretended to be so that he could get out of prison and go to the hospital; that  
4 defendant Geringson never threatened to institute court proceedings; and that plaintiff actually  
5 requested the transfer back to the Enhanced Outpatient Program in February 2008. (Defs.' SUDF  
6 41-45, Carroll Decl. & Exs A & B.)

## 7 II. Defendants' Arguments

8 Defense counsel argues that there is no evidence before the court that defendants  
9 Geringson or Lipon intentionally delayed, denied, or interfered with plaintiff's mental health  
10 treatment or were deliberately indifferent to his mental health needs. Specifically, counsel argues  
11 as follows. With respect to defendant Geringson, the evidence shows that Dr. Geringson was  
12 highly responsive to plaintiff's mental health needs. For example, when plaintiff was discharged  
13 to the Enhanced Outpatient Program, he was taking Vistaril, Geodon, Lithium, Seroquel and  
14 Tegretol. Plaintiff reported feeling better, denied suicidal or self-injurious thoughts, and had not  
15 cut himself during his stay in the Mental Health Crisis Bed. In addition, Dr. Geringson did not  
16 unilaterally make the decision to discharge plaintiff. Rather, plaintiff himself as well as other  
17 mental health staff members agreed with the decision. Dr. Geringson then released plaintiff  
18 back to the most intensive level of mental health care available in CDCR to ensure that he would  
19 receive the appropriate mental health treatment. In fact, between February 15, 2008, and March  
20 6, 2008, five other doctors found that plaintiff presented a "low" risk of suicide. (Defs.' Mem. of  
21 P. & A. at 8-9.)

22 With respect to defendant Lipon, counsel argues that there is no evidence that Dr.  
23 Lipon ignored or failed to respond to any of plaintiff's medical or mental health needs. In  
24 addition, the evidence shows that Dr. Lipon was not directly involved in providing plaintiff with  
25 his mental health care in 2008. Rather, Dr. Lipon was only present at a meeting on February 19,  
26 2008, when the decision was made to discharge plaintiff. There is no evidence before the court

1 suggesting that Dr. Lipon failed to supervise defendant Dr. Geringson or that he directed or  
2 ratified any acts by defendant Geringson that violated plaintiff's constitutional rights. At the  
3 February 19, 2008, treatment team meeting plaintiff requested to be released back to the  
4 Enhanced Outpatient Program. At that time, plaintiff denied suicidal or self-injurious thoughts.  
5 (Defs.' Mem. of P. & A. at 10-11.)

### 6 ANALYSIS

7 Based on the evidence submitted in connection with the pending motion, the court  
8 finds that defendants Lipon and Geringson have borne their initial responsibility of  
9 demonstrating that there is no genuine issue of material fact with respect to the adequacy of the  
10 mental health care provided to plaintiff. Of course, in considering defendants' motion for  
11 summary judgment, the court is required to believe plaintiff's evidence and draw all reasonable  
12 inferences from the facts before the court in plaintiff's favor. However, as noted above, plaintiff  
13 has failed to file any opposition to defendants' motion and therefore has failed to submit any  
14 evidence creating a genuine issue of material fact with respect to his claim that the defendants  
15 responded to his mental health needs with deliberate indifference. See Farmer, 511 U.S. at 834;  
16 Estelle, 429 U.S. at 106. Based upon the evidence submitted in connection with the pending  
17 motion as summarized above, the undersigned finds that a reasonable jury could not conclude  
18 that defendants Lipon and Geringson were deliberately indifferent to plaintiff's medical needs in  
19 violation of plaintiff's rights under the Eighth Amendment. Therefore, defendants Lipon and  
20 Geringson's motion for summary judgment should be granted.<sup>3</sup>

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24 <sup>3</sup> In the pending motion for summary judgment, defense counsel has also argued that  
25 defendants Lipon and Geringson are entitled to summary judgment in their favor based upon  
26 qualified immunity. In light of the recommendation set forth above, however, the court will not  
reach the merits of those qualified immunity arguments.

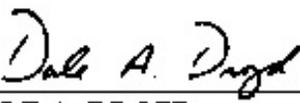
1 **CONCLUSION**

2 Accordingly, IT IS HEREBY RECOMMENDED that:

- 3 1. Defendant Lipon and Geringson’s November 19, 2010 motion for summary  
4 judgment (Doc. No. 67) be granted; and  
5 2. This action be closed.

6 These findings and recommendations are submitted to the United States District  
7 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen  
8 days after being served with these findings and recommendations, any party may file written  
9 objections with the court and serve a copy on all parties. Such a document should be captioned  
10 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
11 shall be served and filed within seven days after service of the objections. The parties are  
12 advised that failure to file objections within the specified time may waive the right to appeal the  
13 District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: April 29, 2011.

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18 DALE A. DROZD  
19 UNITED STATES MAGISTRATE JUDGE

17 DAD:9  
18 stol2584.57Lipon(2)