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

CLIFFORD LOCKLEAR,

Plaintiff,

No. 2:09-cv-2594-MCE-JFM (PC)

vs.

DR. SCHWINER, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that defendants Correctional Officer Solorzano and Correctional Sergeant Orrick violated his constitutional rights by having plaintiff removed from his job under false pretenses and acted intentionally to exacerbate plaintiff's mental illness so that he would hurt himself or others. This matter is before the court on the motion for defendants Orrick and Solorzano for summary judgment.¹

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¹ A third defendant, Sergeant Clay, was dismissed due to plaintiff's failure to exhaust administrative remedies with respect to his claim against said defendant prior to suit. See Findings and Recommendations filed September 14, 2010; Order filed October 20, 2010.

1 must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome
2 of the suit under the governing law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
3 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir.
4 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could
5 return a verdict for the nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433,
6 1436 (9th Cir. 1987).

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

14 In resolving the summary judgment motion, the court examines the pleadings,
15 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
16 any. Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson,
17 477 U.S. at 255. All reasonable inferences that may be drawn from the facts placed before the
18 court must be drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587.
19 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to
20 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen
21 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir.
22 1987). Finally, to demonstrate a genuine issue, the opposing party “must do more than simply
23 show that there is some metaphysical doubt as to the material facts Where the record taken
24 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no
25 ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted).

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1 Inmate Job Assignment, Inmate Assignment History, included in Ex. A to Ferguson Declaration.
2 Defendants have also presented evidence that neither of them had any authority to remove an
3 inmate from a job assignment, and that neither of them had plaintiff removed from his porter
4 position. See Declaration of Cheryl Orrick in Support of Defendants’ Motion for Summary
5 Judgment, filed November 18, 2010 (Orrick Declaration), at ¶¶ 4,5; Declaration of Aaron
6 Solorzano in Support of Defendants’ Motion for Summary Judgment, filed November 18, 2010
7 (Solorzano Declaration), at ¶¶ 3,4. Finally, defendants have presented evidence that neither of
8 them had or have “any knowledge concerning [plaintiff]’s mental health status.” Orrick
9 Declaration at ¶ 6; Solorzano Declaration at ¶ 5.

10 Although plaintiff opposes defendants’ motion, he has not presented any evidence
11 with that opposition. Plaintiff’s complaint is signed under penalty of perjury and “may be
12 considered as an affidavit in opposition to summary judgment if it is based on personal
13 knowledge and sets forth specific facts admissible in evidence.” Lopez v. Smith, 203 F.3d 1122,
14 1132 n.14 (9th Cir. 2000).

15 II. Defendants’ Motion

16 Defendants seek summary judgment on the grounds that (1) they did not deprive
17 plaintiff of any constitutional right; and (2) there is no evidence that they were deliberately
18 indifferent to a substantial risk of harm to plaintiff. In support of their motion, defendants
19 contend that plaintiff has no constitutional right to a job while in prison and, in any event, that
20 neither of them had any authority to remove plaintiff from his porter job and that plaintiff was
21 not removed from his porter job following his move from Building #8. Defendants also contend
22 that they had no knowledge of plaintiff’s mental health status and therefore would not have
23 known about possible impacts on plaintiff’s mental health from the events at bar.

24 The evidence tendered by defendants in support of their motion for summary
25 judgment establishes that (1) plaintiff was moved from Building #8 due to a cell door retrofit
26 project; (2) plaintiff remained in his porter job for at least twelve days following the move; (3)

1 neither defendant had any authority to, nor did, remove plaintiff from his porter job; and (4)
2 neither defendant had knowledge of plaintiff's mental health status or possible impacts of a
3 building move on plaintiff's mental health. The averments of plaintiff's complaint are
4 insufficient to create a triable issue of material fact with respect to any of the foregoing facts.
5 Accordingly, this court finds that there is no evidence to support either of plaintiff's claims. For
6 that reason, defendants are entitled to summary judgment.

7 In accordance with the above, IT IS HEREBY RECOMMENDED that:

8 1. Defendants' November 18, 2010 motion for summary judgment be granted;
9 and

10 2. Judgment be entered in this action in accordance with any order of the district
11 court adopting these findings and recommendations and the October 20, 2010 order of the district
12 court dismissing defendant Clay.

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

21 DATED: June 6, 2011.

22
23 
24 UNITED STATES MAGISTRATE JUDGE

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