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

RODNEY WOMACK,

Plaintiff,

No. 2:11-cv-1030 MCE EFB P

vs.

TIM VIRGA, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This case proceeds on plaintiff’s Eighth Amendment claims pertaining to his conditions of confinement and his claim that defendants were deliberately indifferent to his serious mental health needs when they prevented him from being single-celled, causing him to suffer significant emotional and psychological distress. Pending before the court are the following motions: (1) defendants’ Jochim, Stabbe, Sullivan, Van Dusseldorp, Virga, and Worrell’s motion for summary judgment; (2) plaintiff’s Rule 56(d) request that he be provided discovery prior to ruling on the motion for summary judgment; (3) plaintiff’s motion to amend his opposition to defendants’ summary judgment motion; (4) plaintiff’s motion to reinstate allegations against dismissed defendant McElroy; and (5) plaintiff’s motions for injunctive relief.

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1 For the reasons stated below, it is recommended that defendants' motion be granted and
2 plaintiff's motions be denied.

3 **I. Plaintiff's Allegations**

4 On December 24, 2009, plaintiff told his treating clinician, Dr. Steenman, that when he
5 was confined to California State Prison-Corcoran (CSP-Corcoran) in 1989-1991, there were
6 "gladiator wars," and that officers at that prison had "used tasers" on him and had put inmates in
7 his cell who "sexually assaulted" him. Pl.'s Apr. 18, 2011 Mot. for Prel. Inj. ("MPI") ("Dckt.
8 No. 1"), Ex. B. Plaintiff claimed he had been housed with fifteen cellmates and "felt
9 vulnerable." *Id.* Dr. Steenman found plaintiff's report of past trauma "credible" and determined
10 it was "likely" that plaintiff was experiencing post traumatic stress disorder (PTSD). *Id.* Dr.
11 Steenman recommended a single-cell for one year, "if custody agreed," so that plaintiff would
12 not have to spend his life term in administrative segregation for refusing cellmates. *Id.*
13 Defendant Warden Virga allegedly "reviewed all documents and conversed with [plaintiff] and
14 Steenman." *Id.* at 4. Defendant Virga allegedly agreed to grant plaintiff one-year of single cell
15 status. *Id.*

16 On October 28, 2009, before the one-year had expired, a prison official allegedly
17 informed plaintiff that he was eligible for double-celling. *Id.* at 5. The official allegedly told
18 plaintiff that he could either accept a cellmate or go to administrative segregation. *Id.* When
19 plaintiff objected, the prison official allegedly informed plaintiff that "the doctors don't run the
20 [] prison" and that records indicated that plaintiff was eligible for double-celling. *Id.* Plaintiff
21 refused double-celling and was placed in administrative segregation and the resulting loss of
22 privileges. *Id.* at 5, 9-10.

23 While in administrative segregation, defendant psychologist Sullivan was assigned to be
24 plaintiff's mental health clinician. *Id.* Plaintiff allegedly asked her to obtain copies of Dr.
25 Steenman's diagnosis and single-cell recommendation to assist plaintiff in getting released from
26 administrative segregation. *Id.* at 4-5. Defendant Sullivan allegedly refused, and told plaintiff

1 she would not recommend single-cell status. *Id.* at 5. Subsequently, plaintiff filed an inmate
2 appeal against Sullivan and she was removed as his clinician psychologist. *Id.*

3 Plaintiff claims he also filed an inmate appeal requesting that his single-cell status be
4 reinstated. *Id.* at 8. Defendant psychologist Worrell allegedly assigned the appeal to defendant
5 psychologist Stabbe. *Id.* Defendant Stabbe allegedly reviewed the December 2009 single-cell
6 recommendation, but denied plaintiff's appeal without mentioning it. *Id.*

7 Plaintiff allegedly remained in administrative segregation, where he repeatedly received
8 disciplinary actions for refusing cellmates. *Id.* at 9. He claims that the disciplinary actions were
9 improper because defendant Jochim had falsely stated that compatible cellmates were available
10 to double-cell with plaintiff. *Id.* As a result of the numerous disciplinary actions, plaintiff
11 allegedly lost certain privileges, such as television, visits, and good time credits. *Id.* at 9. He
12 claims that defendant Van Dusseldorp also denied him toiletries and writing materials. *Id.* at 10.

13 Plaintiff contends the real reason he was asked to accept a cellmate was because of
14 limited bed space in the prison. *Id.* at 5. He believes that the defendants have conspired against
15 him to deny him single-cell status and to harass him for refusing a cellmate, just for financial
16 gain. *Id.* at 6-8.

17 According to plaintiff, he personally informed each of the defendants that if they attempt
18 to force him to accept a cellmate, he will "unquestionably kill any cellmate before the cellmate
19 has the opportunity to kill plaintiff," and that his past experiences "honestly warrant[] single cell
20 status." Pl.'s May 6, 2011 Compl. ("Dckt. No. 8") at 12. Plaintiff requests injunctive relief in
21 the form of an order allowing him to be single-celled indefinitely. *Id.* § V.

22 This action proceeds on plaintiff's claim that defendants Jochim, Stabbe, Sullivan, Van
23 Dusseldorp, Virga, and Worrell ("defendants"), violated plaintiff's Eighth Amendment right to
24 be free from cruel and unusual punishment by refusing to permit him to be housed in a single
25 cell for the duration of his incarceration, causing him to suffer significant emotional and

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1 psychological distress.¹ Plaintiff also claims that defendants subjected him to cruel and
2 unusual punishment by wrongfully issuing disciplinary write-ups for his refusal to accept a
3 cellmate, thereby retaining him in administrative segregation and revoking his privileges. *See*
4 Dckt. No. 1; Pl.’s May 6, 2011 Affidavit in Supp. of MPI (“Dckt. No. 7”); Dckt. No. 8. *See also*
5 May 21, 2011 28 U.S.C. § 1915A Screening Order (“Dckt. No. 11”).

6 **II. Defendants’ Motion for Summary Judgment**

7 Defendants’ motion, originally filed on February 17, 2012, was re-filed and re-served on
8 August 3, 2012, in accordance with the court’s July 25, 2012 order.² *See* Dckt. No. 65 (ordering
9 defendants to re-serve the motion along with the notice to plaintiff required by *Woods v. Carey*,
10 684 F.3d 934 (9th Cir. 2012) and allowing plaintiff to either rely on his original opposition or
11 file an amended opposition); Dckt. No. 66. Plaintiff filed an amended opposition on August 14,
12 2012.³ Dckt. No. 69.

13 **A. Plaintiff’s Rule 56(d) Affidavit**

14 After defendants moved for summary judgment, plaintiff filed a request to defer ruling on
15 the summary judgment motion pending further discovery pursuant to Rule 56(d) of the Federal
16 Rules of Civil Procedure. Dckt. No. 73. Rule 56(d) permits a party opposing a motion for
17 summary judgment to request an order deferring the time to respond to the motion and
18 permitting that party to conduct additional discovery upon an adequate factual showing. *See*
19 Fed. R. Civ. P. 56(d) (requiring party making such request to show “by *affidavit or declaration*
20 that, for *specified reasons*, it cannot present *facts essential* to justify its opposition.”). A Rule
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22 ¹ Plaintiff also named McElroy as a defendant in this action, but voluntarily dismissed
23 defendant McElroy on July 18, 2011. Dckt. No. 18.

24 ² Defendants’ accompanying request for judicial notice (Dckt. No. 67) is granted.

25 ³ Plaintiff’s amended opposition supercedes his original opposition (Dckt. No. 50).
26 Accordingly, the court declines to address the arguments raised therein. The court has, however,
reviewed the arguments and exhibits submitted with the original opposition, and notes that they
would not change the outcome of these findings and recommendations.

1 56(d) affidavit must identify “the specific facts that further discovery would reveal, and explain
2 why those facts would preclude summary judgment.” *Tatum v. City and County of San*
3 *Francisco*, 441 F.3d 1090, 1100 (9th Cir. 2006). A Rule 56(d) affidavit must also identify “some
4 basis for believing that the information sought actually exists.” *Blough v. Holland Realty, Inc.*,
5 574 F.3d 1084, 1091 n.5 (9th Cir. 2009).

6 Plaintiff claims that defendants have withheld relevant documents that he believes will
7 “strengthen” his opposition to defendants’ motion. Dckt. No. 73 at 3-4, 5. Specifically, plaintiff
8 seeks: (1) Dr. Hewette’ June 20, 2007 mental health evaluation, (2) Dr. Delgado’s 2009 mental
9 health evaluation, (3) the December 24, 2009 chrono for 365 days of single-cell status, (4) five
10 disciplinary actions (referred to by plaintiff as “write ups”) taken against him for refusing a
11 cellmate during the months of July through December 2011, and (5) mental health records from
12 July through December 2011. *Id.* ¶¶ 7, 9, 10-12. According to plaintiff, the more disciplinary
13 actions he can produce based upon his refusal to accept a cellmate, the “stronger” his claims will
14 be. *Id.* at 3-4. Plaintiff also claims that without all of his medical records, he cannot
15 demonstrate that his significant mental health issues make him unsuitable for double-celling. *Id.*
16 at 4. In opposition, defendants either produce the record requested by plaintiff or submit a
17 declaration explaining that the requested record does not exist. *See* Dckt. No. 76, Defs.’ Exs. A-
18 C.

19 *Mental Health Records*: Defendants produce Dr. Hewette’s June 20, 2007 mental health
20 evaluation, Dr. Delgado’s 2009 mental health evaluation, and mental health records from July
21 through December 2011. Dckt. No. 76, Defs.’ Ex. B, Attach. 1; Ex. C, Attach. 1 & 2. None of
22 these records demonstrate that plaintiff is not a suitable candidate for double-celling. Delgado’s
23 report of May 12, 2009 notes that the plaintiff “is currently in ASU for refusal to take a celly,
24 which has reportedly been an ongoing issue for him with multiple 602 due to his concern for his
25 own safety and the safety of others.” Dckt. No. 76-3, p. 17 (Ex. C, Attach. 2). But the report in
26 no way asserts that plaintiff’s medical or mental condition prevents him from having a cellmate.

1 Hoffman's report of November 30, 2011 similarly notes plaintiff's safety concern that he not be
2 double-celled with a cellmate and appears to reflect an assessment of whether plaintiff's mental
3 health contributed to his rule violation report (referred to as "RVR") for refusal to accept a
4 cellmate. Dr. Hoffman, a Senior Psychologists, concluded that "Mental disorder did not
5 contribute to the behavior described in this RVR, although mental health factors are potentially
6 involved. It is clear that his actions were willful, with full awareness of the reality and context of
7 his behavior." Dckt. No. 76-2, p. 13 (Ex. B, Attach. 1).

8 In his reply, plaintiff claims that the Hewette mental health evaluation produced by
9 defendants is "fabricated" because not every page includes plaintiff's name, Hewette's signature,
10 and a confidentiality notice. Dckt. No. 78 at 4-5. According to plaintiff, this demonstrates that
11 defendants are withholding or destroying documents. *Id.* Plaintiff's argument lacks merit. The
12 pages of the evaluation referred to by plaintiff are boilerplate forms that do not require the
13 information listed by plaintiff. Plaintiff has not called into question the authenticity of these
14 records. Moreover, plaintiff advances no argument as to what the allegedly withheld documents
15 would reveal, or how they would preclude summary judgment.

16 Plaintiff also claims that defendants intentionally withheld or destroyed three pages from
17 Dr. Delgado's 2009 mental health evaluation because they lend credibility to plaintiff's need for
18 single-cell status. Dckt. No. 78 at 4, 6. Plaintiff offers no specific facts regarding what
19 information would be contained in the allegedly withheld pages. Nor does the text of Delgado's
20 report reflect that something is missing from the narrative discussion. There are no sentences or
21 phrases that are abruptly cutoff or incomplete text or any other indication that Delgado wrote
22 more than what is shown in the exhibit. Moreover, defendants explained when they submitted
23 the Delgado evaluation, that pages 2, 4, and 6 were blank and therefore, not reproduced for the
24 court. Dckt. No. 76, Defs.' Ex. C. Plaintiff's contention that certain documents were withheld
25 because they favor his position is based on mere speculation.

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1 In responding to plaintiff's Rule 56(d) request, defendants also submitted plaintiff's
2 Interdisciplinary Treatment Team mental health treatment plans dated July 26, 2011 and October
3 18, 2011, and his mental health progress notes for November 7, 10, 15, 17, 21, 24, 28, 30 and
4 December 1, 5, 8, 13, 15, 22, 27, 31, 2011. Dckt. No. 76, Ex. B, Attach. 1. According to
5 plaintiff, defendants failed to produce all of Dr. Hillary's progress notes. Dckt. No. 78 at 3.
6 Contrary to plaintiff's contentions, however, he has not "unquestionably proven that defendants
7 are withholding or ha[ve] destroyed" the progress notes. Dckt. No. 78 at 4. The July 26 and
8 October 18 mental health treatment plans suggest that the purportedly "destroyed" progress notes
9 never existed. Dr. Hillary's July 26, 2011 report notes that plaintiff's participation in his mental
10 health treatment was "minimal" and that plaintiff had made no progress in participating in
11 weekly one-on-one sessions. Dckt. No. 76, Ex. B, Attach. 1 at 48. The October 18, 2011 report
12 states that given plaintiff's "refusals to attend 1:1 sessions, it is difficult to assess his mood
13 symptoms." *Id.* at 41. These notes indicate that plaintiff was not fully participating in his mental
14 health treatment, and provide an alternate explanation for the absence of progress notes for
15 August through October 2011. Thus, plaintiff has not shown that the information sought actually
16 exists. Moreover, plaintiff fails to describe the purported contents of the progress notes or
17 otherwise explain how such notes would preclude summary judgment.

18 *Disciplinary Actions:* Defendants submit the declaration of J. Polich, a California
19 Department of Corrections and Rehabilitation ("CDCR") Correctional Counselor at CSP-SAC,
20 who states that there are no disciplinary actions for the months of August, September, and
21 December 2011 in plaintiff's central file. Dckt. No. 76, Ex. A ¶ 3(a). Defendants submit copies
22 of disciplinary actions from July, October and November 2011. *Id.* Ex. A, Attach. 1. None of
23 these disciplinary actions were taken by any defendant in this action. Plaintiff maintains that
24 defendants are withholding disciplinary write-ups for plaintiff's refusal to accept a cellmate from
25 the months of August, September, and December of 2011. Dckt. No. 78 at 2. Plaintiff fails to

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1 demonstrate that these documents exist. Assuming they do exist, plaintiff fails to demonstrate
2 how they would preclude summary judgment.

3 Single-Cell Chrono for 365 Days: As discussed above, Dr. Steenman recommended that
4 plaintiff be single-celled for one year. Plaintiff contends there should be a chrono reflecting Dr.
5 Steenman's recommendation. Polich states that there is no such chrono in plaintiff's central file
6 or medical records. Dckt. No. 76, Defs.' Ex. A ¶ 3(b). More to the point, the matter of
7 Steenman's recommendation is undisputed and ultimately immaterial. As discussed below, the
8 facts demonstrate that the Warden was responsible for inmate housing decisions, and that
9 defendant Warden Virga considered Dr. Steenman's recommendation when making his decision
10 to single-cell plaintiff for only 30 days. Assuming Dr. Steenman had prepared a chrono to go
11 with his one-year single-cell recommendation, plaintiff fails to demonstrate how it would
12 preclude summary judgment.

13 In sum, plaintiff fails to identify particular facts upon which he would rely to demonstrate
14 that he should not be double-celled or to otherwise oppose defendants' motion for summary
15 judgment. Because plaintiff does not provide any basis for believing that additional documents
16 exist and have wrongfully been withheld from him, and because he fails to explain why any
17 specific fact or facts within those records would help him defeat defendants' motion, his Rule
18 56(d) request must be denied. *See Brae Transp., Inc. v. Coopers & Lybrand*, 790 F.2d 1439,
19 1443 (9th Cir. 1986) ("Rule 56(f) requires affidavits setting forth the particular facts expected
20 from the movant's discovery. Failure to comply with the requirements of Rule 56(f) is a proper
21 ground for denying discovery and proceeding to summary judgment.").

22 **B. Plaintiff's Motion to Amend his Opposition to Defendants' MSJ**

23 On October 16, 2012, plaintiff filed an "amended response in opposition to defendants'
24 motion for summary judgment." Dckt. No. 74. Plaintiff asks that he be allowed to amend his
25 opposition to include his declaration, stating that since October 2010, he has received 28
26 disciplinary actions for refusing a cellmate, causing him to remain housed in administrative

1 segregation for two years. *See id.* Defendants oppose the request because “[t]here is no dispute
2 that [plaintiff] has been disciplined for repeated refusal to comply with orders that he cell with
3 another inmate, and that he has been retained in administrative segregation for those refusals.”
4 Dckt. No. 76 at 6. Defendants contend that plaintiff “does not need to pyramid every
5 disciplinary action he has received to prove that fact, even though he believes that his case will
6 be ‘stronger’ if he does.” *Id.*

7 Plaintiff has had both the time and the opportunity to present all of his arguments on
8 summary judgment in a single filing. Defendants’ motion for summary judgment was originally
9 filed in February of 2012. Dckt. No. 41. Plaintiff originally opposed the motion on March 15,
10 2012. Dckt. No. 50. After the court denied defendants’ motion without prejudice, the court
11 granted plaintiff the opportunity to file an amended opposition. Dckt. No. 65. After defendants
12 re-filed their motion on August 3, 2012, plaintiff filed an amended opposition. Dckt. No. 69.
13 Plaintiff offers no good cause for his delay in advancing the arguments raised in his pending
14 motion to amend. Nonetheless, the court has considered all of the arguments that plaintiff has
15 asserted in his multiple filings. To the extent plaintiff has received additional disciplinary
16 actions since opposing defendants’ motion on August 14, 2012, that evidence is superfluous. It
17 is clear from the existing record that plaintiff has repeatedly been disciplined and confined to
18 administrative segregation for his refusal to accept a cellmate. For these reasons, plaintiff’s
19 request to submit yet another opposition is denied.

20 **C. Summary Judgment Standards**

21 Summary judgment is appropriate when there is “no genuine dispute as to any material
22 fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Summary
23 judgment avoids unnecessary trials in cases in which the parties do not dispute the facts relevant
24 to the determination of the issues in the case, or in which there is insufficient evidence for a jury
25 to determine those facts in favor of the nonmovant. *Crawford-El v. Britton*, 523 U.S. 574, 600
26 (1998); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-50 (1986); *Nw. Motorcycle Ass’n v.*

1 *U.S. Dep't of Agric.*, 18 F.3d 1468, 1471-72 (9th Cir. 1994). At bottom, a summary judgment
2 motion asks whether the evidence presents a sufficient disagreement to require submission to a
3 jury.

4 The principal purpose of Rule 56 is to isolate and dispose of factually unsupported claims
5 or defenses. *Celotex Cop. v. Catrett*, 477 U.S. 317, 323-24 (1986). Thus, the rule functions to
6 ““pierce the pleadings and to assess the proof in order to see whether there is a genuine need for
7 trial.”” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)
8 (quoting Fed. R. Civ. P. 56(e) advisory committee’s note on 1963 amendments). Procedurally,
9 under summary judgment practice, the moving party bears the initial responsibility of presenting
10 the basis for its motion and identifying those portions of the record, together with affidavits, if
11 any, that it believes demonstrate the absence of a genuine issue of material fact. *Celotex*, 477
12 U.S. at 323; *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc). If the moving
13 party meets its burden with a properly supported motion, the burden then shifts to the opposing
14 party to present specific facts that show there is a genuine issue for trial. Fed. R. Civ. P. 56(e);
15 *Anderson.*, 477 U.S. at 248; *Auvil v. CBS "60 Minutes"*, 67 F.3d 816, 819 (9th Cir. 1995).

16 A clear focus on where the burden of proof lies as to the factual issue in question is
17 crucial to summary judgment procedures. Depending on which party bears that burden, the party
18 seeking summary judgment does not necessarily need to submit any evidence of its own. When
19 the opposing party would have the burden of proof on a dispositive issue at trial, the moving
20 party need not produce evidence which negates the opponent’s claim. *See e.g., Lujan v. National*
21 *Wildlife Fed’n*, 497 U.S. 871, 885 (1990). Rather, the moving party need only point to matters
22 which demonstrate the absence of a genuine material factual issue. *See Celotex*, 477 U.S. at 323-
23 24 (1986). (“[W]here the nonmoving party will bear the burden of proof at trial on a dispositive
24 issue, a summary judgment motion may properly be made in reliance solely on the ‘pleadings,
25 depositions, answers to interrogatories, and admissions on file.’”). Indeed, summary judgment
26 should be entered, after adequate time for discovery and upon motion, against a party who fails

1 to make a showing sufficient to establish the existence of an element essential to that party's
2 case, and on which that party will bear the burden of proof at trial. *See id.* at 322. In such a
3 circumstance, summary judgment must be granted, "so long as whatever is before the district
4 court demonstrates that the standard for entry of summary judgment, as set forth in Rule 56(c), is
5 satisfied." *Id.* at 323.

6 To defeat summary judgment the opposing party must establish a genuine dispute as to a
7 material issue of fact. This entails two requirements. First, the dispute must be over a fact(s)
8 that is material, i.e., one that makes a difference in the outcome of the case. *Anderson*, 477 U.S.
9 at 248 ("Only disputes over facts that might affect the outcome of the suit under the governing
10 law will properly preclude the entry of summary judgment."). Whether a factual dispute is
11 material is determined by the substantive law applicable for the claim in question. *Id.* If the
12 opposing party is unable to produce evidence sufficient to establish a required element of its
13 claim that party fails in opposing summary judgment. "[A] complete failure of proof concerning
14 an essential element of the nonmoving party's case necessarily renders all other facts
15 immaterial." *Celotex*, 477 U.S. at 322.

16 Second, the dispute must be genuine. In determining whether a factual dispute is genuine
17 the court must again focus on which party bears the burden of proof on the factual issue in
18 question. Where the party opposing summary judgment would bear the burden of proof at trial
19 on the factual issue in dispute, that party must produce evidence sufficient to support its factual
20 claim. Conclusory allegations, unsupported by evidence are insufficient to defeat the motion.
21 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.1989). Rather, the opposing party must, by affidavit
22 or as otherwise provided by Rule 56, designate specific facts that show there is a genuine issue
23 for trial. *Anderson*, 477 U.S. at 249; *Devereaux*, 263 F.3d at 1076. More significantly, to
24 demonstrate a genuine factual dispute the evidence relied on by the opposing party must be such
25 that a fair-minded jury "could return a verdict for [him] on the evidence presented." *Anderson*,
26 477 U.S. at 248, 252. Absent any such evidence there simply is no reason for trial.

1 The court does not determine witness credibility. It believes the opposing party's
2 evidence, and draws inferences most favorably for the opposing party. *See id.* at 249, 255;
3 *Matsushita*, 475 U.S. at 587. Inferences, however, are not drawn out of "thin air," and the
4 proponent must adduce evidence of a factual predicate from which to draw inferences. *American*
5 *Int'l Group, Inc. v. American Int'l Bank*, 926 F.2d 829, 836 (9th Cir.1991) (Kozinski, J.,
6 dissenting) (citing *Celotex*, 477 U.S. at 322). If reasonable minds could differ on material facts
7 at issue, summary judgment is inappropriate. *See Warren v. City of Carlsbad*, 58 F.3d 439, 441
8 (9th Cir. 1995). On the other hand, "[w]here the record taken as a whole could not lead a rational
9 trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita*,
10 475 U.S. at 587 (citation omitted); *Celotex.*, 477 U.S. at 323 (If the evidence presented and any
11 reasonable inferences that might be drawn from it could not support a judgment in favor of the
12 opposing party, there is no genuine issue). Thus, Rule 56 serves to screen cases lacking any
13 genuine dispute over an issue that is determinative of the outcome of the case.

14 Concurrent with the instant motion, defendants advised plaintiff of the requirements for
15 opposing a motion pursuant to Rule 56 of the Federal Rules of Civil Procedure. Dckt. No. 68;
16 *see Woods v. Carey*, 684 F.3d 934 (9th Cir. 2012); *Rand v. Rowland*, 154 F.3d 952, 957 (9th Cir.
17 1998) (en banc), *cert. denied*, 527 U.S. 1035 (1999), and *Klinge v. Eikenberry*, 849 F.2d 409
18 (9th Cir. 1988).

19 **D. Discussion**

20 Considering the record before the court, there is no evidence creating a genuine dispute
21 as to whether defendants were deliberately indifferent to plaintiff's safety or medical needs by
22 requiring that he accept a cellmate.

23 The Eighth Amendment protects prisoners from inhumane methods of punishment and
24 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.
25 2006). Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,
26 clothing, sanitation, medical care, and personal safety. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th

1 Cir. 2000). Extreme deprivations are required to make out a conditions of confinement claim,
2 and only those deprivations denying the minimal civilized measure of life's necessities are
3 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,
4 503 U.S. 1, 9 (1992). To succeed on such a claim, a prisoner must show that (1) the defendant's
5 conduct deprived him of the minimal civilized measure of life's necessities and (2) that the
6 defendant acted with deliberate indifference to the prisoner's health or safety. *Farmer v.*
7 *Brennan*, 511 U.S. 825, 834 (1994). That is, the defendant must have known that the inmate
8 faced a substantial risk of serious harm, and must have also disregarded that risk by failing to
9 take reasonable measures to abate it. *Id.* at 847.

10 To succeed on an Eighth Amendment claim predicated on the denial of medical care, a
11 plaintiff must establish that he had a serious medical need and that the defendant's response to
12 that need was deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); *see*
13 *also Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

14 As to the issue of double-celling, inmates do not have a constitutional right to be
15 incarcerated at a particular correctional facility or in a particular cell or unit within a facility.
16 *See Meachum v. Fano*, 427 U.S. 215, 224-25 (1976). The denial of single cell status by itself
17 does not rise to the level of an Eighth Amendment violation. *See Rhodes v. Chapman*, 452 U.S.
18 337, 349 (1981). In evaluating plaintiff's challenge to the cellmate requirement imposed here
19 the court is mindful that "[r]unning a prison is an inordinately difficult undertaking that requires
20 expertise, planning and the commitment of resources, all of which are peculiarly within the
21 province of the legislative and executive branches of government." *Turner v. Safley*, 482 U.S.
22 78, 84-85 (1987). For this reason, the court must afford deference to the administrative decisions
23 of prison officials. *Id.*

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1 Here, while he was in custody at California State Prison, Sacramento (CSP-SAC), Dckt.
2 No. 8 at 4:7-11, plaintiff was a participant in prison's Mental Health Services Delivery System.⁴
3 He has been diagnosed with various mental health-related conditions, including a serious mood
4 disorder. MSJ, Sullivan Decl. at ¶ 4; Worrell Decl. at ¶ 3; Stabbe Decl. at ¶ 5.

5 On Friday, February 13, 2009, plaintiff received a Rules Violation Report and was
6 retained in administrative segregation after submitting an inmate appeal stating that he would
7 stab any potential cellmate. Dckt. No. 69, Pl.'s Ex. A. In a related mental health evaluation,
8 plaintiff reported that he had been set up and ambushed by correctional officers in "gladiator
9 fights" while incarcerated at CSP-Corcoran. Dckt. No. 40, Pl.'s Ex. E. Plaintiff stated he would
10 stab a cellmate based on his belief that the cellmate was "working for the police." *Id.* The
11 clinician noted plaintiff's fearfulness, but concluded that a mental disorder did not contribute to
12 the behavior resulting in the rules violation. *Id.*

13 A May 12, 2009 mental health evaluation indicates that plaintiff remained housed in
14 administrative segregation because he continued to refuse a cellmate out of concern for his own
15 safety and the safety of others. Dckt. No. 76, Ex. C, Attach. 2.

16 On December 24, 2009, plaintiff told his treating clinician, Dr. Steenman that when he
17 was confined to CSP-Corcoran in 1989-1991, there were "gladiator wars," and that officers at
18 that prison had "used tasers" on him and had put inmates in his cell who "sexually assaulted"
19 him. Dckt. No. 76, Defs.' Ex. A, Polich Decl., Attach. 2 at 0564. Plaintiff claimed he had been
20 housed with fifteen cellmates and "felt vulnerable." *Id.* Dr. Steenman found plaintiff's report of
21 past trauma "credible" and determined it was "likely" that plaintiff was experiencing PTSD. *Id.*

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24 ⁴ Each of the defendants were CDCR employees working at CSP-SAC: Defendant Virga
25 as the Warden; Defendants Jochim and Van Dusseldorp as correctional officers assigned to the
26 prison's Administrative Segregation housing unit (Ad-Seg); and Defendants Sullivan, Worrell
and Stabbe as clinical psychologists. Dckt. No. 8, § III (A), (B); MSJ, Virga Decl. at ¶ 1; Jochim
Decl. at ¶ 1; Van Dusseldorp Decl. at ¶¶ 1, 2; Sullivan Decl. at ¶ 1; Worrell Decl. at ¶ 1; Stabbe
Decl. at ¶1.

1 Dr. Steenman recommended a single cell for one year, “if custody agreed,” so that plaintiff
2 would not have to spend his life term in administrative segregation for refusing cellmates. *Id.* at
3 0563-0564. Plaintiff’s mental health Interdisciplinary Treatment Team agreed with this
4 recommendation. *Id.* at 0563.

5 The role of CDCR mental health staff members regarding housing and custody-related
6 matters, is consultative, not mandatory. MSJ, Sullivan Decl. at ¶ 12; Worrell Decl. at ¶ 6; Stabbe
7 Decl. at ¶ 7; Macomber Decl. at ¶ 8. Thus, while mental health staff members may, and often
8 do, make recommendations regarding whether an inmate should be single-celled for some period
9 of time, the ultimate authority for making inmate housing-related determinations rests
10 exclusively with the Warden or the Warden’s designee. *Id.*

11 On January 6, 2010, an institutional classification committee (ICC), whose members
12 included Acting Warden Virga (defendant) and Dr. Houston, a treating clinician, considered the
13 single-cell recommendation and decided to house plaintiff in a single-cell for thirty days, rather
14 than one year, provided that mental health staff would work with plaintiff and evaluate his
15 further need for a single cell. Dckt. No. 76, Defs.’ Ex. A, Polich Decl., Attach. 2 at 0728; MSJ,
16 Virga Decl. ¶ 10. By March 15, 2010, the ICC had cleared plaintiff for double-celling because
17 plaintiff had no history of in-cell violence or predatory behavior. MSJ, Virga Decl., Ex. A.

18 On October 28, 2010, plaintiff was ordered to double-cell. *See* MSJ, Stabbe Decl. ¶ 3,
19 Ex. A (appeal log no. SAC-10-10-12945). Plaintiff refused and as a result, was housed in
20 administrative segregation. *Id.* On November 10, 2010, the ICC agreed that plaintiff should
21 remain double-celled because there was a lack of sufficient documentation to warrant single-cell
22 status. MSJ, Virga Decl. ¶ 11, Ex. C.

23 On November 26, 2010, plaintiff submitted an inmate appeal contending that he was not
24 mentally capable of interacting with a cellmate, and that he should be permitted to remain single-
25 celled during his incarceration. MSJ, Stabbe Decl., Ex. A After interviewing plaintiff,
26 reviewing his Unit Health Record, and conferring with defendant Worrell (the supervising

1 psychologist), defendant Stabbe concluded that plaintiff's mental illness was not sufficiently
2 severe to require indefinite single-cell housing and that plaintiff's difficulty in accepting a
3 cellmate was not rooted in severe mental illness. *Id.* ¶ 4, Ex. A.

4 Defendant Sullivan was plaintiff's primary mental health clinician from October 2010
5 through February 2011. MSJ, Sullivan Decl. ¶ 4. In that role, Sullivan was responsible for
6 determining whether there was any clinical basis for plaintiff's refusal to accept a cellmate. *Id.*
7 ¶ 6. Sullivan reviewed plaintiff's mental health records that had been compiled during his CSP-
8 SAC incarceration to determine whether he suffered from any mental health stressors or
9 concerns that would cause him to be a significant danger to himself or another inmate if he was
10 required to accept a cellmate. *Id.* During the period of time that Sullivan was plaintiff's primary
11 mental health clinician, he neither exhibited any overt symptoms that would have resulted in a
12 diagnosis of PTSD, nor actively sought treatment for PTSD. *Id.* Based upon her personal
13 observations of plaintiff's comments and behavior during treatment sessions, Sullivan concluded
14 that plaintiff would not, based solely on mental health factors, pose a threat to himself or another
15 inmate if one was assigned as his cellmate. *Id.* ¶ 11.

16 Between December 2010 and March 2011, defendant Ad-Seg Floor Officer Jochim made
17 several unsuccessful requests for plaintiff to comply with CDCR and CSP-SAC policies
18 governing double-cell inmate housing assignments. Jochim Decl. at ¶¶ 2-4, Exs. A, B. As a
19 result of his refusal to comply with the assignments, plaintiff received numerous Rules Violation
20 Reports, and was assessed several lengthy periods in the prison's Security Housing Unit, in
21 accordance with policies and procedures set forth in California Code of Regulations Title 15,
22 § 3269. Jochim Decl. ¶¶ 2, 3; Virga Decl. ¶ 9, Exs. B, E. During the period of time that
23 defendant Van Dusseldorp was plaintiff's Ad-Seg canteen officer, he submitted all of plaintiff's
24 requests for canteen items as written, unless the requested items had been restricted by the
25 correctional lieutenant who ruled on plaintiff's Rules Violation Reports. Van Dusseldorp Decl.
26 ¶ 6.

1 A mental health assessment dated November 30, 2011, reflects plaintiff's claims
2 regarding "gladiator fights" and "sex pervers" at CSP-Corcoran. Dckt. No. 76, Defs.' Ex. B,
3 Attach 1. In that assessment, the psychologist concluded that plaintiff's mental disorder "did not
4 contribute" to his refusal to accept a cellmate, but acknowledged that mental health factors were
5 "potentially involved." *Id.*

6 Plaintiff maintains that because of the alleged trauma he experienced at CSP-Corcoran
7 over twenty years ago, he fears he will attempt to kill his cellmate. Defendants contend they are
8 entitled to summary judgment because there is no evidence that forcing plaintiff to double-cell
9 poses an excessive risk of harm to plaintiff's health or safety. They contend that the undisputed
10 facts negate any finding that plaintiff was objectively deprived of his constitutional right to live
11 in a safe prison environment.

12 The record demonstrates that in December 2009, Dr. Steenman determined that PTSD
13 was likely, and recommended one year of single-cell housing so that plaintiff would not have to
14 be housed indefinitely in Ad-Seg for refusing cellmates. Defendant Virga, acting through the
15 ICC, decided to grant plaintiff single-cell status for only 30 days, subject to plaintiff's agreement
16 to continue engaging in treatment sessions with mental health clinicians to assess whether further
17 single-cell status was required. MSJ, Virga Decl. ¶ 10. It was not until October 2010, that
18 plaintiff was ordered to double-cell. Plaintiff insists that he was not and is not, a suitable
19 candidate for double-celling, and warns that violence is inevitable if forced to double-cell.
20 Though plaintiff has been diagnosed with various mental health-related conditions, there is no
21 evidence that the psychiatric concerns that prompted his 30-day single-cell assignment in
22 January 2010, remain present. Plaintiff has received extensive medical attention for his mental
23 health needs, and none of his mental health clinicians have recommended further single-cell
24 status. *See* Dckt. No. 76, Exs. B, C; MSJ, Sullivan Decl.; Macomber Decl. ¶ 9. Thus, there is
25 no genuine dispute as to whether plaintiff requires single-cell housing for medical or mental
26 health reasons. *See Anderson v. Zika*, No. C 11-04276 EJD PR, 2013 U.S. Dist. LEXIS 3639, at

1 *13-14 (N.D. Cal. Jan. 8, 2013) (no Eighth Amendment claim based on having to share a cell
2 absent a showing of how post traumatic stress disorder, or other mental illness, necessitated a
3 single cell). Moreover, while it is clear the plaintiff does not want a cellmate he fails to submit
4 any evidence showing that double-celling will cause him to suffer any serious psychological or
5 physical injuries. *Cf. Gonzalez v. Zika*, No. C. 11-5561 CW, 2012 U.S. Dist. LEXIS 138613, at
6 *29 (N.D. Cal. Sept. 26, 2012) (granting plaintiff’s request for single-cell status based, in part,
7 on the documented medical and mental health problems experienced by plaintiff as the result of
8 being double-celled). Plaintiff simply does not have an Eighth Amendment to a single cell
9 status. *See Rhodes v. Chapman*, 452 U.S. at 349.

10 Plaintiff also claims he should be single-celled because in various Rules Violation
11 Reports, he has been deemed a threat to institutional safety and security, and because he
12 continues to threaten violence against a cellmate. Dckt. No. 69 at 2-3. However, single-cell
13 status is reserved for inmates with a history of in-cell abuse, a history of in-cell violence toward
14 a cell partner, or who have been victimized in-cell by another inmate. MSJ, Macomber Decl.
15 ¶ 7 (citing Cal. Code Regs. tit. 15, § 3269). Notwithstanding plaintiff’s repeated threats of
16 violence, there is no evidence demonstrating that he has the requisite history of in-cell violence
17 or predatory behavior to justify a single-cell assignment. While plaintiff’s allegations regarding
18 his experiences at CSP-Corcoran may have suggested a need for single cell status then, plaintiff
19 fails to demonstrate how these “long past incidents” at “a different facilit[y]” entitle him to
20 single cell status now. *See Lopez v. Hubbard*, No. Civ. S-09-1928 GEB GGH P, 2010 U.S. Dist.
21 LEXIS 104503 (E.D. Cal. Sept. 29, 2010) (granting defendants’ motion for summary judgment
22 on plaintiff’s claim that they denied him single-cell status, because “[o]ther than disagreeing
23 with the decision, plaintiff . . . failed to present any evidence to justify single cell status,” and
24 merely “relie[d] on incidents in the 1980’s and 1990’s where he was assaulted”).

25 Plaintiff claims that his continued retention in administrative segregation is
26 unconstitutional. It is evident from the record, however, that his indefinite confinement there is

1 self-inflicted. Notwithstanding plaintiff's purported fears, there is no evidence that sharing a cell
2 will expose him to a substantial risk of serious harm. *See Evans v. Beck*, No. 1:12-cv-0284 AWI
3 MJS PC, 2012 U.S. Dist. LEXIS 143982, at * 9-10 (E.D. Cal. Oct. 3, 2012) (allegations that
4 defendants ordered plaintiff to double-cell despite plaintiff's documented single status at prior
5 facility because of plaintiff's violence against cellmates fail to suggest that plaintiff faced a
6 substantial risk of serious harm, given that violence was from "years past" and "any threat was
7 posed by Plaintiff, not against Plaintiff"). Because plaintiff fails to create a triable issue as to
8 whether any defendant exposed him to a substantial risk of serious harm, defendants are entitled
9 to summary judgment.

10 **III. Plaintiff's Motion to Reinstate Allegations Against Defendant McElroy**

11 Plaintiff voluntarily dismissed defendant McElroy from this action on July 18, 2011.
12 Dckt. No. 18. Plaintiff explains that he did so after the two of them "came to an undisclosed
13 agreement." Dckt. No. 62 at 2. According to plaintiff, McElroy breached that agreement on
14 May 27, 2012. Dckt. No. 62 at 3; *see also* Dckt. No. 75 (explaining that terms of agreement
15 included plaintiff's ability to possess a television). To remedy McElroy's alleged breach of
16 contract, plaintiff asks that the court "reinstate" all of plaintiff previous allegations against
17 McElroy. Dckt. No. 62 at 3.

18 Plaintiff's motion is procedurally and substantively deficient. First, neither the Federal
19 Rules of Civil Procedure nor the court's Local Rules provide for a motion to "reinstate"
20 allegations of a complaint. Second, this lawsuit is not the appropriate forum for a breach of
21 contract claim against McElroy. Plaintiff dismissed McElroy from this lawsuit over a year ago.
22 *See* Dckt. No. 18. Discovery is now closed and a dispositive motion is pending before the court.
23 *See* Dckt. Nos. 27, 66. Plaintiff fails to demonstrate good cause for allowing him to set aside the
24 dismissal and proceed in this action with claims against McElroy. Accordingly, plaintiff's
25 motion must be denied.

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1 **IV. Plaintiff’s Motions for Injunctive Relief**

2 Plaintiff has filed various requests for injunctive relief, some of which relate to the merits
3 of this action, others which do not. *See* Dckt. Nos. 54, 63, 64, 81. To be entitled to injunctive
4 relief, the plaintiff must demonstrate “that he is likely to succeed on the merits, that he is likely
5 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in
6 his favor, and that an injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d
7 1109, 1127 (9th Cir. 2009) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)).
8 A plaintiff seeking injunctive relief “must establish that irreparable harm is likely, not just
9 possible.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citing
10 *Winter*, 555 U.S. at 20–21); *see also Connecticut v. Massachusetts*, 282 U.S. 660, 674 (1931)
11 (“Injunction issues to prevent existing or presently threatened injuries. One will not be granted
12 against something merely feared as liable to occur at some indefinite time in the future.”). In
13 cases brought by prisoners involving conditions of confinement, any preliminary injunction
14 “must be narrowly drawn, extend no further than necessary to correct the harm the court finds
15 requires preliminary relief, and be the least intrusive means necessary to correct the harm.” 18
16 U.S.C. § 3626(a)(2). For the reason discussed at length above, plaintiff not only fails to show
17 probable success on the merits but defendants are entitled to summary judgment. Moreover,
18 there is no evidence demonstrating that plaintiff will suffer irreparable harm in the absence of the
19 requested relief.

20 **V. Recommendation**

21 For the reasons stated above, it is hereby RECOMMENDED that:

- 22 1. Plaintiff’s motions to “reinstate” McElroy as a defendant (Dckt. Nos. 62, 75) be
23 denied.
- 24 2. Plaintiff’s Rule 56(d) motion for further discovery (Dckt. No. 73) be denied.
- 25 3. Plaintiff’s motion to amend his opposition to defendants’ motion for summary
26 judgment (Dckt. No. 74) be denied.

1 4. Defendants' motion for summary judgment (Dckt. No. 66) be granted and judgment
2 entered in their favor;

3 5. Plaintiff's motions for injunctive relief (Dckt. Nos. 54, 63, 64, 81) be denied; and

4 6. The Clerk be directed to close this case.

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
7 after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
10 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
11 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

12 Dated: March 22, 2013.

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14 EDMUND F. BRENNAN
15 UNITED STATES MAGISTRATE JUDGE
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