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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BERLAN LYNELL DICEY,
Plaintiff,
v.
T. COBB, et al.,
Defendants.

No. 2:14-cv-2661 TLN CKD P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 13, 2017, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to the findings and recommendations.

Plaintiff objects to the Magistrate Judge’s grant of summary judgment as to Defendant Hood. (Object., ECF No. 67, at 2.) Plaintiff maintains that Defendant Hood made a retaliatory statement prior to Plaintiff’s cell transfer. (ECF No. 67, at 2.) Plaintiff argues that Defendant Hood made a retaliatory statement similar to Defendant Betti prior to the cell transfer. (ECF No. 67, at 2.) Specifically, Defendant Hood allegedly said: “Dicey you will be moved to the lower

1 yard if you don't let me see you trash that appeal right now, this is your last chance to keep
2 everything you now have, once you are moved you will los[e] your job.” (Compl., ECF No. 1, at
3 21.) The Magistrate Judge correctly identified evidence showing a genuine issue of material fact
4 as to whether Defendant Betti recommended and thereby caused Plaintiff's cell transfer. The
5 Magistrate Judge identifies Defendant Betti's alleged statement as: “Dicey I see that second
6 watch now has you on their shit list. You just can't stop your little appeals huh. You[re] going to
7 lose...[T]his is your last chance to keep everything you now have, once you are moved you will
8 lose your job.” (ECF No. 1, at 6–7.) This Court disagrees with the Magistrate Judge's finding
9 that there is no evidence demonstrating a genuine issue of material fact against Defendant Hood.
10 Defendant Betti's alleged retaliatory statement is similar to Defendant Hood's and just as likely to
11 be construed as a threat. Accordingly, this Court finds that Plaintiff has demonstrated a genuine
12 issue of material fact as to whether Defendant Hood recommended Plaintiff be transferred for
13 refusing to withdraw his grievances. Therefore, Defendant Hood is not entitled to summary
14 judgment.

15 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
16 Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
17 Court finds the findings and recommendations to be supported by the record and, except as
18 mentioned above, by proper analysis.

19 Accordingly, IT IS HEREBY ORDERED that:

20 1. The findings and recommendations filed January 13, 2017, are adopted in part;
21 2. Defendants Betti and Hood's motion for summary judgment (ECF No. 29) is denied as
22 follows:

23 A. Denied with respect to Plaintiff's remaining claim against Defendant Hood;
24 and
25 B. Denied with respect to Plaintiff's remaining claim against Defendant Betti.

26
27 Dated: March 31, 2017



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Troy L. Nunley
United States District Judge