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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ANTONIO CORTEZ BUCKLEY,	CASE NO. 1:04-cv-05622-LJO-MJS PC
Plaintiff,	
v.	AMENDED SECOND INFORMATIONAL ORDER - NOTICE AND WARNING OF REQUIREMENTS FOR OPPOSING DEFENDANTS' SUMMARY JUDGMENT MOTION
A K SCRIBNER, et al.,	
Defendants.	(ECF No. 78)

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Plaintiff Antonio Cortez Buckley ("Plaintiff") is proceeding pro se in this civil action. Defendants filed a motion for summary judgment on July 11, 2012. Pursuant to Woods v. Carey, Nos. 09-15548, 09-16113, 2012 WL 262 6912 (9th Cir. Jul. 6, 2012), Wyatt v. Terhune, 315 F.3d 1108 (9th Cir. 2003), Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998), and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988), the Court hereby notifies Plaintiff of the following rights and requirements for opposing the motion:

1. Unless otherwise ordered, all motions for summary judgment are briefed pursuant to Local Rule 230(l).
2. Plaintiff is required to file an opposition or a statement of non-opposition to Defendants' motion for summary judgment. Local Rule 230(l). If Plaintiff fails to file an opposition or a statement of non-opposition to the motion, this action may be dismissed, with prejudice, for failure to prosecute. The opposition or statement of non-opposition must be filed not more than 21 days after the date of service of the motion. Id.

1           3. A motion for summary judgment is a request for judgment on some or all of  
2 Plaintiff's claims in favor of Defendants without trial. Fed. R. Civ. P. 56(a). Defendants'  
3 motion sets forth the facts which they contend are not reasonably subject to dispute and  
4 that entitle them to judgment as a matter of law. Fed. R. Civ. P. 56(c). This is called the  
5 Statement of Undisputed Facts. Local Rule 260(a).

6           Plaintiff has the right to oppose a motion for summary judgment. To oppose the  
7 motion, Plaintiff must show proof of his claims. Plaintiff may agree with the facts set forth  
8 in Defendants' motion but argue that Defendants are not entitled to judgment as a matter  
9 of law.

10           In the alternative, if Plaintiff does not agree with the facts set forth in Defendants'  
11 motion, he may show that Defendants' facts are disputed in one or more of the following  
12 ways: (1) Plaintiff may rely upon statements made under the penalty of perjury in the  
13 complaint or the opposition if (a) the complaint or opposition shows that Plaintiff has  
14 personal knowledge of the matters stated and (b) Plaintiff calls to the Court's attention  
15 those parts of the complaint or opposition upon which Plaintiff relies; (2) Plaintiff may serve  
16 and file declarations setting forth the facts which Plaintiff believes prove his claims;<sup>1</sup> (3)  
17 Plaintiff may rely upon written records but Plaintiff must prove that the records are what he  
18 claims they are;<sup>2</sup> or (4) Plaintiff may rely upon all or any part of the transcript of one or  
19 more depositions, answers to interrogatories, or admissions obtained in this proceeding.  
20 Should Plaintiff fail to contradict Defendants' motion with declarations or other evidence,  
21 Defendants' evidence will be taken as truth, and final judgment may be entered without a  
22 full trial. Fed. R. Civ. P. 56(e).

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24           <sup>1</sup>A declaration is a written statement setting forth facts (1) which are admissible in evidence, (2)  
25 which are based on the personal knowledge of the person giving the statement, and (3) to which the  
26 person giving the statement is competent to testify. 28 U.S.C. § 1746; Fed. R. Civ. P. 56(c)(4). A  
27 declaration must be dated and signed under penalty of perjury as follows: "I declare (or certify, verify or  
28 state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)." 28  
U.S.C. § 1746.

<sup>2</sup> Sworn or certified copies of all papers referred to in the declaration must be included and served  
on the opposing party. Fed. R. Civ. P. 56(e).

1 In opposing Defendants' motion for summary judgment, Local Rule 260(b) requires  
2 Plaintiff to reproduce Defendants' itemized facts in the Statement of Undisputed Facts and  
3 admit those facts which are undisputed and deny those which are disputed. If Plaintiff  
4 disputes (denies) a fact, Plaintiff must cite to the evidence used to support that denial (e.g.,  
5 pleading, declaration, deposition, interrogatory answer, admission, or other document).  
6 Local Rule 260(b).

7 4. If discovery has not yet been opened or if discovery is still open and Plaintiff is  
8 not yet able to present facts to justify the opposition to the motion, the Court will consider  
9 a request to postpone consideration of Defendants' motion. Fed. R. Civ. P. 56(d). Any  
10 request to postpone consideration of Defendants' motion for summary judgment must  
11 include the following: (1) a declaration setting forth the specific facts Plaintiff hopes to elicit  
12 from further discovery, (2) a showing that the facts exist, and (3) a showing that the facts  
13 are essential to opposing the motion for summary judgment. Blough v. Holland Realty,  
14 Inc., 574 F.3d 1084, 1091 n.5 (9th Cir. 2009); Tatum v. City and County of San Francisco,  
15 441 F.3d 1090, 1100-01 (9th Cir. 2006); State of California v. Campbell, 138 F.3d 772,  
16 779 (9th Cir. 1998). The request to postpone the motion for summary judgment must  
17 identify what information is sought and how it would preclude summary judgment. Blough,  
18 574 F.3d at 1091 n.5; Tatum, 441 F.3d at 1100-01; Margolis v. Ryan, 140 F.3d 850, 853  
19 (9th Cir. 1998); Local Rule 260(b).

20 5. Unsigned declarations will be stricken, and declarations not signed under penalty  
21 of perjury have no evidentiary value.

22 6. The failure of any party to comply with this order, the Federal Rules of Civil  
23 Procedure, or the Local Rules of the Eastern District of California may result in the  
24 imposition of sanctions including but not limited to dismissal of the action or entry of  
25 default.

26 Plaintiff shall have sixty (60) days after the date of service of this Second

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Informational Order to file his response to Defendants' Motion for Summary Judgement.

IT IS SO ORDERED.

Dated: July 30, 2012

*/s/ Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE