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

Ruben Odell Boulware,
Plaintiff,
vs.
D. Ervin, Jr., et al.,
Defendants.

No. CV-05-01565-ROS

ORDER

For the reasons below, Defendants’ Motion for Summary Judgment (Doc. 54) will be granted, and Plaintiff’s motions for default judgment (Docs. 45 and 49) will be denied.

BACKGROUND

Plaintiff is a state prisoner at Folsom State Prison (“Folsom” or “FSP”). (Docs. 20 and 21). Plaintiff brings this action against Folsom prison officers for retaliation, excessive force and an illegal search. The following facts are undisputed unless otherwise indicated.

Plaintiff was a member of the Mens Advisory Council (“MAC”) at Folsom. (Doc. 60, at Ex. 4). On January 18, 2005, Plaintiff was temporarily suspended from the MAC for disobeying a direct order, as reported in Log Number 305-01-035. (Doc. 60, at Ex. 4). On February 24, 2005, Plaintiff was removed from the MAC. (Doc. 60, at Ex. 4).

Plaintiff filed numerous inmate grievances at Folsom. (Docs. 54 and 60). Those grievances included, among others: Log #FSP-04-1376, filed September 5, 2004, challenging the maximum number of inmates allowed in the yard and the use of “mini yards”; and, Log

1 #FSP-05-00417, filed on February 5, 2005, complaining about racial disparities and inmate
2 job assignments. (Docs. 54-2 and 60, at ¶¶ 1, 8).¹

3 Plaintiff wrote letters on January 30 and February 8, 2005 to the Warden and other
4 state officials complaining of retaliation. (Id. at ¶ 7). Plaintiff contends his correspondence
5 and grievance activity were chilled when he was removed from the MAC. (Id. at ¶ 15).
6 Plaintiff, however, continued to file inmate grievances following each of his disciplinary
7 charges. (Id. at ¶ 17).

8 **RVR #305-01-035**

9 On January 18, 2005, Folsom had limited staff due to memorial services for a
10 correctional officer and was on a modified program permitting only limited inmate
11 movement. (Docs. 54-2 and 60, at ¶ 22).² Officer Haworth³ was in the process of securing
12 the unit as Folsom employees returned to work from the memorial service. (Id. at ¶ 24).
13 Plaintiff asserts he was authorized to be out of his cell, and Defendants assert he was not
14 authorized to be out of his cell. (Id. at ¶ 24). Officer Haworth instructed Plaintiff to return
15 to his cell. (Id. at ¶ 26). Plaintiff was argumentative and continually talked over officer
16 Haworth and disregarded her authority as she attempted to order him back to his cell. (Id.
17 at ¶ 27). Plaintiff stated he was out of his cell because he was a MAC representative seeking
18 to talk to the sergeant about an issue regarding third watch failing to complete showers on
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20 ¹ The institutional responses to these grievances were made by Correctional
21 Lieutenant Langford and Warden Knowles, and Correctional Counselor Heinz and Warden
22 Shepherd, respectively. (Id. at ¶¶ 3-4, 9-10). Langford, Knowles, Heinz and Shepherd are
23 not parties to this action. Plaintiff does not allege any Defendants were aware of these
24 grievances or appeals, and the Defendants deny being aware of these grievances and appeals.
25 (Id. at ¶¶ 5-6, 9-14).

26 ² Defendants assert Folsom was on lock down. (Id.).

27 ³ The Court's docket shows Defendant "Haworth," as named in the Complaint and
28 First Amended Complaint, but certain briefing refers to this Defendant as "Hayworth." The
Court will use "Haworth" because it appears on the docket. There is no indication
"Haworth" and "Hayworth" are different people, but instead a typographical error by
Plaintiff or Defendants.

1 the previous night. (Id. at ¶ 28). However, Sergeant Olvera indicated Plaintiff did not talk
2 with him about MAC issues, and the activities log from the prior night showed the shower
3 program had been completed. (Id. at ¶ 29). Plaintiff violated Officer Haworth's direct order
4 to return to his cell. (Id. at ¶ 34). Acting as the hearing officer in RVR #305-01-035,
5 Lieutenant Clayton found the evidence supported the finding of Guilty of Disobeying a
6 Direct Order but chose to dismiss the charge and recorded the event. (Id. at ¶ 40). In so
7 doing, Lieutenant Clayton considered Plaintiff was told to lock up and did not comply but
8 also considered Plaintiff may have been attempting to conduct MAC business.

9 **AVR #305-02-003**

10 On January 31, 2005, Officer Shambre observed Plaintiff out of bounds - i.e. in an
11 area he was not permitted. (Id. at ¶ 47). Plaintiff contends he was permitted in this area
12 because he was conducting MAC business. (Id.). Plaintiff returned to his cell. (Id. at ¶ 50).
13 Plaintiff refused to attend his administrative hearing and was found guilty of being out of
14 bounds in AVR #305-02-003. (Id. at ¶¶ 44, 52-53).

15 **RVR #305-02-028**

16 On February 13, 2005, Officer Ervin instructed Plaintiff certain clothing worn by
17 Plaintiff was not allowed in the shower area. (Id. at ¶ 66). Defendants claim the policy
18 allows only one T-shirt, one pair of underwear, and one pair of shoes. (Id. at 68). Plaintiff
19 replied he was authorized to wear shorts. (Id. at ¶¶ 67-68). Officer Ervin instructed Plaintiff
20 to walk back to the first tier. (Id. at ¶ 71). Defendants assert Plaintiff made several
21 inflammatory remarks to Officer Ervin, which Plaintiff denies. (Id. at ¶ 72).⁴

22 When they reached the first tier podium, Officer Ervin instructed Plaintiff to turn
23 around and face the wall for a clothed body search. (Id. at ¶ 73). The parties have different
24 versions of what happened next. Plaintiff alleges the order for a clothed body search was
25 after Plaintiff gave Officer Ervin a memo stating Plaintiff could wear shorts. (Id.) As

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27 ⁴ Defendants assert Plaintiff made the following remarks to Officer Ervin: "You're
28 harassing me, you baby ass watcher. You're just part of the Aryan Nation harassing black
people." (Id. at ¶ 72).

1 Officer Ervin conducted the clothed body search, Plaintiff asked Officer Ervin whether he
2 was gay and if he felt “like a man.” (Id. at ¶ 74). Officer Ervin instructed Plaintiff to turn
3 around and Sergeant Dutton ordered Plaintiff to submit to being handcuffed. (Id. at ¶¶ 75,
4 80-81). As Plaintiff started to comply, officer Ervin placed his right hand on Plaintiff’s right
5 shoulder and “slammed” him against the shower panel door. (Id. at ¶¶ 80-83). Plaintiff
6 yelled “excessive force!” (Id. at ¶¶ 84-87). Plaintiff concedes his injuries were no more
7 serious than bruises and soreness to his left shoulder and left thumb. (Doc. 21).

8 Defendants allege during the clothed body search Plaintiff told Officer Ervin, “You’re
9 a fag. You like what you feel? You like that? You like touching black men?” (Doc. 54-2 and
10 60, at ¶ 74). Plaintiff made obscene comments to Officer Ervin, pulled out his penis and
11 disobeyed orders to turn around. (Id. at ¶¶ 75-79). Officers handcuffed Plaintiff, who yelled,
12 “Excessive Force! You guys see that? Write it down!” (Id. at ¶ 85, 87). Officer McNeal
13 escorted Plaintiff away. (Id. at ¶ 89).⁵

14 Officer Ervin issued RVR #305-02-028 to Plaintiff for behavior that could lead to
15 violence. (Id. at ¶ 57).⁶ Officer Clayton found Plaintiff guilty of behavior that could lead to
16 violence because he refused an officer’s order, made inciteful statements, engaged in
17 disruptive behavior and was confrontational with an officer. (Id. at ¶ 90). On February 13,
18 2005, Plaintiff was placed in administrative segregation by Lieutenant Cox for his inciteful
19 behavior. (Id. at ¶ 91). None of the Defendants were involved in the decision to place
20 Plaintiff in segregation. (Id. at ¶ 97).

21 **RVR #105-04-120**

22 On April 23, 2005, Officer Braziel was monitoring inmates to the yard. (Id. at ¶ 102).
23 When Plaintiff approached, the yard was capped, meaning the maximum number of inmates
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25 ⁵ Defendants deny the use of any force. (Doc. 54-2 and 60, at ¶ 140).

26 ⁶ Defendants assert Sergeant Dutton witnessed Plaintiff’s behavior, and Plaintiff
27 asserts Sergeant Dutton only saw a portion of the incident. (Id. at ¶ 58). Dutton submitted
28 a supplemental report and was the reviewing supervisor. (Id. at ¶¶ 59-60).

1 that were allowed in the yard had been reached. (Id. at ¶¶ 103, 104). Plaintiff wanted to
2 attend a religious service but had a yard bag with him. (Id. at ¶ 107). Officer Braziel
3 informed Plaintiff he would have to return his yard bag to his cell and could only bring his
4 church items with him. (Id. at ¶ 110). A subsequent search of the yard bag found it
5 contained legal work but did not contain anything for a religious ceremony. (Id. at ¶¶ 112,
6 113). Defendants assert Plaintiff yelled, “If you didn’t have that gun coverage, you would
7 be talking to me differently.” (Id. at ¶ 116).⁷ Plaintiff denies this. (Id.).

8 Officer Braziel was the only staff present, and the area was filled with 20-25 inmates.
9 (Id. at ¶¶ 119, 120). Officer Braziel felt threatened due to Plaintiff’s demeanor (Id. at ¶¶ 117,
10 118), but Plaintiff denies he threatened Officer Braziel. (Id.). Officer Braziel issued RVR
11 #105-04-120 because: he perceived Plaintiff’s statement as a direct threat; Plaintiff was
12 aggressive and attempting to intimidate him; Plaintiff demonstrated blatant disregard for
13 his authority; Plaintiff was uncooperative; and Plaintiff was trying to manipulate the system
14 to get into the yard at a time when he was not permitted on the yard. (Id. at ¶ 121).

15 After the alleged threat to Officer Braziel on April 23, 2005, Plaintiff was searched
16 and placed in restraints. (Id. at ¶ 154). Plaintiff was escorted to the Custody Complex by
17 Sergeant Hannaford and Officer Holman, neither of whom are parties to this action. (Id. at
18 ¶¶ 155, 156). Plaintiff alleges Sergeant Hannaford and Officer Holman placed Plaintiff in
19 an “outdoor cage,” forced him to strip down naked in the rain, and subjected him to a strip
20 search. (Doc. 21). Officer Braziel did not participate in this escort, and there is no evidence
21 demonstrating Officer Braziel personally participated in placing Plaintiff in an outdoor cage
22 on April 23, 2005. (Doc. 54-2, at ¶¶ 157-160).

23 **April 24, 2005 Denial of Access to Religious Services**

24 The April 24, 2005 events were similar to the April 23, 2005 events. Plaintiff sought
25 to enter the yard with a yard bag, but the yard was capped. Plaintiff attempted to attend a
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28 ⁷ See also (Id. at ¶ 125).

1 religious service but was told he could not take his yard bag. Plaintiff was not permitted to
2 take a yard bag with non-religious content to a religious ceremony. (Id. at ¶¶ 125-132).

3 **April 27, 2005 Administrative Segregation**

4 On April 27, 2005, Plaintiff was placed in administrative segregation by Lieutenant
5 Jones for threatening staff. This was based on Plaintiff's conduct during his attempts to enter
6 the yard under the guise of going to a religious ceremony. (Id. at ¶¶ 135-140). Plaintiff
7 asserts he never threatened an officer. (Id.).

8 **Procedural Background**

9 Plaintiff's First Amended Complaint ("FAC") alleged four causes of action pursuant
10 to 42 U.S.C. § 1983. (Doc. 21). The Court dismissed Count One without prejudice. (Doc.
11 23). The remaining counts are: Count Two for retaliation against Defendants Armstrong,
12 Braziel, Clayton, Dutton, Ervin, Haworth, Howell, Manuel, McNeal and Shambre; Count
13 Three for excessive force against Defendant Ervin; and Count Four for an illegal "body
14 search" against Officer Braziel. (Docs. 20 and 23). On August 31, 2010, Defendants
15 Braziel, Clayton, Dutton, Ervin, Haworth, Howell, McNeal and Shambre moved for
16 summary judgment. (Doc. 54). On January 6, 2011, Defendant Armstrong joined in the
17 motion for summary judgment. (Doc. 58). On June 16, 2009, Defendant Manuel waived
18 service (Doc. 28), but has not otherwise appeared in the case. On April 9, 2010, default was
19 entered against Manuel. (Doc. 44). Plaintiff's applications for default judgment against
20 Manuel are pending. (Docs. 45 and 49).

21 **ANALYSIS**

22 **I. Summary Judgment Standard**

23 Summary judgment is appropriate where "there is no genuine issue as to any material
24 fact" and "the movant is entitled to judgment as a matter of law." Fed R. Civ. P. 56(c). The
25 evidence of the non-moving party is to be believed, and all reasonable inferences drawn in
26 its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255-56 (1986). "[A] party seeking
27 summary judgment always bears the initial responsibility of informing the district court of
28 the basis for its motion, and identifying those portions of the pleadings, depositions, answers

1 to interrogatories, and admissions on file, together with the affidavits, if any, which it
2 believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v.*
3 *Catrett*, 477 U.S. 317, 323 (1986) (internal citations omitted). However, if the non-moving
4 party bears the burden of proof at trial, the moving party’s summary judgment motion need
5 only highlight the absence of evidence supporting the non-moving party’s claims. *See*
6 *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (citing *Celotex Corp.*, 477 U.S. at
7 323-25). The burden then shifts to the non-moving party who must produce evidence
8 sustaining a genuine issue of disputed material fact. *Id.*

9 **II. Defendants Are Entitled to Summary Judgment**

10 **A. Count Two - Retaliation**

11 In order to establish a retaliation claim under 42 U.S.C. § 1983, Plaintiff must show
12 he was retaliated against for exercising a constitutional right and the action was not related
13 to a legitimate penological purpose, such as institutional security. *Barnett v. Centoni*, 31
14 F.3d 813, 815-16 (9th Cir. 1994); *Rhodes v. Robinson*, 408 F.3d 559, 568 (9th Cir. 2005).
15 It is Plaintiff’s burden to show there were no legitimate penological purposes motivating the
16 actions of which he complains. *Pratt v. Rowland*, 65 F.3d 802, 808 (9th Cir. 1995). Courts
17 should avoid “excessive judicial involvement in day-to-day prison management” and “afford
18 appropriate deference and flexibility to prison officials in the evaluation of proffered
19 legitimate penological reasons for conduct alleged to be retaliatory.” *Pratt*, 65 F.3d at 807
20 (internal quotation omitted).

21 Preserving institutional order, discipline and security are legitimate penological goals.
22 *Barnett*, 31 F.3d at 816; *Witherow v. Paff*, 52 F.3d 264, 265 (9th Cir. 1995). Requiring
23 respect for authority is also a legitimate correctional goal. *Brodheim v. Cry*, 584 F.3d 1262,
24 1272 (9th Cir. 2009). The safety and security of a penal institution requires inmates obey
25 rules and regulations and respect authority. *Cutter v. Wilkenson*, 544 U.S. 709, 722-23
26 (2005); *Ustrak v. Fairman*, 781 F.2d 573, 580 (7th Cir. 1986). It is undisputed that prison
27 security is a legitimate penological interest. *Turner v. Safley*, 482 U.S. 78, 91 (1987).

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1 Plaintiff alleges Defendants retaliated against him by filing false rules violations and
2 placing him in administrative segregation. Plaintiff alleges the following acts constitute
3 retaliation: filing rules violation reports RVR #305-01-035, AVR #305-02-003, RVR #305-
4 02-028, and RVR #105-04-120; administrative segregation placements on February 13 and
5 April 27, 2005; and denial of access to religious services on April 24, 2005. (Doc. 21).
6 However, these acts were in response to Plaintiff disobeying orders, disrespecting officer
7 authority, attempting to circumvent prison rules, inciteful behavior, and making
8 inflammatory remarks. Plaintiff has not met his burden of showing the absence of any
9 legitimate penological goals. *Pratt*, 65 F.3d at 806. The undisputed facts establish
10 Defendants had a legitimate penological purpose for their rules violation reports.

11 In addition, Plaintiff must establish a specific link between the alleged retaliation and
12 the exercise of a constitutional right. *Pratt*, 65 F.3d at 807. Plaintiff has not drawn a causal
13 connection between any of his numerous grievances and any of his numerous rules
14 violations.

15 Further, Plaintiff must show his constitutional right was actually chilled by the alleged
16 retaliation. *Resnick v. Hayes*, 213 F.3d 443, 449 (9th Cir. 2000). Plaintiff asserts his
17 constitutional rights were chilled by his removal from MAC. This decision, however, served
18 a legitimate penological purpose. Further, there is nothing to indicate Plaintiff stopped filing
19 inmate grievances or writing letters to state officials after the alleged retaliatory action.
20 There Plaintiff's constitutional rights were not actually chilled.

21 Therefore, there is no genuine issue of material fact as to Count Two.

22 **B. Defendant Manuel**

23 A court is “required to exercise ‘sound judicial discretion’ in deciding whether
24 [default] judgment should be entered [and] ‘[t]his element of discretion makes it clear that
25 the party making the request is not entitled to a default judgment as of right, even when
26 defendant is technically in default and that fact has been noted under Rule 55(a).’” 10
27 Wright, Miller & Kane, Federal Practice and Procedure § 2685 (1983) (citing cases). “[I]n
28 determining whether [a party] is entitled to default judgment, the Court must still analyze the

1 merits of [the] claims and determine if it is entitled to judgment.” *Allia v. Target Corp.*, 2010
2 WL 1050043 *11 n. 15 (D. N.J. Mar. 17, 2010). Defendant Manuel is only named in Count
3 Two. There are no facts to support liability under Count Two against any named Defendant.
4 The alleged retaliatory action had a legitimate penological purpose, Plaintiff has not shown
5 a specific link between the alleged retaliation and his constitutional rights, and Plaintiff has
6 not demonstrated his constitutional rights were chilled. As such, there is no issue of genuine
7 fact as to Count Two against Manuel. Plaintiff’s motions for default judgment (Docs. 45 and
8 49) will be denied.

9 **C. Count Three - Excessive Force**

10 The Eighth Amendment prohibits cruel and unusual punishment. “[T]he unnecessary
11 and wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the
12 Eighth Amendment.” *Whitely v. Albers*, 475 U.S. 312, 319 (1986). “The Eighth
13 Amendment’s prohibition of cruel and unusual punishments necessarily excludes from
14 constitutional recognition *de minimis* uses of physical force, provided that the use of force
15 is not of a sort repugnant to the conscience of mankind.” *Wilkins v. Gaddy*, 130 S.Ct. 1175,
16 1178 (2010) (quoting *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)) (internal quotations
17 omitted).

18 “An inmate who complains of a ‘push or shove’ that causes no discernible injury
19 almost certainly fails to state a valid excessive force claim.” *Id.* (internal quotations omitted).
20 Not “every malevolent touch by a prison guard gives rise to a federal cause of action.”
21 *Hudson*, 503 U.S. at 9. The “extent of injury suffered by an inmate is one factor” in the
22 excessive force inquiry because it may suggest whether the force used was thought to be
23 necessary. *Id.* at 7 “The extent of injury may also provide some indication of the amount
24 of force applied.” *Wilkins*, 130 S.Ct. at 1178.⁸

25 Plaintiff alleges Officer Ervin used excessive force when Officer Ervin placed his
26 right hand on Plaintiff’s shoulder and “slammed” Plaintiff against a door in the course of
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28 ⁸ The absence of serious injury, however, does not end the inquiry. *Id.*

1 handcuffing him. Plaintiff concedes his injuries were no more serious than bruises and
2 soreness to his left shoulder and left thumb. Officer Ervin allegedly “slammed” Plaintiff into
3 the door after Plaintiff’s refusal to obey a direct order regarding proper attire in the shower
4 area. Plaintiff denies many of the allegations made by Plaintiff about obscene conduct and
5 statements, but admits he asked Officer Ervin if he was gay and if he felt like a man. At a
6 minimum, Plaintiff disobeyed a direct order and challenged Officer Ervin’s authority during
7 a disciplinary interaction, a clothed body search and handcuffing. Based on the allegations,
8 the undisputed facts, the context of the events and the injury, the force was minimal. The use
9 of *de minimis* force against an inmate disobeying orders serves a penological purpose to
10 maintain order and security. There is no genuine issue of material fact as to Count Three.

11 **D. Count Four - Body Search**

12 Liability under Section 1983 requires a showing of personal participation by the
13 Defendant. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). In Count Four, Plaintiff
14 alleges he was subject to an illegal “body search” when he was placed in an “outdoor cage”
15 in the rain for two hours and subjected to a strip search. However, Count Four is pending
16 only against Officer Braziel. Officer Braziel’s participation consists of filing a rules
17 violation report, RVR #105-04-120, after Plaintiff attempted to circumvent prison rules
18 regarding the maximum number of inmates allowed in the yard, taking yard bags to religious
19 ceremonies, making false statements to an officer and threatening an officer. After these
20 events, Plaintiff was placed in restraints and escorted by Sergeant Hannaford and Officer
21 Holman to the Custody Complex, where he was allegedly placed in an outdoor cage and
22 subjected to a body search. There is no evidence showing Officer Braziel personally
23 participated in the escort or the search, or ordered Plaintiff to be placed in an outdoor cage
24 on April 23, 2005 or searched. Nor did Officer Braziel have such authority. Officer Braziel
25 did not personally participate in the alleged violation. There is no genuine issue of material
26 fact as to Count Four alleged against Officer Braziel.

1 **E. Rule 56(d)**

2 In his Response to Defendants’ Motion for Summary Judgment, Plaintiff states he
3 “has not been given a Court Order to begin Discovery and therefore [sic] Summary Judgment
4 is barred as a matter of law.” (Doc. 60, at 1). “If a nonmovant shows by affidavit or
5 declaration that, for specified reasons, it cannot present facts essential to justify its
6 opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to
7 obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate
8 order.” Fed. R. Civ. P. 56(d).⁹ This rule requires a court “continue a summary judgment
9 motion upon a good faith showing by affidavit that the continuance is needed to obtain facts
10 essential to preclude summary judgment.” *Cal Dep’t of Toxic Substances Control v.*
11 *Campbell*, 138 F.3d 772, 779 (9th Cir. 1998). A party seeking additional time to conduct
12 discovery must show “(1) that they have set forth in affidavit form the specific facts that they
13 hope to elicit from further discovery, (2) that the facts sought exist, and (3) that these sought-
14 after facts are ‘essential’ to resist the summary judgment motion.” *Id.* Plaintiffs have failed
15 to make this showing.

16 Plaintiff has submitted a declaration with his Response, but it does not address the
17 need to conduct more discovery, let alone specific reasons required by Rule 56(d). (Doc. 60,
18 at 87-91). Plaintiff does not identify the specific facts he will seek, that those facts exist, and
19 that those facts are essential to resisting the summary judgment motion. In his opposition to
20 Defendants’ statement of facts in support of the Motion for Summary Judgment, Plaintiff
21 indicates more discovery is needed on two factual issues: (1) whether, as a result of limited
22 staff due to memorial services for a correctional officer on January 18, 2005, Folsom was on
23 lock down or only operating with limited inmate movement (Docs. 54-2 and 60 at ¶ 22); and
24 (2) whether the memo indicating acceptable attire in the shower facilities permits shorts (*Id.*
25 at ¶¶ 68 and 70). The Court has adopted Plaintiff’s version of these facts for purposes of

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27 ⁹ The 2010 Amendments to Rule 56 moved the provisions of subdivision (f) to
28 subdivision (d). Plaintiff’s Response was filed after the December 1, 2010 rule change.
Plaintiff does not cite a specific rule.

1 summary judgment. Therefore, Plaintiff would not be in any better position to defeat
2 summary judgment if permitted to take this discovery.

3 “Unless a different time is set by local rule or the court orders otherwise, a party may
4 file a motion for summary judgment at any time until 30 days after the close of all
5 discovery.” Fed. R. Civ. P. 56(b). Defendants’ Motion for Summary Judgment will be
6 granted.

7 Accordingly,

8 **IT IS ORDERED** Defendants’ Motion for Summary Judgment (**Doc. 54**) is
9 **GRANTED**.

10 **IT IS FURTHER ORDERED** the Entry of Default against Defendant Armstrong
11 (**Doc. 51**) is **VACATED**.

12 **IT IS FURTHER ORDERED** Plaintiff’s motions for default judgment (**Docs. 45**
13 **and 49**) are **DENIED**.

14 **IT IS FURTHER ORDERED** the **Clerk of the Court** shall enter **judgment** in favor
15 of Defendants Armstrong, Braziel, Clayton, Dutton, Ervin, Haworth, Howell, Jones, Manuel,
16 McNeal, and Shambre. The Clerk shall terminate this case.

17 DATED this 29th day of March, 2011.

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Roslyn O. Silver
Chief United States District Judge