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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Derrick Lee Billups,)
) CV-06-1014-DCB P
Plaintiff,)
)
vs.)
) **ORDER**
Sergeant Lomeli,)
)
Defendants.)
)

Defendant has moved for summary judgment as to some or all of Plaintiff's claims. Pursuant to *Klinge v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988) and *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), Plaintiff is advised of the following requirements for opposing a motion for summary judgment made by Defendant pursuant to Rule 56 of the Federal Rules of Civil Procedure. Such a motion is a request for an order for judgment on some or all of Plaintiff's claims in favor of defendants without trial. See Rule 56(b). Defendant's motion will set forth the facts which Defendant contends are not reasonably subject to dispute and that entitle Defendant to judgment as a matter of law. See Rule 56(c).

Plaintiff has the right to oppose a motion for summary judgment. To oppose the motion, Plaintiff must show proof of his or her claims. Plaintiff may agree with the facts set forth in Defendant's motion but argue that Defendant is not entitled to judgment as a matter of law. Plaintiff may show Defendant's facts are disputed in one or more of the

1 following ways: (1) Plaintiff may rely upon statements made under the
2 penalty of perjury in the complaint *if* the complaint shows that Plaintiff
3 has personal knowledge of the matters stated and *if* Plaintiff calls to the
4 court's attention those parts of the complaint upon which Plaintiff
5 relies; (2) Plaintiff may also serve and file affidavits or declarations¹
6 setting forth the facts which plaintiff believes prove Plaintiff's claims
7 (the persons who sign the affidavit or declaration must have personal
8 knowledge of the facts stated); (3) Plaintiff may also rely upon written
9 records but Plaintiff must prove that the records are what Plaintiff
10 claims they are²; (4) Plaintiff may also rely upon all or any part of
11 the transcript of one or more depositions, answers to interrogatories, or
12 admissions obtained in this proceeding. Should Plaintiff fail to
13 contradict Defendant's motion with affidavits, declarations, or other
14 evidence, Defendant's evidence will be taken as truth, and final judgment
15 may be entered without a full trial. See Rule 56(e). Plaintiff's waiver
16 of opposition to Defendant's motion may result in the entry of summary
17 judgment against Plaintiff. A motion supported by affidavits or
18 declarations that are unsigned will be stricken. The failure of any party
19 to comply with this order, the Federal Rules of Civil Procedure, or the

20 _____

21 ¹An affidavit is a written declaration or statement of facts, made
22 voluntarily, and confirmed by the oath or affirmation of the party making
23 it, taken before an officer having authority to administer such oath. An
24 unsworn declaration has the same effect as an affidavit, provided that
25 it is dated and signed under penalty of perjury, as follows: "I declare
under penalty of perjury that the foregoing is true and correct." 28
U.S.C. § 1746. Affidavits and declarations must be made on personal
knowledge and must set forth facts as would be admissible in evidence.
See Rule 56(e).

26 ²Sworn or certified copies of all papers referred to in an affidavit
27 must be attached to the affidavit and served on the opposing party. Rule
28 56(e).

1 Local Rules of Court, may result in the imposition of sanctions including,
2 but not limited to, dismissal of the action or entry of default.


3 Accordingly,

4 **IT IS ORDERED** that Plaintiff must file a response to Defendant's
5 Motion for Summary Judgment (Doc. No. 54) in accordance with this Order
6 on or before **April 30, 2010**. Defendant must file a reply on or before **May**
7 **21, 2010**.

8 **IT IS FURTHER ORDERED** that Defendant must file a response to
9 Plaintiff's Motion for Summary Judgment (Doc. No. 51) on or before **April**
10 **30, 2010** and Plaintiff must file a reply on or before **May 21, 2010**.

11 DATED this 26th day of March, 2010.

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David C. Bury
United States District Judge