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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JEAN-PIERRE K. THOMAS,

 Plaintiff,

 v.

BONILLA, et al.,

 Defendants.

Case No. 1:08-cv-00689-LJO-DLB PC

**ORDER GRANTING PLAINTIFF LEAVE
TO FILE AMENDED OPPOSITION OR
PROCEED WITH CURRENT
OPPOSITION**

RESPONSE DUE WITHIN THIRTY DAYS

Plaintiff Jean-Pierre K. Thomas (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se in this civil action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Bonilla and Garcia for violation of the Eighth Amendment. Defendants filed a motion for summary judgment on April 9, 2012. ECF No. 115.

In light of the recent decision in *Woods v. Carey*, Nos. 09-15548, 09-16113, 2012 WL 2626912, at *5 (9th Cir. Jul. 6, 2012), Plaintiff must be provided with “fair notice” of the requirements for opposing a motion for summary judgment at the time the motion is brought, and

1 notice provided several years prior will not suffice. The Court will hereby provide the required
2 notice.

3 1. Unless otherwise ordered, all motions for summary judgment are briefed pursuant to
4 Local Rule 230(l).

5 2. Plaintiff is required to file an opposition or a statement of non-opposition to Defendants'
6 motion for summary judgment. Local Rule 230(l). If Plaintiff fails to file an opposition or a
7 statement of non-opposition to the motion, this action may be dismissed, with prejudice, for failure
8 to prosecute. The opposition or statement of non-opposition must be filed not more than 21 days
9 after the date of service of the motion. *Id.*

10 3. A motion for summary judgment is a request for judgment on some or all of Plaintiff's
11 claims in favor of Defendants without trial. Fed. R. Civ. P. 56(a). Defendants' motion sets forth the
12 facts which they contend are not reasonably subject to dispute and that entitle them to judgment as a
13 matter of law. Fed. R. Civ. P. 56(c). This is called the Statement of Undisputed Facts. Local Rule
14 260(a).

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

18 In the alternative, if Plaintiff does not agree with the facts set forth in Defendants' motion, he
19 may show that Defendants' facts are disputed in one or more of the following ways: (1) Plaintiff
20 may rely upon statements made under the penalty of perjury in the complaint or the opposition if (a)
21 the complaint or opposition shows that Plaintiff has personal knowledge of the matters stated and (b)
22 Plaintiff calls to the Court's attention those parts of the complaint or opposition upon which Plaintiff
23 relies; (2) Plaintiff may serve and file declarations setting forth the facts which Plaintiff believes
24 prove his claims; (3) Plaintiff may rely upon written records but Plaintiff must prove that the records
25 are what he claims they are; or (4) Plaintiff may rely upon all or any part of the transcript of one or
26 more depositions, answers to interrogatories, or admissions obtained in this proceeding. Should
27 Plaintiff fail to contradict Defendants' motion with declarations or other evidence, Defendants'

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1 evidence will be taken as truth, and final judgment may be entered without a full trial. Fed. R. Civ.
2 P. 56(e).

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

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

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

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

25 The Court will not consider multiple oppositions, however, and Plaintiff has two options
26 upon receipt of this order. Plaintiff may either (1) stand on his previously-filed opposition or (2)
27 withdraw it and file an amended opposition.

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Accordingly, it is HEREBY ORDERED that:

1. Plaintiff may, within thirty (30) days from the date of service of this order, withdraw his opposition and file an amended opposition;
2. If Plaintiff does not file an amended opposition in response to this order, his existing opposition will be considered in resolving Defendants' motions for summary judgment; and
3. If Plaintiff elects to file an amended opposition, Defendants' existing reply will not be considered and they may file an amended reply within fourteen (14) days from the date of service of Plaintiff's amended opposition.

IT IS SO ORDERED.

Dated: August 2, 2012

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE