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

Phillip W. Dunn,  
Plaintiff,  
vs.  
Matthew Cate, et. al.,  
Defendants.

No. CV 1-08-873-NVW

**ORDER**

Defendants have filed a Motion to Dismiss [doc. 19].

IT IS ORDERED that the Motion to Dismiss is converted to a Motion for Summary Judgment under Fed. R. Civ. P. 56 as to the argument for preclusion of claims against Defendant Greenman and Enenmoh based on prior adjudication in Kings County Superior Court Case No. 08W0047A and the documents attached to the motion.

**NOTICE--WARNING TO PLAINTIFF**

***THIS NOTICE IS REQUIRED TO BE GIVEN TO YOU BY THE COURT<sup>1</sup>***

The Defendants' Motion for Summary Judgment seeks to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

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<sup>1</sup> Rand v. Rowland, 154 F.3d 952, 962 (9th Cir. 1998) (*en banc*).

1 Rule 56 tells you what you must do in order to oppose a motion for summary  
2 judgment. Generally, summary judgment must be granted when there is no genuine issue of  
3 material fact – that is, if there is no real dispute about any fact that would affect the result  
4 of your case, the party who asked for summary judgment is entitled to judgment as a matter  
5 of law, which will end your case. When a party you are suing makes a motion for summary  
6 judgment that is properly supported by declarations (or other sworn testimony), you cannot  
7 simply rely on what your complaint says. Instead, you must set out specific facts in  
8 declarations, depositions, answers to interrogatories, or authenticated documents, as provided  
9 in Rule 56(e), that contradict the facts shown in the Defendants’ declarations and documents  
10 and show that there is a genuine issue of material fact for trial. If you do not submit your  
11 own evidence in opposition, summary judgment, if appropriate, may be entered against you.  
12 If summary judgment is granted, your case will be dismissed and there will be no trial.

13 Rule 56.1(b) of the Local Rules of Civil Procedure also requires that you include with  
14 your response to the Motion for Summary Judgment a separate statement of facts in  
15 opposition to the Motion for Summary Judgment. Your separate statement of facts must  
16 include numbered paragraphs corresponding to the Defendants’ (“moving party’s”) separate  
17 statement of facts:

18 (b) Any party opposing a motion for summary judgment shall file a  
19 statement, separate from that party’s memorandum of law, setting forth: (1) for  
20 each paragraph of the moving party’s separate statement of facts, a  
21 correspondingly numbered paragraph indicating whether the party disputes the  
22 statement of fact set forth in that paragraph and a reference to the specific  
23 admissible portion of the record supporting the party’s position [for example,  
24 affidavit, deposition, discovery response, etc.] if the fact is disputed; and  
25 (2) any additional facts that establish a genuine issue of material fact or  
26 otherwise preclude judgment in favor of the moving party. Each additional  
27 fact shall be set forth in a separately numbered paragraph and shall refer to a  
28 specific admissible portion of the record where the fact finds support. Each  
numbered paragraph of the statement of facts set forth in the moving party’s  
separate statement of facts shall, unless otherwise ordered, be deemed admitted  
for purposes of the motion for summary judgment if not specifically  
controverted by a correspondingly numbered paragraph in the opposing party’s  
separate statement of facts.

LRCiv 56.1(b). You must also cite to the specific paragraph in your statement of facts that  
supports any factual claims you make in your memorandum of law:

1 (e) Memoranda of law filed in support of or in opposition to a motion  
2 for summary judgment, including reply memoranda, shall include citations to  
3 the specific paragraph in the statement of facts that supports factual assertions  
4 made in the memoranda.

5 LR.Civ 56.1(e).

6 Additionally, Rule 7.2(e) of the Local Rules of Civil Procedure provides:

7 Unless otherwise permitted by the Court, a motion including its supporting  
8 memorandum, and the response including its supporting memorandum, each  
9 shall not exceed seventeen (17) pages, exclusive of attachments and any  
10 required statement of facts. Unless otherwise permitted by the Court, a reply  
11 including its supporting memorandum shall not exceed eleven (11) pages,  
12 exclusive of attachments. Attachments shall exclude materials extraneous to  
13 genuine issues of material fact or law.

14 LRCiv 7.2(e). Finally, Rule 7.2(i) of the Local Rules of Civil Procedure provides:

15 If a motion does not conform in all substantial respects with the requirements  
16 of this Local Rule, or if the unrepresented party or counsel does not serve and  
17 file the required answering memoranda, or if the unrepresented party or  
18 counsel fails to appear at the time and place assigned for oral argument, such  
19 non-compliance may be deemed a consent to the denial or granting of the  
20 motion and the Court may dispose of the motion summarily.

21 LRCiv 7.2(i).

22 You must timely respond to all motions. The Court may, in its discretion, treat your  
23 failure to respond to Defendants' Motion for Summary Judgment as a consent to the granting  
24 of that Motion without further notice, and judgment may be entered dismissing this action  
25 with prejudice pursuant to Rule 7.2(i) of the Local Rules of Civil Procedure. See Brydges  
26 v. Lewis, 18 F.3d 651 (9th Cir. 1994) (*per curiam*).

27 **IT IS ORDERED** that Plaintiff must file a response to Defendants' Motion for  
28 Summary Judgment, together with a separate Statement of Facts and supporting affidavits  
or other appropriate exhibits, no later than **September 14, 2009**.

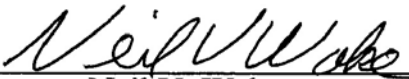
**IT IS FURTHER ORDERED** that Defendants may file a reply within 15 days after  
service of Plaintiff's response.

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**IT IS FURTHER ORDERED** that the Motion for Summary Judgment will be deemed ready for decision without oral argument on the day following the date set for filing a reply unless otherwise ordered by the Court.

DATED this 12<sup>th</sup> day of August, 2009.

  
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Neil V. Wake  
United States District Judge