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

VALENTINE E. UNDERWOOD,

1:08-cv-00986-GSA-PC

Plaintiff,

ORDER DENYING AS MOOT  
PLAINTIFF’S REQUEST TO SUBMIT  
THREE AFFIDAVITS IN SUPPORT OF  
AMENDED OPPOSITION TO MOTION  
FOR SUMMARY JUDGMENT  
(Doc. 142.)

vs.

M. KNOWLES, et al.,

Defendants.

**I. BACKGROUND**

Valentine Underwood ("Plaintiff") is a prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on July 17, 2008. (Doc. 1.) This action now proceeds on the original Complaint, against defendants Correctional Officer (“C/O”) M. Northcutt and C/O S. Martin for retaliation, in violation of the First Amendment; and against defendants C/O M. Northcutt, C/O S. Martin, C/O D. Caviness, C/O A. Trujillo, and C/O P. Truitt, ("Defendants") for use of excessive force, in violation of the Eighth Amendment.<sup>1</sup> The parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C.

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<sup>1</sup>Defendant Seth Lantz was dismissed from this action on July 18, 2011, via Plaintiff’s motion to dismiss. (Doc. 107.) Defendant J. Fambrough was dismissed from this action on December 9, 2011, via Plaintiff’s motion to dismiss. (Doc. 121.) All other claims and defendants were dismissed by the Court on October 21, 2009, based on

1 § 636(c), and on June 15, 2011, this case was reassigned to the undersigned for all further  
2 proceedings. (Docs. 4, 97, 102.)

3 Defendants filed a motion for summary judgment on February 17, 2012. (Doc. 122.) On  
4 April 26, 2012, Plaintiff filed an opposition to the motion. (Doc. 127.) On May 18, 2012,  
5 Defendants filed a reply to the opposition. (Doc. 131.)

6 On September 18, 2012, Plaintiff withdrew his opposition, and on September 24, 2012,  
7 Plaintiff filed an amended opposition. (Docs. 138, 139, 141.) On September 28, 2012, Defendants  
8 filed a reply to the amended opposition. (Doc. 140.)

9 On October 15, 2012, Plaintiff filed a request for the Court to allow him to submit three  
10 affidavits in support of his amended opposition. (Doc. 142.) Plaintiff's request is now before the  
11 Court.

12 **II. PLAINTIFF'S REQUEST**

13 Plaintiff explains that Defendants claimed, in their reply of September 28, 2012, that  
14 Plaintiff failed to submit three affidavits -- of Zimena Underwood, Tracy Underwood, and Joy  
15 Haskins -- in support of his amended opposition. Plaintiff asserts that he intended to submit the  
16 three affidavits as Exhibits 14-16, and if he inadvertently failed to submit them, he requests the  
17 Court to allow submission of the affidavits now.

18 Plaintiff's request is moot, because the record shows that Plaintiff submitted the three  
19 affidavits of Zimena Underwood, Tracy Underwood, and Joy Haskins on September 24, 2012, as  
20 Exhibits 14-16 in support of his amended opposition. (Doc. 141 at 63-68 [Exhs. 14-16].) Plaintiff  
21 is not required to submit the exhibits again. Accordingly, Plaintiff's request shall be denied as  
22 moot.

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27 Plaintiff's failure to state a claim. (Doc. 31.)

1 **III. CONCLUSION**

2 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's request, filed on  
3 October 15, 2012, for the Court to allow submission of three affidavits in support of Plaintiff's  
4 amended opposition to Defendants' motion for summary judgment, is DENIED AS MOOT.

5  
6 IT IS SO ORDERED.

7 **Dated: October 19, 2012**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE