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

**GERALD L. MILLER, JR.,
CDCR #C-92075,**

Plaintiff,

vs.

O. RUFION, et al.,

Defendants.

Civil No. 08cv01233-BTM(WMC)

ORDER:

**(1) SETTING BRIEFING SCHEDULE
RE MOTION FOR SUMMARY
JUDGMENT; and**

**(2) PROVIDING PLAINTIFF
KLINGELE/RAND NOTICE**

Plaintiff Gerald L. Miller, Jr. ("Miller"), a state prisoner proceeding *pro se* and *in forma pauperis* with a civil rights complaint pursuant to 42 U.S.C. § 1983, alleging denial of medical treatment in violation of his Eighth Amendment rights and retaliation, sues three prison medical staff members in their official and individual capacities. The Motion For Summary Judgment previously filed by two of the defendants remains under submission with the Court. The third defendant, Dr. J. Akanno, was belatedly served in this action, and has now filed a separate Motion For Summary Judgment on his own behalf. (Dkt No. 101.)

As required by Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998) (*en banc*) and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988), **the Court hereby reiterates its notice to Miller that Defendants seek through their Motions to have this case dismissed. If the Motions are granted, his case will end.** Generally, summary judgment must be granted when there is no genuine issue of material fact -- that is, if there is no real dispute about any fact that would affect the result of the case --

1 and the party who asked for summary judgment is entitled to judgment as a matter of law. A grant of
2 summary judgment ends the case in favor of the successful moving party.

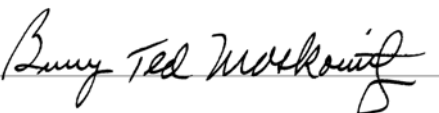
3 Rule 56 of the Federal Rules of Civil Procedure informs parties what they must do in order to
4 oppose a Motion for Summary Judgment. When a party you are suing makes a motion for summary
5 judgment that is properly supported by declarations or other sworn testimony, you cannot simply rely
6 on what your complaint says. Instead, you must set out specific facts in declarations, depositions,
7 answers to interrogatories, or authenticated documents, as provided by Rule 56(e), that contradict the
8 facts shown in the defendant's declarations and documents and show that there is a genuine issue of
9 material fact for trial. If you do not submit your own evidence in opposition, summary judgment may
10 be entered against you. **If the Court grants summary judgment for Defendants, there will be no**
11 **trial, and your case will be dismissed.**

12 For the foregoing reasons, **IT IS HEREBY ORDERED:**

- 13 1. Miller may serve and File an Opposition to Defendant Akanno's Motion For Summary
14 Judgment no later than *November 29, 2010*.
- 15 2. Defendants may serve and file a Reply to the Opposition no later than *December*
16 *13, 2010*.
- 17 3. Absent further Order of the Court, the Motion will be considered fully briefed on the
18 passage of Defendants' Reply deadline and will be decided thereafter on the papers, without oral
19 argument.
20

21 **IT IS SO ORDERED.**

22 DATED: October 27, 2010

23 

24 Honorable Barry Ted Moskowitz
25 United States District Judge