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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ANTHONY GASTON,

CASE NO. 1:08-cv-01629-SKO PC

Plaintiff,

ORDER REGARDING FILING OF REPLY  
TO PLAINTIFF’S MOTION/OPPOSITION

v.

TERRONEZ,

Defendant.

On December 24, 2009, Defendant Terronez (“Defendant”) filed a motion to dismiss on the grounds that: (1) Plaintiff’s first amended complaint fails to state a claim on which relief can be granted under Section 1983, and (2) Plaintiff failed to exhaust his administrative remedies prior to filing suit. (Doc. #15.) After receiving numerous extensions of time, Plaintiff filed a “Motion for Summary Judgment In Response To Defendant’s Motion To Dismiss Plaintiff’s Amended Complaint.” (Doc. #22.) Defendant has not filed an opposition or reply to Plaintiff’s motion for summary judgment.

The Court notes that Plaintiff’s motion for summary judgment is premature. The Court has not yet issued a discovery order. There exist issues of disputed facts that cannot be resolved at this stage in litigation.

The Court will construe Plaintiff’s motion for summary judgment as an opposition to Defendant’s motion to dismiss. Plaintiff’s motion for summary judgment was filed directly in response to Defendant’s motion to dismiss and contains arguments opposing Defendant’s motion to dismiss. It appears that Plaintiff’s filing was intended to be an opposition and that Plaintiff titled

1 it as a motion for summary judgment due to his lack of experience with legal terminology and  
2 procedure. Given the ambiguous title of Plaintiff's filing, the Court will provide Defendant with an  
3 opportunity to file a reply to Plaintiff's "opposition" for the purpose of ruling on Defendant's motion  
4 to dismiss. See Local Rule 230(l) (providing moving party with an opportunity to file and serve a  
5 reply to an opposition to a motion within seven (7) days after the opposition is served).

6 Accordingly, it is HEREBY ORDERED that Defendant shall, within seven (7) days of the  
7 date of service of this order, file a reply to Plaintiff's "opposition" or notify the Court that Defendant  
8 does not intend to file a reply.<sup>1</sup>

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10 IT IS SO ORDERED.

11 **Dated: June 4, 2010**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup>The filing of a reply to an opposition is not mandatory under Local Rule 230(l). Therefore, Defendant may also notify the Court that she does not intend to file a reply to Plaintiff's opposition.