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

GEORGE BERRY STRONG,
Plaintiff,
v.
KENNETH ELLIOTT, et al.,
Defendants.

Case No. 1:09-cv-00583 AWI JLT (PC)
**INFORMATIONAL ORDER RE
MOTION FOR SUMMARY JUDGMENT**

Plaintiff is a prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. §1983. On December 20, 2011, Defendants filed a motion for summary judgment. (Doc. 40). Plaintiff filed his opposition on March 8, 2012 and a sur-reply on March 28, 2012 (Doc. 48).

Plaintiff is advised that pursuant to Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988) and Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998), of the following requirements for opposing a motion for summary judgment made by defendants pursuant to Rule 56 of the Federal Rules of Civil Procedure:

1. Such a motion is a request for an order for judgment on some or all of plaintiff's claims in favor of defendants without trial. See Rule 56(b).
2. Defendant(s)' motion set forth the facts which defendants contend are not reasonably subject to dispute and that entitle defendant to judgment as a matter of law. See Rule 56(c).

- 1 3. Plaintiff has the right to oppose a motion for summary judgment. To oppose the
2 motion, plaintiff must show proof of his or her claims. Plaintiff may agree with the facts
3 set forth in defendant(s)' motion but argue that defendant(s) are not entitled to judgment
4 as a matter of law.
- 5 4. Plaintiff may show defendant(s)' facts are disputed in one or more of the following
6 ways: (1) Plaintiff may rely upon statements made under the penalty of perjury in the
7 complaint if the complaint shows that plaintiff has personal knowledge of the matters
8 stated and if plaintiff calls to the court's attention those parts of the complaint upon
9 which plaintiff relies; (2) Plaintiff may also serve and file affidavits or declarations
10 setting forth the facts which plaintiff believes prove plaintiff's claims (the persons who
11 sign the affidavit or declaration must have personal knowledge of the facts stated); (3)
12 Plaintiff may also rely upon written records but plaintiff must prove that the records are
13 what plaintiff claims they are; (4) Plaintiff may also rely upon all or any part of the
14 transcript of one or more depositions, answers to interrogatories, or admissions obtained
15 in this proceeding. Should plaintiff fail to contradict defendants' motion with affidavits,
16 declarations, or other evidence, defendants' evidence will be taken as truth, and final
17 judgment may be entered without a full trial. See Rule 56(e).
- 18 5. If there is some good reason why such facts are not available to plaintiff when
19 required to oppose such a motion, the court will consider a request to postpone
20 considering defendant(s)' motion. See Rule 56(f).
- 21 6. If plaintiff does not serve and file a request to postpone consideration of defendant(s)'
22 motion or written opposition to the motion, the court may consider plaintiff's failure to
23 act as a waiver of opposition to defendant(s)' motion. Plaintiff's waiver of opposition to
24 defendant(s)' motion may result in the entry of summary judgment against plaintiff.
- 25 7. A motion supported by affidavits or declarations that are unsigned will be stricken.
- 26 8. The failure of any party to comply with this order, the Federal Rules of Civil
27 Procedure, or the Local Rules of Court, may result in the imposition of sanctions
28 including, but not limited to, dismissal of the action or entry of default.

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9. Plaintiff is advised that any declarations submitted by him must be dated and signed under penalty of perjury. His own declaration must set forth every fact within his personal knowledge that he relies upon to oppose the motion. He cannot merely say that facts set forth in other documents are true; the facts must be set forth in the declaration itself. Also, all declarations must set forth *how* they declaring witness knows what he says he know whether the witness saw something happen, heard it, or felt it, for example. The failure of declarants to comply with this guidance will result in the Court refusing to consider their declarations.

10. **Plaintiff is granted until September 7, 2012 to file supplemental opposition to the motion, if he chooses.**

IT IS SO ORDERED.

Dated: August 15, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE