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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DONTE ROLANDO HARRIS,
Plaintiff,
v.
H.A. RIOS, et al.,
Defendants.

Case No. 1:09-cv-00781-MJS (PC)
ORDER EXTENDING PLAINTIFF'S TIME TO OPPOSE DEFENDANTS' SUMMARY JUDGMENT MOTION
(ECF No. 94)
TWENTY-ONE (21) DAY DEADLINE
NOTICE AND WARNING OF REQUIREMENTS FOR OPPOSING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff Donte Rolando Harris is a federal prisoner proceeding pro se in this civil rights action filed pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). The matter proceeds on First and Fifth Amendment claims against Defendants Gonzaga, Cobb, Zaragoza, Valero, and Estrada.

On September 9, 2013, Defendants filed a motion for summary judgment. (ECF No. 94.) Plaintiff filed opposition. (ECF Nos. 104 & 105.) Defendants replied. (ECF No. 106.)

Plaintiff's opposition is facially inadequate. Plaintiff is hereby advised of the requirements for opposing a motion for summary judgment and of the consequences of failing to meet those requirements. Plaintiff shall be given twenty-one (21) days from the date of service of this order to supplement his response and ensure its compliance with the

1 requirements below. (Defendants shall then have seven days thereafter to serve and file a
2 supplemental reply.)

3 Pursuant to Woods v. Carey, 684 F.3d 934 (9th Cir. 2012), Rand v. Rowland,
4 154 F.3d 952 (9th Cir. 1998), and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988), the
5 Court hereby notifies Plaintiff of the following rights and requirements for opposing the
6 motion:

7 1. Unless otherwise ordered, all motions for summary judgment are briefed
8 pursuant to Local Rule 230(f).

9 2. Plaintiff is required to file an opposition or a statement of non-opposition
10 to Defendant's motion for summary judgment. Local Rule 230(f). If Plaintiff fails to file
11 an opposition or a statement of non-opposition to the motion, this action may be
12 dismissed, with prejudice, for failure to prosecute. The supplemental opposition allowed
13 hereunder must be filed not more than twenty one (21) days from the date of service of this
14 order. Id.

15 3. A motion for summary judgment is a request for judgment on some or all of
16 Plaintiff's claims in favor of Defendants without trial. Fed. R. Civ. P. 56(a). Defendants'
17 motion sets forth the facts which they contend are not reasonably subject to dispute and
18 that entitle them to judgment as a matter of law. Fed. R. Civ. P. 56(c). This is called the
19 statement of undisputed facts. Local Rule 260(a).

20 Plaintiff has the right to oppose the motion for summary judgment. To oppose the
21 motion, Plaintiff must show proof of his claims. Plaintiff may agree with the facts set
22 forth in Defendants' motion but argue that Defendants are not entitled to judgment as a
23 matter of law. In the alternative, if Plaintiff does not agree with the facts set forth in
24 Defendants' motion, he may show that Defendants' facts are disputed in one or more of
25 the following ways: (1) Plaintiff may rely upon statements made under the penalty of
26 perjury in the complaint or the opposition if (a) the complaint or opposition shows that
27 Plaintiff has personal knowledge of the matters stated and (b) Plaintiff calls to the
28 Court's attention those parts of the complaint or opposition upon which Plaintiff relies;

1 (2) Plaintiff may serve and file declarations setting forth the facts which Plaintiff believes
2 prove his claims;¹ (3) Plaintiff may rely upon written records but Plaintiff must prove that the
3 records are what he claims they are;² or (4) Plaintiff may rely upon all or any part of the
4 transcript of one or more depositions, answers to interrogatories, or admissions obtained in
5 this proceeding. Should Plaintiff fail to contradict Defendants' motion with declarations or
6 other evidence, Defendants' evidence will be taken as truth, and final judgment may be
7 entered without a full trial. Fed. R. Civ. P. 56(e).

8 In opposing Defendants' motion for summary judgment, Local Rule 260(b) requires
9 Plaintiff to reproduce Defendants' itemized facts in the statements of undisputed facts and
10 admit those facts which are undisputed and deny those which are disputed. If Plaintiff
11 disputes (denies) a fact, Plaintiff must cite to the evidence used to support that denial (e.g.,
12 pleading, declaration, deposition, interrogatory answer, admission, or other document).
13 Local Rule 260(b).

14 4. If discovery has not yet been opened or if discovery is still open and
15 Plaintiff is not yet able to present facts to justify the opposition to the motion, the Court will
16 consider a request to postpone consideration of Defendants' motion. Fed. R. Civ. P. 56(d).
17 Any request to postpone consideration of Defendants' motion for summary judgment must
18 include the following: (1) a declaration setting forth the specific facts Plaintiff hopes to elicit
19 from further discovery, (2) a showing that the facts exist, and (3) a showing that the facts
20 are essential to opposing the motion for summary judgment. Blough v. Holland Realty, Inc.,
21 574 F.3d 1084, 1091 n.5 (9th Cir. 2009); Tatum v. City and County of San Francisco, 441
22 F.3d 1090, 1100-01 (9th Cir. 2006); State of California v. Campbell, 138 F.3d 772, 779 (9th
23 Cir. 1998). The request to postpone the motion for summary judgment must identify what
24 information is sought and how it would preclude summary judgment. Blough, 574 F.3d at
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26 ¹ A declaration is a written statement setting forth facts (1) which are admissible in evidence, (2)
27 which are based on the personal knowledge of the person giving the statement, and (3) to which the
28 person giving the statement is competent to testify. 28 U.S.C. § 1746; Fed. R. Civ. P. 56(c)(4). A
declaration must be dated and signed under penalty of perjury as follows: "I declare (or certify, verify or
state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)." 28
U.S.C. § 1746.

² Sworn or certified copies of all papers referred to in the declaration must be included and served
on the opposing party. Fed. R. Civ. P. 56(e).

1 1091 n.5; Tatum, 441 F.3d at 1100-01; Margolis v. Ryan, 140 F.3d 850, 853 (9th Cir. 1998);
2 Local Rule 260(b).

3 5. Unsigned declarations will be stricken, and declarations not signed under
4 penalty of perjury have no evidentiary value.

5 6. The failure of any party to comply with this order, the Federal Rules of Civil
6 Procedure, or the Local Rules of the Eastern District of California may result in the
7 imposition of sanctions including but not limited to dismissal of the action or entry of
8 default.

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10 IT IS SO ORDERED.

11 Dated: January 15, 2014

12 /s/ Michael J. Seng
13 UNITED STATES MAGISTRATE JUDGE
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