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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER HARBRIDGE,
Plaintiff,
v.
YATES, et al.,
Defendants.

Case No. 1:10-cv-00473-AWI-JLT (PC)
**AMENDED SECOND INFORMATIONAL
ORDER - NOTICE AND WARNING OF
REQUIREMENTS FOR OPPOSING A MOTION
FOR SUMMARY JUDGMENT**

Plaintiff, Christopher Harbridge, is a state prisoner proceeding *pro se* and *in forma pauperis* pursuant to 42 U.S.C. § 1983 on the following claims under the Eight Amendment in Plaintiff's Second Amended Complaint (Doc. 22): Claim 1, against Defendants Trimble, Williams, Brown and Reeves, Munoz and Singleton the Court for deliberate indifference related to the temperature of the cell only; Claim 9, against Defendants Reeves, Collier, and Brown; Claims 12, 13, and 14 against Defendants Redding and Franco for use of excessive force against and against Defendant McBride for failing to intervene on Plaintiff's behalf; Claim 16 against Defendants McBride and Herrera related to the denial of medical care; Claim 17, against Defendants Hall, McBride, Herrera, Lee and Tucker for deliberate indifference to his medical condition; Claim 18, against Defendant Dishman for deliberate indifference to an alleged serious medical condition; Claim 19 against Defendants Ferro, Benyamin, and Dishman for deliberate indifference to an alleged serious medical condition; and Claim 21 for deliberate indifference to an alleged serious medical condition against Defendant Benyamin. (*See* Docs. 28, 30.)

1 In a concurrently issued order, Defendants are being given the election whether to have
2 their motion to dismiss converted to a motion for summary judgment, or to withdraw it and file a
3 motion for summary judgment. Pursuant to *Woods v. Carey*, Nos. 09-15548, 09-16113, 2012
4 WL 262 6912 (9th Cir. Jul. 6, 2012), *Wyatt v. Terhune*, 315 F.3d 1108 (9th Cir. 2003), *Rand v.*
5 *Rowland*, 154 F.3d 952 (9th Cir. 1998), and *Klinge v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988),
6 the Court hereby notifies Plaintiff of the following rights and requirements for opposing a motion
7 for summary judgment:

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

10 2. Plaintiff is required to file an opposition or a statement of non-opposition to
11 Defendants' motion for summary judgment. Local Rule 230(1). If Plaintiff fails to file an
12 opposition or a statement of non-opposition to the motion, this action may be dismissed, with
13 prejudice, for failure to prosecute. *Id.*

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

19 Plaintiff has the right to oppose a motion for summary judgment. To oppose the motion,
20 Plaintiff must show proof of his claims. Plaintiff may agree with the facts set forth in Defendants'
21 motion, but argue that Defendants are not entitled to judgment as a matter of law.

22 In the alternative, if Plaintiff does not agree with the facts set forth in Defendants' motion,
23 he may show that Defendants' facts are disputed in one or more of the following ways: (1)
24 Plaintiff may rely upon statements made under the penalty of perjury in the complaint or the
25 opposition if (a) the complaint or opposition shows that Plaintiff has personal knowledge of the
26 matters stated and (b) Plaintiff calls to the Court's attention those parts of the complaint or
27 opposition upon which Plaintiff relies; (2) Plaintiff may serve and file declarations setting forth
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1 the facts which Plaintiff believes prove his claims;¹ (3) Plaintiff may rely upon written records but
2 Plaintiff must prove that the records are what he claims they are;² or (4) Plaintiff may rely upon
3 all or any part of the transcript of one or more depositions, answers to interrogatories, or
4 admissions obtained in this proceeding. Should Plaintiff fail to contradict Defendants' motion
5 with declarations or other evidence, Defendants' evidence will be taken as truth, and final
6 judgment may be entered without a full trial. Fed. R. Civ. P. 56(e).

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

12 4. If discovery has not yet been opened, or if discovery is still open and Plaintiff is not yet
13 able to present facts to justify the opposition to the motion, the Court will consider a request to
14 postpone consideration of Defendants' motion. Fed. R. Civ. P. 56(d). Any request to postpone
15 consideration of Defendants' motion for summary judgment must include the following: (1) a
16 declaration setting forth the specific facts Plaintiff hopes to elicit from further discovery; (2) a
17 showing that the facts exist; and (3) a showing that the facts are essential to opposing the motion
18 for summary judgment. *Blough v. Holland Realty, Inc.*, 574 F.3d 1084, 1091 n.5 (9th Cir. 2009);
19 *Tatum v. City and County of San Francisco*, 441 F.3d 1090, 1100-01 (9th Cir. 2006); *State of*
20 *California v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998). The request to postpone the motion
21 for summary judgment must identify what information is sought and how it would preclude
22 summary judgment. *Blough*, 574 F.3d at 1091 n.5; *Tatum*, 441 F.3d at 1100-01; *Margolis v.*
23 *Ryan*, 140 F.3d 850, 853 (9th Cir. 1998); Local Rule 260(b).

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25 ¹A declaration is a written statement setting forth facts (1) which are admissible in evidence, (2) which are
26 based on the personal knowledge of the person giving the statement, and (3) to which the person giving the statement
27 is competent to testify. 28 U.S.C. § 1746; Fed. R. Civ. P. 56(c)(4). A declaration must be dated and signed under
28 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).

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

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

IT IS SO ORDERED.

Dated: April 9, 2014

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE