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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KEE LEE d/b/a CHIN’S MARKET AND
KITCHEN,

Plaintiff,

v.

UNITED STATES OF AMERICA; and
DOES 1 through 100, inclusive,

Defendants.

) 1:11cv0881 AWI DLB

) **SECOND INFORMATIONAL ORDER**

Parties to this litigation shall take note of the following requirements:

1. Defendants must reply to the complaint within the time provided by the applicable provisions of Fed. R. Civ. P. 12(a).

2. At some point in the litigation, defendants may file a motion to dismiss this action on any number of grounds. Plaintiff is advised that he has the right to oppose the motion in writing. Written oppositions must be filed not less than fourteen (14) days preceding the noticed hearing date. Local Rule 230(c) provides that no party will be entitled to be heard in opposition to a motion at oral arguments if the opposition has not been timely filed by that party.

3. At some point in the litigation, one or more defendants may move for summary judgment as to some or all of plaintiff’s claims. Pursuant to Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988) and Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998), plaintiff is advised of the following requirements for opposing a motion for summary judgment made by defendants

1 pursuant to Rule 56 of the Federal Rules of Civil Procedure. Such a motion is a request for an
2 order for judgment on some or all of plaintiff's claims in favor of defendants without trial. See
3 Rule 56(a). Defendants' motion will set forth the facts which defendants contend are not
4 reasonably subject to dispute and that entitle defendants to judgment as a matter of law. See
5 Rule 56(c).

6 Plaintiff has the right to oppose a motion for summary judgment. To oppose the
7 motion, plaintiff must show proof of his or her claims. Plaintiff may agree with the facts set
8 forth in defendants' motion but argue that defendants are not entitled to judgment as a matter of
9 law. Plaintiff may show defendants' facts are disputed in one or more of the following ways: (1)
10 Plaintiff may rely upon statements made under the penalty of perjury in the complaint if the
11 complaint shows that plaintiff has personal knowledge of the matters stated and if plaintiff calls
12 to the court's attention those parts of the complaint upon which plaintiff relies; (2) Plaintiff may
13 also serve and file affidavits or declarations¹ setting forth the facts which plaintiff believes prove
14 plaintiff's claims (the persons who sign the affidavit or declaration must have personal
15 knowledge of the facts stated); (3) Plaintiff may also rely upon written records but plaintiff must
16 prove that the records are what plaintiff claims they are²; (4) Plaintiff may also rely upon all or
17 any part of the transcript of one or more depositions, answers to interrogatories, or admissions
18 obtained in this proceeding. Should plaintiff fail to contradict defendants' motion with
19 affidavits, declarations, or other evidence, defendants' evidence will be taken as truth, and final
20 judgment may be entered without a full trial. See Rule 56(e).

21 If there is some good reason why such facts are not available to plaintiff when
22 required to oppose such a motion, the court will consider a request to postpone considering

23
24 ¹An affidavit is a written declaration or statement of facts, made voluntarily, and confirmed by the oath or
25 affirmation of the party making it, taken before an officer having authority to administer such oath. An unsworn
26 declaration has the same effect as an affidavit, provided that it is dated and signed under penalty of perjury, as
27 follows: "I declare under penalty of perjury that the foregoing is true and correct." 28 U.S.C. § 1746. Affidavits and
28 declarations must be made on personal knowledge and must set forth facts as would be admissible in evidence. See
Rule 56(e).

² Sworn or certified copies of all papers referred to in an affidavit must be attached to the affidavit and
served on the opposing party.

1 defendants' motion. See Rule 56(d). If plaintiff does not serve and file a request to postpone
2 consideration of defendants' motion or written opposition to the motion, the court may consider
3 plaintiff's failure to act as a waiver of opposition to defendants' motion. Plaintiff's waiver of
4 opposition to defendants' motion may result in the entry of summary judgment against plaintiff.

5 4. A motion supported by affidavits or declarations that are unsigned will be
6 stricken.

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

10
11 IT IS SO ORDERED.

12 **Dated: October 3, 2011**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE