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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NOEL RODRIGUEZ,
Plaintiff,
v.
ISAAC,
Defendant.

1:11-cv-01914-AWI-GSA (PC)
ORDER PERMITTING PLAINTIFF
OPPORTUNITY TO WITHDRAW MOTION
FOR SUMMARY JUDGMENT AND FILE
OPPOSITION TO DEFENDANT’S MOTION
TO DISMISS
(ECF Nos. 23, 27.)
THIRTY-DAY DEADLINE

Plaintiff is a prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. On June 30, 2015, Defendant Isaac (“Defendant”) filed a motion to dismiss this case as barred by the doctrines of res judicata and collateral estoppel. (ECF No. 23.) On July 9, 2015 Plaintiff filed a motion for summary judgment. (ECF No. 27.) Both of these motions are pending.

On August 10, 2015, defense counsel filed a declaration in lieu of reply to Plaintiff’s opposition. (ECF No. 37.) In her declaration, defense counsel argues that Plaintiff failed to file a timely opposition to Defendant’s motion to dismiss, and therefore the motion to dismiss stands submitted without any opposition. (Id. at 2 ¶5.)

On August 20, 2015, Plaintiff filed a reply to defense counsel’s declaration. (ECF No. 38.) Plaintiff argues that the motion to dismiss is not unopposed, because he filed his motion for

1 summary judgment in timely opposition to the motion to dismiss. Plaintiff acknowledges that he
2 “made a mistake, due to my lack of legal education, by filing a motion for summary judgment”
3 instead of an opposition to the motion to dismiss. (ECF No. 38 at 2 ¶8.)

4 The court finds good cause to allow Plaintiff to correct his mistake. The Court shall open a
5 thirty-day time period for Plaintiff to replace his motion for summary judgment with an
6 opposition to Defendant’s motion to dismiss, if he so wishes. Plaintiff has two options upon
7 receipt of this order. Plaintiff may either (1) withdraw his motion for summary judgment of July
8 9, 2015 and file an opposition to Defendant’s motion to dismiss of June 30, 2015, or (2) proceed
9 with the motion to dismiss unopposed.¹ The opposition, if any, must be complete in itself and
10 must not refer back to any prior document. L.R. 220.

11 Accordingly, it is HEREBY ORDERED that:

- 12 1. Plaintiff may, within **thirty (30) days** from the date of service of this order,
13 withdraw his motion for summary judgment of July 9, 2015 and file an opposition
14 to Defendants’ motion to dismiss of June 30, 2015;
- 15 2. If Plaintiff elects to withdraw the motion for summary judgment and file an
16 opposition, Defendant may file a reply pursuant to Local Rule 230(1); and
- 17 3. If Plaintiff does not comply with this order, the court shall deem Defendant’s
18 motion to dismiss submitted without opposition.

19 IT IS SO ORDERED.

20 Dated: August 25, 2015

/s/ Gary S. Austin
21 UNITED STATES MAGISTRATE JUDGE

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28 ¹ If Plaintiff chooses to replace his motion for summary judgment with an opposition to the motion to dismiss,
Plaintiff is not precluded from bringing another motion for summary judgment.