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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

DURRELL A. PUCKETT,  
Plaintiff,  
v.  
SGT. RONALD VOGEL, et al.,  
Defendants.

Case No. 1:13-cv-00525-AWI-SKO (PC)  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING (1) PLAINTIFF’S  
MOTION FOR SUMMARY JUDGMENT BE  
DENIED, WITHOUT PREJUDICE, ON  
PROCEDURAL GROUNDS, AND (2)  
DEFENDANTS’ RULE 56(D) MOTIONS BE  
DENIED AS MOOT  
(Docs. 51, 52, and 54)

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Plaintiff Durrell A. Puckett, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on April 12, 2013. This action for damages is proceeding on Plaintiff’s amended complaint against Defendants Sanchez, Vogel, and Johnson for retaliation in violation of the First Amendment; against Defendants Sanchez, Vogel, Johnson, Dean, Bolander, Abadia, Lockhart, Zamora, Sisneroz,<sup>1</sup> Campos, and Callow for excessive force in violation of the Eighth Amendment; and against Defendants Sanchez, Vogel, and Johnson for violation of the Equal Protection Clause of the Fourteenth Amendment.

On January 30, 2015, the Court issued a scheduling order which opened discovery, and on March 4, 2015, Plaintiff filed a motion for summary judgment. However, the motion did not comply with Local Rule 260(a), which requires that “[e]ach motion for summary judgment or

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<sup>1</sup> Identified as Sisneros in the amended complaint.

1 summary adjudication shall be accompanied by a ‘Statement of Undisputed Facts’ that shall  
2 enumerate discretely each of the specific material relied upon in support of the motion and cite the  
3 particular portions of any pleading, affidavit, deposition, interrogatory answer, admission, or other  
4 document relied upon to establish that fact.”<sup>2</sup> Compliance with Local Rule 260(a) is mandatory,  
5 and as a result of Plaintiff’s failure to include a Statement of Undisputed Facts with his motion, it  
6 is procedurally defective and should be denied, without prejudice, on that ground.

7 In response to Plaintiff’s motion, Defendant Zamora filed a Rule 56(d) motion on March 9,  
8 2015, and Defendants Sanchez, Vogel, Johnson, Dean, Bolander, Lockhart, Sisneroz, Campos,  
9 and Callow filed a Rule 56(d) motion on March 24, 2015. Fed. R. Civ. P. 56(d). Plaintiff did not  
10 file a response. In light of the recommendation that Plaintiff’s motion be denied on procedural  
11 grounds, the Court recommends Defendants’ Rule 56(d) motions be denied as moot.

12 Accordingly, based on the foregoing, the Court HEREBY RECOMMENDS that Plaintiff’s  
13 motion for summary judgment be DENIED, without prejudice, on procedural grounds and  
14 Defendants’ Rule 56(d) motions be DENIED as moot.

15 These Findings and Recommendations will be submitted to the United States District  
16 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
17 **fifteen (15) days** after being served with these Findings and Recommendations, the parties may  
18 file written objections with the Court. The document should be captioned “Objections to  
19 Magistrate Judge’s Findings and Recommendations.” The parties are advised that failure to file  
20 objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v.*  
21 *Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394  
22 (9th Cir. 1991)).

23  
24 IT IS SO ORDERED.

25 Dated: May 19, 2015

26 /s/ Sheila K. Oberto  
27 UNITED STATES MAGISTRATE JUDGE

28 <sup>2</sup> Plaintiff listed a “Statement of Uncontroverted Facts” in the table of contents but it was not included with the motion. Also listed but not included was Plaintiff’s declaration.

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