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

ARTHUR T. BUSSIERE,  
  
  Plaintiff,  
  
  v.  
  
Dr. W, KOKOR, et al.,  
  
  Defendants.

**Case No. 1:13-cv-01565-AWI-SKO (PC)**  
  
**FINDINGS AND RECOMMENDATION THAT  
DEFENDANTS’ MOTION FOR SUMMARY  
JUDGMENT BE DENIED, WITHOUT  
PREJUDICE, ON PROCEDURAL GROUNDS**  
  
**(Doc. 51)**  
  
**FIFTEEN DAY OBJECTION DEADLINE**

Plaintiff, Arthur T. Bussiere, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 27, 2013. This action is proceeding on Plaintiff’s First Amended Complaint (Doc. 12) against Defendants W. Kokor, M.D., N. Hashemi, M.D., and A. Tiggs-Brown, P.A., for deliberate indifference to Plaintiff’s medical needs in violation of the Eight Amendment. (*See* Doc. 14.)

On February 16, 2016, Defendants filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. (Doc. 51.) However, Defendants did not concurrently serve Plaintiff with the requisite notice of the requirements for opposing their motion. *Woods v. Carey*, 684 F.3d 934, 939-41 (9th Cir. 2012); *Rand v. Rowland*, 154 F.3d 952, 960-61 (9th Cir. 1998). Plaintiff nevertheless filed an opposition. (Doc. 55.) Without engaging in harmless error analysis, this Court finds that, had Plaintiff had been informed of the requirements to oppose a motion under Rule 56, he may have requested consideration of Defendants’ motion be postponed under subsection (d), pending ruling on discovery motions he previously filed and completion of

1 discovery. (*See* Docs. 37, 39, 44.)<sup>1</sup> Since Plaintiff is an inmate proceeding *pro se*, he must be  
2 given proper notice of what is required as well as opportunity to present an adequate opposition to  
3 Defendants' motion for summary judgment.

4 Accordingly, based on the foregoing, the Court HEREBY RECOMMENDS that  
5 Defendants' motion for summary judgment, filed on February 16, 2016, (Doc. 51), be DENIED,  
6 without prejudice to refile<sup>2</sup> with concurrent requisite noticed to Plaintiff.<sup>3</sup>

7 These Findings and Recommendations will be submitted to the United States District  
8 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
9 **fifteen (15) days** after being served with these Findings and Recommendations, the parties may  
10 file written objections with the Court. The document should be captioned "Objections to  
11 Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file  
12 objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v.*  
13 *Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394  
14 (9th Cir. 1991)).

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16 IT IS SO ORDERED.

17 Dated: June 6, 2016

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> These motions will be addressed via separate orders.

25 <sup>2</sup> Though both the discovery and dispositive motion deadlines have passed (*see* Doc. 26), they  
26 will be extended via an amended discovery and scheduling order subsequent to consideration of  
these findings and recommendations by the District Judge.

27 <sup>3</sup> Though both the discovery and dispositive motion deadlines have passed (*see* Doc. 26), they will be  
28 extended via an amended discovery and scheduling order subsequent to consideration of these findings  
and recommendations by the District Judge.