

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

LARRY CRUZ,)	Case No.: 1:13-cv-01762-BAM PC
)	
Plaintiff,)	ORDER DIRECTING DEFENDANTS TO RE-
)	SERVE MOTION FOR SUMMARY JUDGMENT
v.)	ON PLAINTIFF
)	
M. ESPINOSA, et al.,)	ORDER REQUIRING PLAINTIFF TO FILE AN
)	OPPOSITION to DEFENDANTS' MOTION
Defendants.)	WITHIN TWENTY-ONE DAYS OF RE-SERVICE
)	
)	(ECF No. 26)
)	
)	

Plaintiff Larry Cruz (“Plaintiff”), a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983, initiated this action on November 1, 2013. This action proceeds against Defendants Dunn, Hiracheta, Silva, and Espinosa for excessive force in violation of the Eighth Amendment.

On July 24, 2015, Defendants filed a motion for summary judgment for failure to exhaust administrative remedies. Fed. R. Civ. P. 56. Plaintiff did not file any response to that motion. As a result, on August 25, 2015, the Court issued an order requiring Plaintiff to file an opposition or statement of non-opposition within twenty-one days. (ECF No. 25.) In response to the Court’s order, on September 24, 2015, Plaintiff filed a motion requesting a copy of Defendants’ motion for summary judgment. (ECF No. 26.) In the motion, Plaintiff states that he received the Court’s August 25, 2015

1 order but has not received Defendants' July 24, 2015 motion for summary judgment. (Id. at 4.) He
2 requests a copy so that he can make his arguments against Defendants' motion. (Id.)

3 It appears based on Defendants' certificates of service that they mailed their motion and
4 accompanying documents to Plaintiff at the current address he has provided the Court, but based on
5 his representations he did not receive that mailing. (ECF No. 21.) To ensure that Plaintiff is afforded a
6 full opportunity to pursue this matter on the merits, the Court will direct Defendants to re-serve their
7 motion for summary judgment on him, and will grant him one final opportunity to respond.

8 Additionally, the Court notes that although Plaintiff's motion in response to the Court's August
9 25, 2015 order was dated August 31, 2015, it was not filed until several weeks later, on September 24,
10 2015. Plaintiff is admonished in the future to pursue this matter with diligence and to comply with all
11 applicable deadlines.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Within seven (7) days from the date of service of this order, Defendants shall re-serve
14 their motion for summary judgment for failure to exhaust administrative remedies and
15 accompanying documents, filed on July 24, 2015, on Plaintiff at his current address of
16 record;
- 17 2. Defendants shall file a certificate of service with the Court;
- 18 3. Plaintiff is granted twenty-one (21) days from the date that Defendants' motion for
19 summary judgment is served to file an opposition or statement of non-opposition to that
20 motion; and
- 21 4. Plaintiff is warned that the failure to comply with this order will result in dismissal of
22 this action, with prejudice, for failure to prosecute.

23
24 IT IS SO ORDERED.

25 Dated: September 27, 2015

/s/ Barbara A. McAuliffe
26 UNITED STATES MAGISTRATE JUDGE