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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL NEIL JACOBSEN,
Plaintiff,
v.
PEOPLE OF THE STATE OF CALIFORNIA, et al.,
Defendants.

Case No. 1:14-cv-00108-JLT (PC)
**SECOND INFORMATIONAL ORDER -
NOTICE AND WARNING OF
REQUIREMENTS FOR OPPOSING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**
(Doc. 114, 116)
21-DAY DEADLINE

Defendants Barahas and Diaz have filed a motion for summary judgment on the merits of Plaintiff’s claims and on the basis that Plaintiff failed to exhaust available administrative remedies on his claims before initiating this action. (Docs. 114, 116.) Pursuant to *Woods v. Carey*, 684 F.3d 934 (9th Cir. 2012), cert denied --- U.S. ---, 135 S.Ct. 228 (2014), *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), and *Klinge v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988), the Court hereby notifies Plaintiff of the rights and requirements for opposing these motions.

1. Unless otherwise ordered, all motions for summary judgment are briefed in accordance with Local Rule 230(1).
2. Plaintiff is required to file an opposition or a statement of non-opposition to Defendants’ motion for summary judgment. Local Rule 230(1). **If Plaintiff fails to file an opposition or a statement of non-opposition to the motion, Defendants Barahas and Diaz**

1 **and all claims against them may be dismissed, with prejudice, for failure to prosecute.** The
2 opposition or statement of non-opposition must be filed not more than 21 days after the date of
3 service of the motion. *Id.* It appears that Plaintiff's residence has recently changed. (*See* Doc.
4 118.) It is noted that Defendant Nurse Monica Choe recently also filed a motion for summary
5 judgment. (Doc. 109.) Given these circumstances and Plaintiff's *pro se* status, Plaintiff is
6 granted an extension of time to file an opposition or statement of non-opposition to the motions
7 for summary judgment filed by Defendants Choe, Barahas, and Diaz (Docs. 109, 114, 116)
8 **within 21 days of the date of service of this order.**

9 3. A motion for summary judgment is a request for judgment on some or all of Plaintiff's
10 claims in favor of Defendants without a trial. Fed. R. Civ. P. 56(a). Defendants' motion sets
11 forth the facts which she contends are not reasonably subject to dispute and that entitle them to
12 judgment as a matter of law. Fed. R. Civ. P. 56(c). This is called the Statement of Undisputed
13 Facts. Local Rule 260(a).

14 Plaintiff has the right to oppose a motion for summary judgment. To oppose the motion,
15 Plaintiff must show proof of his claims. Plaintiff may agree with the facts set forth in
16 Defendants' motion but argue that Defendants are not entitled to judgment as a matter of law.

17 In the alternative, if Plaintiff does not agree with the facts set forth in Defendants'
18 motion, Plaintiff may show that Defendants' facts are disputed in one or more of the following
19 ways: (1) Plaintiff may rely upon statements made under the penalty of perjury in the complaint
20 or the opposition if (a) the complaint or opposition shows that Plaintiff has personal knowledge of
21 the matters stated and (b) Plaintiff calls to the Court's attention those parts of the complaint or
22 opposition upon which Plaintiff relies; (2) Plaintiff may serve and file declarations setting forth
23 the facts which Plaintiff believes prove his claims;¹ (3) Plaintiff may rely upon written records but
24 Plaintiff must prove that the records are what he claims they are;² or (4) Plaintiff may rely upon

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26 ¹A declaration is a written statement setting forth facts (1) which are admissible in evidence, (2) which are based
27 on the personal knowledge of the person giving the statement, and (3) to which the person giving the statement is
28 competent to testify. 28 U.S.C. § 1746; Fed.R.Civ.P. 56(c)(4). A declaration must be dated and signed under
penalty of perjury as follows: "I declare (or certify, verify or state) under penalty of perjury that the foregoing is true
and correct. Executed on (date). (Signature)." 28 U.S.C. § 1746.

² Sworn or certified copies of all papers referred to in the declaration must be included. Fed.R.Civ.P. 56(e).

1 all or any part of the transcript of one or more depositions, answers to interrogatories, or
2 admissions obtained in this proceeding. Should Plaintiff fail to contradict Defendants' motion
3 with declarations or other evidence, Defendants' evidence will be taken as truth, and final
4 judgment may be entered without a full trial. Fed. R. Civ. P. 56(e).

5 In opposing Defendants' motion for summary judgment, Local Rule 260(b) requires
6 Plaintiff to reproduce Defendants' itemized facts in the Statement of Undisputed Facts and admit
7 those facts which are undisputed and deny those which are disputed. If Plaintiff disputes (denies)
8 a fact, Plaintiff must cite to the evidence used to support that denial (e.g., pleading, declaration,
9 deposition, interrogatory answer, admission, or other document). Local Rule 260(b).

10 4. If discovery has not yet been opened or if discovery is still open and Plaintiff is not yet
11 able to present facts to justify the opposition to the motion, the Court will consider a request to
12 postpone consideration of Defendants' motion. Fed. R. Civ. P. 56(d). Any request to postpone
13 consideration of Defendants' motion for summary judgment must include the following: (1) a
14 declaration setting forth the specific facts Plaintiff hopes to elicit from further discovery, (2) a
15 showing that the facts exist, and (3) a showing that the facts are essential to opposing the motion
16 for summary judgment. *Blough v. Holland Realty, Inc.*, 574 F.3d 1084, 1091 n.5 (9th Cir. 2009);
17 *Tatum v. City and County of San Francisco*, 441 F.3d 1090, 1100-01 (9th Cir. 2006); *State of*
18 *California v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998). The request to postpone the motion
19 for summary judgment must identify what information is sought and how it would preclude
20 summary judgment. *Blough*, 574 F.3d at 1091 n.5; *Tatum*, 441 F.3d at 1100-01; *Margolis v.*
21 *Ryan*, 140 F.3d 850, 853 (9th Cir. 1998); Local Rule 260(b).

22 5. Unsigned declarations will be stricken and declarations not signed under penalty of
23 perjury have no evidentiary value.

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6. The failure of any party to comply with this order, the Federal Rules of Civil Procedure, or the Local Rules of the Eastern District of California may result in the imposition of sanctions including but not limited to dismissal of the action.

IT IS SO ORDERED.

Dated: June 12, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE