

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

RUBEN VALDEZ,  
Plaintiff,  
v.  
JEFFREY BEARD,  
Defendant.

Case No. 1:14-cv-01839-AWI-MJS (PC)

**ORDER REQUIRING PLAINTIFF TO  
FILE OPPOSITION TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

**(ECF No. 85)**

**NOTICE AND WARNING OF  
REQUIREMENTS FOR OPPOSING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

**FOURTEEN (14) DAY DEADLINE**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. The action proceeds on Plaintiff's due process claims against Defendants Beard, Castorena, Galaviz, Jennings, Pina, Holland, Prince, Chavez, Vasquez, Edgar, Garcia, Mayfield, Patterson, Davey, Oliveira, Perez, Campbell, Wilson and Lester. On November 30, 2017, Defendants filed a motion for summary judgment. (ECF No. 85.)

Plaintiff has received multiple extensions of time to file his opposition or statement of non-opposition to the motion for summary judgment. (ECF Nos. 90, 95.)

1 On the last motion, Plaintiff was warned that no further extensions would be considered  
2 or granted absent unforeseeable good cause. (ECF No. 95.) Nonetheless, Plaintiff failed  
3 to file an opposition or non-opposition by the applicable deadline.

4 The Court will give Plaintiff one further opportunity to respond to the motion:  
5 Plaintiff must file an opposition or a statement of non-opposition to Defendant's motion  
6 for summary judgment within fourteen (14) days from the date of service of this Order.

7 Pursuant to Woods v. Carey, 684 F.3d 934 (9th Cir. 2012), Rand v. Rowland,  
8 154 F.3d 952 (9th Cir. 1998), and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988),  
9 the Court hereby notifies Plaintiff of the following rights and requirements for opposing  
10 the motion:

11 1. Unless otherwise ordered, all motions for summary judgment are briefed  
12 pursuant to Local Rule 230(l).

13 2. Plaintiff is required to file an opposition or a statement of non-opposition to  
14 Defendant's motion for summary judgment. Local Rule 230(l). If Plaintiff fails to file an  
15 opposition or a statement of non-opposition to the motion, this action may be dismissed,  
16 with prejudice, for failure to prosecute. The opposition or statement of non-opposition  
17 must be filed not more than twenty one (21) days from the date of service of this order. Id.

18 3. A motion for summary judgment is a request for judgment without trial, and in  
19 favor of Defendant, on some or all of Plaintiff's claims. Fed. R. Civ. P. 56(a).  
20 Defendant's motion sets forth the facts which he contends are not reasonably subject to  
21 dispute and that entitle him to judgment as a matter of law. Fed. R. Civ. P. 56(c). This is  
22 called the statement of undisputed facts. Local Rule 260(a).

23 Plaintiff has the right to oppose the motion for summary judgment. To oppose the  
24 motion, Plaintiff must show proof of his claims. Plaintiff may agree with the facts set  
25 forth in Defendant's motion but argue that Defendant is not entitled to judgment as a  
26 matter of law. In the alternative, if Plaintiff does not agree with the facts set forth in  
27 Defendant's motion, he may show that Defendant's facts are disputed in one or more of  
28 the following ways: (1) Plaintiff may rely upon statements made under the penalty of

1 perjury in the complaint or the opposition if (a) the complaint or opposition shows that  
2 Plaintiff has personal knowledge of the matters stated and (b) Plaintiff calls to the  
3 Court's attention those parts of the complaint or opposition upon which Plaintiff relies;  
4 (2) Plaintiff may serve and file declarations setting forth the facts which Plaintiff believes  
5 prove his claims;<sup>1</sup> (3) Plaintiff may rely upon written records but Plaintiff must prove that  
6 the records are what he claims they are;<sup>2</sup> or (4) Plaintiff may rely upon all or any part of  
7 the transcript of one or more depositions, answers to interrogatories, or admissions  
8 obtained in this proceeding. Should Plaintiff fail to contradict Defendant's motion with  
9 declarations or other evidence, Defendant's evidence will be taken as truth, and final  
10 judgment may be entered without a full trial. Fed. R. Civ. P. 56(e).

11 In opposing Defendant's motion for summary judgment, Local Rule 260(b)  
12 requires Plaintiff to reproduce Defendant's itemized facts in the statement of undisputed  
13 facts and admit those facts which are undisputed and deny those which are disputed. If  
14 Plaintiff disputes (denies) a fact, Plaintiff must cite to the evidence used to support that  
15 denial (e.g., pleading, declaration, deposition, interrogatory answer, admission, or other  
16 document). Local Rule 260(b).

17 4. If discovery has not yet been opened or if discovery is still open and Plaintiff is  
18 not yet able to present facts to justify the opposition to the motion, the Court will  
19 consider a request to postpone consideration of Defendant's motion. Fed. R. Civ. P.  
20 56(d). Any request to postpone consideration of Defendant's motion for summary  
21 judgment must include the following: (1) a declaration setting forth the specific facts  
22 Plaintiff hopes to elicit from further discovery, (2) a showing that the facts exist, and (3)  
23 a showing that the facts are essential to opposing the motion for summary judgment.

---

24  
25 <sup>1</sup> A declaration is a written statement setting forth facts (1) which are admissible in evidence, (2)  
26 which are based on the personal knowledge of the person giving the statement, and (3) to which the  
27 person giving the statement is competent to testify. 28 U.S.C. § 1746; Fed. R. Civ. P. 56(c)(4). A  
28 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.

<sup>2</sup> Sworn or certified copies of all papers referred to in the declaration must be included and served on the  
opposing party. Fed. R. Civ. P. 56(c).

1 Blough v. Holland Realty, Inc., 574 F.3d 1084, 1091 n.5 (9th Cir. 2009); Tatum v. City  
2 and County of San Francisco, 441 F.3d 1090, 1100-01 (9th Cir. 2006); State of  
3 California v. Campbell, 138 F.3d 772, 779 (9th Cir. 1998). The request to postpone the  
4 motion for summary judgment must identify what information is sought and how it would  
5 preclude summary judgment. Blough, 574 F.3d at 1091 n.5; Tatum, 441 F.3d at 1100-  
6 01; Margolis v. Ryan, 140 F.3d 850, 853 (9th Cir. 1998); Local Rule 260(b).

7 5. Unsigned declarations will be stricken, and declarations not signed under penalty  
8 of perjury have no evidentiary value.

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

13 Based on the foregoing, Plaintiff is HEREBY ORDERED to file an opposition or  
14 statement of non-opposition to Defendant's motion for summary judgment within  
15 fourteen (14) days of the service of this order. **If Plaintiff fails to file an opposition or**  
16 **statement of non-opposition within fourteen days, the Court will recommend**  
17 **dismissal of this action with prejudice for failure to obey a court order and failure**  
18 **to prosecute.**

19 IT IS SO ORDERED.  
20

21 Dated: April 15, 2018

22 /s/ Michael J. Seng  
23 UNITED STATES MAGISTRATE JUDGE  
24  
25  
26  
27  
28