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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

SCOTT K. RICKS,	)	1:15-cv-01150-AWI-BAM (PC)
	)	
Plaintiff,	)	SECOND INFORMATIONAL ORDER -
	)	NOTICE AND WARNING OF
v.	)	REQUIREMENTS FOR OPPOSING
	)	DEFENDANTS' SUMMARY JUDGMENT
G. LEVINE, et al.,	)	MOTION
	)	
Defendants.	)	(ECF No. 49)
	)	
	)	

Plaintiff Scott K. Ricks ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is related to Ricks v. Austria, et al., 1:15-cv-01147-AWI-BAM, and Ricks v. Onyeye, et al., 1:15-cv-1148-AWI-BAM. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Defendants filed a motion for summary judgment on July 7, 2017. (ECF No. 49.) Pursuant to Woods v. Carey, 684 F.3d 934 (9th Cir. 2012), 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 following rights and requirements for opposing the motion:

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

1           2.       Plaintiff is required to file an opposition or a statement of non-opposition to  
2 Defendants' motion for summary judgment. Local Rule 230(1). If Plaintiff fails to file an  
3 opposition or a statement of non-opposition to the motion, this action may be dismissed, with  
4 prejudice, for failure to prosecute. The opposition or statement of non-opposition must be filed  
5 not more than twenty-one (21) days after the date of service of the motion. Id.

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

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

14          5.       In the alternative, if Plaintiff does not agree with the facts set forth in Defendants'  
15 motion, he may show that Defendants' facts are disputed in one or more of the following ways:  
16 (1) Plaintiff may rely upon statements made under the penalty of perjury in the complaint or the  
17 opposition if (a) the complaint or opposition shows that Plaintiff has personal knowledge of the  
18 matters stated and (b) Plaintiff calls to the Court's attention those parts of the complaint or  
19 opposition upon which Plaintiff relies; (2) Plaintiff may serve and file declarations setting forth  
20 the facts which Plaintiff believes prove his claims;<sup>1</sup> (3) Plaintiff may rely upon written records  
21 but Plaintiff must prove that the records are what he claims they are;<sup>2</sup> or (4) Plaintiff may rely  
22 upon all or any part of the transcript of one or more depositions, answers to interrogatories, or  
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24 <sup>1</sup> A declaration is a written statement setting forth facts (1) which are admissible in evidence, (2) which  
25 are based on the personal knowledge of the person giving the statement, and (3) to which the person  
26 giving the statement is competent to testify. 28 U.S.C. § 1746; Fed. R. Civ. P. 56(c)(4). A declaration  
27 must be dated and signed under penalty of perjury as follows: "I declare (or certify, verify or state) under  
28 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(e).

1 admissions obtained in this proceeding. Should Plaintiff fail to contradict Defendants' motion  
2 with declarations or other evidence, Defendants' evidence will be taken as truth, and final  
3 judgment may be entered without a full trial. Fed. R. Civ. P. 56(e).

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

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

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

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