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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AVERILLE WILLIS,

 Plaintiff,

 v.

NELLYA KANDKHOROVA,

 Defendant.

CASE No. 1:15-cv-01572-AWI-MJS (PC)

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

(ECF No. 37)

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

TWENTY-ONE (21) DAY DEADLINE

Plaintiff is a state prisoner proceeding in forma pauperis and with counsel in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds on Plaintiff’s Eighth Amendment claim for damages and injunctive relief against Defendant Kandkhorova. (ECF Nos. 10, 35.)

Before the Court is Defendant Kandkhorova’s motion for summary judgment on the ground Plaintiff failed to exhaust administrative remedies. (ECF No. 37.)

Plaintiff has not filed an opposition or statement of non-opposition to Defendant’s motions, and the time for doing so has passed. Local Rule 230(l). The Court will give Plaintiff one further opportunity to respond to the motions: Plaintiff must file an opposition or a statement of non-opposition to Defendant’s motion for summary judgment within

1 twenty-one (21) days from the date of service of this Order.

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

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

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

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

19 Plaintiff has the right to oppose the motion for summary judgment. To oppose the
20 motion, Plaintiff must show proof of his claims. Plaintiff may agree with the facts set forth
21 in Defendant's motion but argue that Defendant is not entitled to judgment as a matter of
22 law. In the alternative, if Plaintiff does not agree with the facts set forth in Defendant's
23 motion, he may show that Defendant's facts are disputed in one or more of the following
24 ways: (1) Plaintiff may rely upon statements made under the penalty of perjury in the
25 complaint or the opposition if (a) the complaint or opposition shows that Plaintiff has
26 personal knowledge of the matters stated and (b) Plaintiff calls to the Court's attention
27 those parts of the complaint or opposition upon which Plaintiff relies; (2) Plaintiff may
28 serve and file declarations setting forth the facts which Plaintiff believes prove his

1 claims;¹ (3) Plaintiff may rely upon written records but Plaintiff must prove that the
2 records are what he claims they are;² or (4) Plaintiff may rely upon all or any part of the
3 transcript of one or more depositions, answers to interrogatories, or admissions obtained
4 in this proceeding. Should Plaintiff fail to contradict Defendant's motion with declarations
5 or other evidence, Defendant's evidence will be taken as truth, and final judgment may
6 be entered without a full trial. Fed. R. Civ. P. 56(e).

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

13 4. If discovery has not yet been opened or if discovery is still open and Plaintiff is not
14 yet able to present facts to justify the opposition to the motion, the Court will consider a
15 request to postpone consideration of Defendant's motion. Fed. R. Civ. P. 56(d). Any
16 request to postpone consideration of Defendant's motion for summary judgment must
17 include the following: (1) a declaration setting forth the specific facts Plaintiff hopes to
18 elicit from further discovery, (2) a showing that the facts exist, and (3) a showing that the
19 facts are essential to opposing the motion for summary judgment. Blough v. Holland
20 Realty, Inc., 574 F.3d 1084, 1091 n.5 (9th Cir. 2009); Tatum v. City and County of San
21 Francisco, 441 F.3d 1090, 1100-01 (9th Cir. 2006); State of California v. Campbell, 138
22 F.3d 772, 779 (9th Cir. 1998). The request to postpone the motions for summary
23 judgment must identify what information is sought and how it would preclude summary
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25 ¹ 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.

² 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 judgment. Blough, 574 F.3d at 1091 n.5; Tatum, 441 F.3d at 1100-01; Margolis v. Ryan,
2 140 F.3d 850, 853 (9th Cir. 1998); Local Rule 260(b).

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

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

9 Based on the foregoing, Plaintiff is HEREBY ORDERED to file an opposition or
10 statement of non-opposition to Defendant's motion for summary judgment within twenty-
11 one (21) days of the service of this order. **If Plaintiff fails to file an opposition or**
12 **statement of non-opposition within twenty-one days, the Court will recommend**
13 **dismissal of this action with prejudice for failure to obey a court order and failure**
14 **to prosecute.**

15 IT IS SO ORDERED.
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17 Dated: March 15, 2018

18 /s/ Michael J. Seng
19 UNITED STATES MAGISTRATE JUDGE
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