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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL NEIL JACOBSEN,
Plaintiff,
v.
OFFICER CURRAN, et al.,
Defendants.

CASE No. 1:16-cv-01050-MJS (PC)
**ORDER REQUIRING PLAINTIFF TO FILE
OPPOSITION TO DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT**
(ECF Nos. 35, 38)
**NOTICE AND WARNING OF
REQUIREMENTS FOR OPPOSING
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT**
TWENTY-ONE (21) DAY DEADLINE

Plaintiff is a former county inmate proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds on Plaintiff's first amended complaint against Defendants Curran and Gonzalez¹ for inadequate medical care in violation of the Eighth Amendment of the United States Constitution. (ECF No. 11.)

Before the Court are Defendants Curran and Gonzalez's motions for summary judgment asserting that Plaintiff has failed to state a claim for which relief may be granted and has failed to exhaust his administrative remedies. (ECF Nos. 35, 38.)

¹ Nurse Dulces Gonzalez (erroneously named in the complaint as Nurse Dulces). Hereinafter Defendant Gonzalez.

1 Plaintiff has not filed an opposition or statement of non-opposition to Defendant's
2 motions, and the time for doing so has passed. Local Rule 230(l). Given Plaintiff's pro se
3 status and incarceration, the Court will give Plaintiff one further opportunity to respond to
4 the motions: Plaintiff must file an opposition or a statement of non-opposition to
5 Defendants' motions for summary judgment within twenty-one (21) days from the date of
6 service of this Order.

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

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

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

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

24 Plaintiff has the right to oppose the motions for summary judgment. To oppose
25 the motions, Plaintiff must show proof of his claims. Plaintiff may agree with the facts set
26 forth in Defendants' motions but argue that Defendants are not entitled to judgment as a
27 matter of law. In the alternative, if Plaintiff does not agree with the facts set forth in
28 Defendants' motions, he may show that Defendants' facts are disputed in one or more of

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

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

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

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25 ² 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.

³ 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 facts are essential to opposing the motion for summary judgment. Blough v. Holland
2 Realty, Inc., 574 F.3d 1084, 1091 n.5 (9th Cir. 2009); Tatum v. City and County of San
3 Francisco, 441 F.3d 1090, 1100-01 (9th Cir. 2006); State of California v. Campbell, 138
4 F.3d 772, 779 (9th Cir. 1998). The request to postpone the motions for summary
5 judgment must identify what information is sought and how it would preclude summary
6 judgment. Blough, 574 F.3d at 1091 n.5; Tatum, 441 F.3d at 1100-01; Margolis v. Ryan,
7 140 F.3d 850, 853 (9th Cir. 1998); Local Rule 260(b).

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

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

14 Based on the foregoing, Plaintiff is HEREBY ORDERED to file an opposition or
15 statement of non-opposition to Defendants' motions for summary judgment within
16 twenty-one (21) days of the service of this order. **If Plaintiff fails to file an opposition**
17 **or statement of non-opposition within twenty-one days, the Court will recommend**
18 **dismissal of this action with prejudice for failure to obey a court order and failure**
19 **to prosecute.**

20
21 IT IS SO ORDERED.

22 Dated: November 28, 2017

/s/ Michael J. Seng
23 UNITED STATES MAGISTRATE JUDGE

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