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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 RAYMOND D. CHESTER,

12 Plaintiff,

13 vs.

14 AUDREY KING, et al.,

15 Defendants.
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1:16-cv-01257-DAD-GSA-PC

**ORDER DENYING PLAINTIFF'S MOTION
TO STRIKE
(ECF No. 51.)**

**ORDER REQUIRING PLAINTIFF TO FILE
OPPOSITION OR STATEMENT OF NON-
OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT WITHIN
THIRTY (30) DAYS
(ECF No. 37.)**

19 **I. BACKGROUND**

20 Raymond D. Chester ("Plaintiff") is a civil detainee proceeding *pro se* and *in forma*
21 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with
22 Plaintiff's First Amended Complaint filed on August 31, 2016, against defendants Audrey King
23 (Executive Director), Jagsir Sandhu, M.D. (Chief Medical Officer), Bradley Powers, M.D. (Unit
24 Physician), and Robert Withrow, M.D. (Medical Director of CSH) ("Defendants") for failing to
25 provide adequate medical care to Plaintiff in violation of the Fourteenth Amendment. (ECF No.
26 10.) This case is in the discovery phase.

27 On August 19, 2019, defendant Bradley Powers, M.D., filed a motion for summary
28 judgment. (ECF No. 36.) On the same date, with separate counsel, defendants King, Sandhu,

1 and Withrow also filed a motion for summary judgment. (ECF No. 37.) On September 9, 2019,
2 Plaintiff filed an opposition to defendant Powers' motion; and he also filed a cross-motion for
3 summary judgment. (ECF Nos. 43, 44.) On September 17, 2019, defendants King, Sandhu, and
4 Withrow opposed Plaintiff's cross-motion for summary judgment. (ECF No. 46.) On September
5 30, 2019, defendant Powers replied to Plaintiff's opposition to his motion, opposed Plaintiff's
6 motion, and replied to Plaintiff's statement of undisputed facts. (ECF Nos. 47, 48.)

7 On October 25, 2019, Plaintiff filed a motion to strike his opposition to defendant Powers'
8 motion for summary judgment; and to strike his own cross-motion. (ECF No. 51.) No opposition
9 to the motion to strike has been filed.

10 Plaintiff's motion to strike is now before the court. Local Rule 230(l).

11 **II. MOTION TO STRIKE OPPOSITION AND CROSS-MOTION**

12 Plaintiff seeks to strike his opposition to defendant Powers' motion for summary
13 judgment and Plaintiff's own cross motion for summary judgment. Plaintiff states as follows:
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15 The motion to strike is based on the impossibility of Defendant Powers'
16 reply and opposition. Plaintiff has proven, by the medical records ordered by the
17 Court to be delivered to Plaintiff and obtained from defense counsel during
18 discovery, and filed with the Court along with Plaintiff's cross-motion for
19 summary judgment that Plaintiff is unreservedly entitled to summary judgment
20 herein. (ECF No. 51 at 1-2.)

21

22 The only facts framed by Plaintiff's First Amended Complaint and at issue
23 herein are: (1) whether Plaintiff Raymond D. Chester had a diagnosed medical
24 condition of Hepatitis C disease since 1997; (2) Plaintiff received no treatment for
25 his Hepatitis C Disease from the time he contracted it until far *after* a cure for
26 Hepatitis C disease, Harvoni, was marketed in 2014; (3) Plaintiff was denied
27 treatment for Hepatitis C with Harvoni for years; (4) Plaintiff was finally
28

1 prescribed a course of Harvoni in December 2017. These are the only things at
2 issue. (Id. at 2:9-15.)

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4 For the foregoing reasons, Plaintiff urges the Court to strike the Reply and
5 Opposition to Bradley C. Powers, M.D.'s Motion for Summary Judgment and
6 Cross-Motion for Summary Judgment. (Id. at 3.)

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8 **II. DISCUSSION**

9 Plaintiff appears to misunderstand the consequences of withdrawing his opposition and
10 cross-motion. Plaintiff may not simply rely on his complaint and medical records to defend this
11 case.

12 On August 19, 2019, defendant Powers provided Plaintiff with notice of Rule 56 of the
13 Federal Rules of Civil Procedure, and what he must do to oppose a motion for summary
14 judgment. (ECF No. 38.) Plaintiff is advised to review the information again here:

15
16 **PLEASE TAKE NOTICE** of the following advisory mandated by the
17 decision of *Rand v. Rowland*, 154 F.3d 952, 955-56 (9th Cir. 1998) (en banc):
18 **Defendant has made a motion for summary judgment by which it seeks to**
19 **have your case dismissed. A motion for summary judgment under Rule 56 of**
20 **the Federal Rules of Civil Procedure will, if granted, ends your case. Rule 56**
21 **tells you what you must do in order to oppose a motion for summary**
22 **judgment.**

23 Generally, summary judgment must be granted when there is no genuine
24 issue of material fact – that is, if there is no real dispute about any fact that would
25 affect the result of your case, the party who asked for summary judgment is
26 entitled to judgment as a matter of law, which will end your case. When a party
27 you are suing makes a motion for summary judgment that is properly supported
28 by declarations (or other sworn testimony), you cannot simply rely on what your

1 complaint says. Instead, you must set out specific facts in declarations,
2 depositions, answers to interrogatories, or authenticated documents, as provided
3 in Rule 56(e), that contradict the facts shown in Defendant’s declarations and
4 documents and show that there is a genuine issue of material fact for trial. If you
5 do not submit your own evidence in opposition, summary judgment, if
6 appropriate, may be entered against you. If summary judgment is granted, your
7 case will be dismissed and there will be no trial.

8 **PLEASE TAKE NOTICE** that written opposition to a motion for
9 summary judgment or, in the alternative, motion for summary adjudication, under
10 Rule 56 must be filed not more than 18 days, plus three days for mailing, after the
11 date of service of the motion for summary judgment. Local Rule 78-230(m)
12 provides that failure to oppose a motion “may be deemed a waiver of any
13 opposition to the granting of the motion . . .”

14 This means that the court may deem Plaintiff’s failure to oppose
15 Defendant’s motion for summary judgment or, in the alternative, motion for
16 summary adjudication of the issues, as a waiver and may recommend that the
17 motion be granted on that basis.

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19 Plaintiff has not filed an opposition to the motion for summary judgment filed by
20 defendants King, Sandhu, and Withrow on August 19, 2019. (ECF No. 37.) Plaintiff was
21 required to file an opposition or a statement of non-opposition to the motion within twenty-one
22 days, but has not done so. Local Rule 230(l). Accordingly, within **thirty (30) days** from the
23 date of service of this order, Plaintiff must file an opposition or a statement of non-opposition to
24 defendants King, Sandhu, and Withrow’s motion for summary judgment. If Plaintiff fails to
25 comply with this order, the court shall recommend that this action be dismissed, with prejudice,
26 for failure to obey the court’s order and failure to prosecute.

27 Based on the foregoing, Plaintiff’s motion to strike shall be denied.

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1 **III. CONCLUSION**

2 Based on the foregoing, IT IS HEREBY ORDERED that:

- 3 1. Plaintiff's motion to strike, filed on October 25, 2019, is DENIED;
- 4 2. Within thirty days from the date of service of this order, Plaintiff is required to
- 5 file an opposition, or notice of non-opposition to the motion for summary
- 6 judgment filed by defendants King, Sandhu, and Withrow on August 19, 2019;
- 7 and
- 8 3. Plaintiff's failure to comply with this order shall result in a recommendation that
- 9 this case be dismissed, with prejudice, for failure to comply with the court's order
- 10 and failure to prosecute.

11 IT IS SO ORDERED.

12 Dated: June 10, 2020

13 /s/ Gary S. Austin
14 UNITED STATES MAGISTRATE JUDGE