

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

EFREN DANIELLE BULLARD,
Plaintiff,
v.
R. ST. ANDRA, et al.,
Defendant.

CASE No. 1:17-cv-00328-LJO-MJS (PC)
**ORDER REQUIRING PLAINTIFF TO FILE
OPPOSITION TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**
(ECF No. 23)
**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 Eighth Amendment claims against CO Jane Doe and CO Benson; a conspiracy claim against CO Jane Doe and CO Benson; and a First Amendment retaliation claim against CO Davis. (ECF No. 10.)

Defendants have filed a motion for summary judgment on the ground Plaintiff failed to exhaust administrative remedies. (ECF No. 23.) Plaintiff has not filed an opposition or statement of non-opposition to Defendants' motion, and the time for doing so has passed. Local Rule 230(*l*).

In light of Plaintiff's pro se and incarcerated status, the Court will give Plaintiff one

1 further opportunity to respond to the motions: Plaintiff must file an opposition or a
2 statement of non-opposition to Defendants' motion for summary judgment within twenty-
3 one (21) days from the date of service of this Order.

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

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

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

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

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

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

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

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

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 California v. Campbell, 138 F.3d 772, 779 (9th Cir. 1998). The request to postpone the
2 motions for summary judgment must identify what information is sought and how it would
3 preclude summary judgment. Blough, 574 F.3d at 1091 n.5; Tatum, 441 F.3d at 1100-
4 01; Margolis v. Ryan, 140 F.3d 850, 853 (9th Cir. 1998); Local Rule 260(b).

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

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

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

17
18 IT IS SO ORDERED.

19 Dated: March 31, 2018

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE