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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 **VICTOR M. SIENZE,**
9 **Plaintiff**

10 **v.**

11 **SHERIFF'S DEPUTY MATTHEW J.**
12 **KUTZ and SHERIFF'S SERGEANT**
13 **DANIEL N. KERBER,**
14 **Defendants**

CASE NO. 1:17-CV-0736 AWI SAB
ORDER RE: ADDITONAL BRIEFING

15 Defendants have filed a motion for summary judgment. Doc. 27. Plaintiff, who is
16 proceeding pro se, has opposed the motion. Doc. 39. Defendants have pointed out certain
17 procedural defects in his opposition. Reviewing the materials submitted makes clear that
18 additional briefing would help to clarify the motion.

19 First, Plaintiff has not provided a response to Defendants' Separate Statement of
20 Undisputed Fact (Doc. 30). Eastern District Local Rule 260(b) states:

21 Any party opposing a motion for summary judgment or summary adjudication shall
22 reproduce the itemized facts in the Statement of Undisputed Facts and admit those
23 facts that are undisputed and deny those that are disputed, including with each
24 denial a citation to the particular portions of any pleading, affidavit, deposition,
25 interrogatory answer, admission, or other document relied upon in support of that
26 denial. The opposing party may also file a concise 'Statement of Disputed Facts,'
27 and the source thereof in the record, of all additional material facts as to which
28 there is a genuine issue precluding summary judgment or adjudication. The
opposing party shall be responsible for the filing of all evidentiary documents cited
in the opposing papers. See L.R. 133(j). If a need for discovery is asserted as a
basis for denial of the motion, the party opposing the motion shall provide a
specification of the particular facts on which discovery is to be had or the issues on
which discovery is necessary.

27 Plaintiff must comply with this rule and produce a point by point response to Defendants' Separate
28 Statement of Undisputed Fact. For each fact, Plaintiff must either admit that he has no evidence to

1 dispute the fact or point to the evidence he has that disputes the fact. Second, Plaintiff has
2 provided what he calls a “Response by Plaintiff...” (Doc. 39) in which he makes several factual
3 assertions. However, Plaintiff does not do so under penalty of perjury. At summary judgement,
4 parties must support their assertions with some evidence. The court accepts the “Response by
5 Plaintiff...” as argument, but can not accept Plaintiff’s factual assertions contained in that
6 document as evidence. Declarations of fact made under penalty of perjury qualify as evidence
7 while general statements and arguments do not. California Code of Civil Procedure § 2015.5
8 states in relevant part:

9 Whenever...any matter is required or permitted to be supported, evidenced,
10 established, or proved by the sworn statement, declaration, verification, certificate,
11 oath, or affidavit, in writing of the person making the same...such matter may with
12 like force and effect be supported, evidenced, established or proved by the unsworn
13 statement, declaration, verification, or certificate, in writing of such person which
14 recites that it is certified or declared by him or her to be true under penalty of
15 perjury, is subscribed by him or her, and (1), if executed within this state, states the
16 date and place of execution, or (2), if executed at any place, within or without this
17 state, states the date of execution and that it is so certified or declared under the
18 laws of the State of California. The certification or declaration may be in
19 substantially the following form:

20 (a) If executed within this state:

21 “I certify (or declare) under penalty of perjury that the foregoing is true and
22 correct”:

23 _____ (Date and Place) _____ (Signature) _____

24 (b) If executed at any place, within or without this state:

25 “I certify (or declare) under penalty of perjury under the laws of the State of
26 California that the foregoing is true and correct”:

27 _____ (Date and Place) _____ (Signature) _____

28 A declaration of facts (as distinct from argument) in this form from Plaintiff may constitute
evidence he could use. Third, Plaintiff has filed photocopies of several photographs, both in his
initial complaint and in his opposition to summary judgement. These black and white photocopies
are unclear and no conclusion can be drawn from them. Plaintiff needs to provide better copies of
the photographs if he wishes them to constitute evidence with which he can oppose the summary
judgement motion.

Plaintiff is being given an opportunity to correct these deficiencies. Plaintiff must make

1 any additional filings in opposition to summary judgement by 4:00 PM, August 30, 2018.

2 Defendants must make any additional filings in reply by 4:00 PM, September 13, 2018.

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4 IT IS SO ORDERED.

5 Dated: August 13, 2018



6 SENIOR DISTRICT JUDGE

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