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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHARLES B. JONES,

Plaintiff,

v.

GARCIA, et al.,

Defendants.

Case No. 1:17-cv-01311-LJO-SKO (PC)

**SECOND INFORMATIONAL ORDER -
NOTICE AND WARNING OF
REQUIREMENTS FOR OPPOSING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT and ORDER
GRANTING PLAINTIFF'S MOTION FOR
AN EXTENSION OF TIME**

(Docs. 34, 35)

SIXTY (60) DAY DEADLINE

Plaintiff, Charles B. Jones, is a state prisoner proceeding *pro se* and *in forma pauperis* pursuant to 42 U.S.C. § 1983. Defendants filed a motion for summary judgment on August 28, 2019 based on Plaintiff's failure to exhaust his administrative remedies prior to filing suit. (Doc. 34.) Pursuant to *Woods v. Carey*, 684 F.3d 934 (9th Cir. 2012), *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), and *Klinge v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988), the Court hereby notifies Plaintiff of the rights and requirements for opposing the motion.

1. Unless otherwise ordered, all motions for summary judgment are briefed in accordance with Local Rule 230(l).

2. Plaintiff is required to file an opposition or a statement of non-opposition to Defendants' motion for summary judgment. Local Rule 230(l). **If Plaintiff fails to file an opposition or a statement of non-opposition to the motion, this action may be dismissed, with prejudice, for failure to prosecute.** The opposition or statement of non-opposition is

1 normally required to be filed not more than 21 days after the date of service of the motion. *Id.*
2 However, given the circumstances presented in Plaintiff's motion for a stay or extension of time,
3 (Doc. 35), the Court finds that good cause exists to grant Plaintiff an extension to file an
4 opposition or statement of non-opposition to Defendants' motion **within sixty (60) days of the**
5 **date of service of this order.**

6 3. A motion for summary judgment is a request for judgment on some or all of Plaintiff's
7 claims in favor of Defendants without trial. Fed. R. Civ. P. 56(a). Defendants' motion sets forth
8 the facts which they contend are not reasonably subject to dispute and that entitle them to
9 judgment as a matter of law. Fed. R. Civ. P. 56(c). This is called the Statement of Undisputed
10 Facts. Local Rule 260(a).

11 Plaintiff has the right to oppose a motion for summary judgment. To oppose the motion,
12 Plaintiff must show proof of his claims. Plaintiff may agree with the facts set forth in
13 Defendants' motion but argue that Defendants are not entitled to judgment as a matter of law.

14 In the alternative, if Plaintiff does not agree with the facts set forth in Defendants' motion,
15 Plaintiff may show that Defendants' facts are disputed in one or more of the following ways: (1)
16 Plaintiff may rely upon statements made under the penalty of perjury in the complaint or the
17 opposition **if** (a) the complaint or opposition shows that Plaintiff has personal knowledge of the
18 matters stated and (b) Plaintiff calls to the Court's attention those parts of the complaint or
19 opposition upon which Plaintiff relies; (2) Plaintiff may serve and file declarations setting forth
20 the facts which Plaintiff believes prove his claims;¹ (3) Plaintiff may rely upon written records but
21 Plaintiff must prove that the records are what he claims they are;² or (4) Plaintiff may rely upon
22 all or any part of the transcript of one or more depositions, answers to interrogatories, or
23 admissions obtained in this proceeding. Should Plaintiff fail to contradict Defendants' motion

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25 ¹A declaration is a written statement setting forth facts (1) which are admissible in evidence, (2) which are based
26 on the personal knowledge of the person giving the statement, and (3) to which the person giving the statement is
27 competent to testify. 28 U.S.C. § 1746; Fed. R. Civ. P. 56(c)(4). A declaration must be dated and signed under
28 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(e). Further, if an exhibit consists of more than one page, Plaintiff must reference
the specific page of the exhibit (i.e. "See Exhibit A, page 3") he relies on to establish a dispute of fact.

1 with declarations or other evidence, Defendants' evidence will be taken as truth, and final
2 judgment may be entered without a full trial. Fed. R. Civ. P. 56(e).

3 In opposing Defendants' motion for summary judgment, Local Rule 260(b) requires
4 Plaintiff to reproduce Defendants' itemized facts in the Statement of Undisputed Facts and admit
5 those facts which are undisputed and deny those which are disputed. If Plaintiff disputes (denies)
6 a fact, Plaintiff must cite to the evidence used to support that denial (e.g., pleading, declaration,
7 deposition, interrogatory answer, admission, or other document). Local Rule 260(b).

8 4. If discovery has not yet been opened or if discovery is still open and Plaintiff is not yet
9 able to present facts to justify the opposition to the motion, the Court will consider a request to
10 postpone consideration of Defendants' motion. Fed. R. Civ. P. 56(d). Any request to postpone
11 consideration of Defendants' motion for summary judgment must include the following: (1) a
12 declaration setting forth the specific facts Plaintiff hopes to elicit from further discovery, (2) a
13 showing that the facts exist, and (3) a showing that the facts are essential to opposing the motion
14 for summary judgment. *Blough v. Holland Realty, Inc.*, 574 F.3d 1084, 1091 n.5 (9th Cir. 2009);
15 *Tatum v. City and County of San Francisco*, 441 F.3d 1090, 1100-01 (9th Cir. 2006); *State of*
16 *California v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998). The request to postpone the motion for
17 summary judgment must identify what information is sought and how it would preclude summary
18 judgment. *Blough*, 574 F.3d at 1091 n.5; *Tatum*, 441 F.3d at 1100-01; *Margolis v. Ryan*, 140 F.3d
19 850, 853 (9th Cir. 1998); Local Rule 260(b).

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

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

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26 IT IS SO ORDERED.

27 Dated: August 30, 2019

28 /s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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