

1 reasons unknown to us, have not challenged plaintiff's factual allegations. Defendants' only
2 docket entry that challenges the merits of plaintiff's arguments is in defendants' answer. ECF
3 No. 19. As defendants are well aware, a party opposing summary judgment may not simply rest
4 upon its pleadings but "must set out specific facts in declarations, depositions, answers to
5 interrogatories, or authenticated documents . . . that contradict the facts shown" by the moving
6 party. ECF No. 32-1 (quoting *Rand v. Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc)).
7 Further, defendants did not even cite to their own answer in opposition to summary judgment as
8 required by Rule 56. Fed. R. Civ. P. 56(c)(1)(A); *see also* Fed. R. Civ. P. 56(c)(3) ("The court
9 need consider only the cited materials, but it may consider other materials in the record.").

10 Instead of addressing the merits of plaintiff's arguments, defendants allege that plaintiff's
11 motion should be denied because it did not include a statement of facts and because defendants
12 have not taken plaintiff's deposition. *See* ECF No. 30. Defendants' first argument—that plaintiff
13 omitted a statement of facts—defies reality; plaintiff included a statement of facts with his
14 motion. *See* ECF No. 29 at 3-5 (summarizing the facts), 8-12 (reciting "uncontroverted facts").
15 Defendants' second argument—that they should get a chance to take plaintiff's deposition—is not
16 properly before the court; to obtain discovery under Rule 56(d), a party must file a motion. *See*
17 Fed. R. Civ. P. 56(d)(2); *Barona Grp. of Capitan Grande Band of Mission Indians v. Am. Mgmt.*
18 *& Amusement, Inc.*, 840 F.2d 1394, 1400 (9th Cir. 1987) ("References in memoranda and
19 declarations to a need for discovery do not qualify as motions under Rule 56([d])." (quoting *Brae*
20 *Transp., Inc. v. Coopers & Lybrand*, 790 F.2d 1439, 1443 (9th Cir. 1986))).

21 Even if defendants had raised their Rule 56(d) argument in a motion, it would fail, since
22 defendants have not explained why they need information from plaintiff's deposition. They have
23 not shown "what further discovery would reveal that is essential to justify [their] opposition to the
24 motion for summary judgment." *Stevens v. CoreLogic, Inc.*, 899 F.3d 666, 678 (9th Cir. 2018)
25 (quotation marks and citation omitted). Here, plaintiff has provided his account of the facts in
26 multiple documents filed on the record, including in his motion for summary judgment; his
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1 perspective is hardly absent.³ We do not understand why defendants would need any evidence
2 beyond their own statements to oppose plaintiff's version of events. In any case, it is defendants'
3 burden to set forth such arguments in an appropriate motion. *See Family Home & Fin. Ctr., Inc.*
4 *v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827 (9th Cir. 2008) ("The requesting party must
5 show [that]: (1) it has set forth in affidavit form the specific facts it hopes to elicit from further
6 discovery; (2) the facts sought exist; and (3) the sought-after facts are *essential to oppose*
7 summary judgment." (emphasis added)). Thus, defendants have identified no procedural
8 obstacles to plaintiff's motion for summary judgment.

9 Although defendants have failed to produce a competent response to plaintiff's motion for
10 summary judgment, we recognize that the court has some discretion for how to address this
11 failure. *See* Fed. R. Civ. P. 56(e). Our first option is to "give an opportunity to properly support
12 or address the fact[s]." Fed. R. Civ. P. 56(e)(1). The corresponding notes to this option recognize
13 that "[i]n many circumstances this opportunity will be the court's preferred first step." Fed. R.
14 Civ. P. 56 Advisory Committee Notes (2010). Alternatively, the facts may be considered
15 "undisputed for the purposes of the motion," Fed. R. Civ. P. 56(e)(2), and the court may grant
16 summary judgment where, as here, the moving party has shown that he is entitled to it, Fed. R.
17 Civ. P. 56(e)(3).

18 For these reasons, defendants are ordered to show cause why summary judgment on the
19 merits should not be entered against them. Should defendants have some basis for providing
20 additional evidence in opposition to summary judgment, they must brief that basis and provide all
21 proposed evidence within ten days from the date of entry of this order.

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27 ³ It is not apparent that defendants have read plaintiff's motion. Tellingly, information that
28 defendants claim to lack is included in plaintiff's motion. *Compare* ECF No. 30 at 6 *with* ECF
No. 29 at 3-5, 8-12, 15-27.

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IT IS SO ORDERED.

Dated: March 2, 2020


UNITED STATES MAGISTRATE JUDGE

No. 204.