

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GILBERT NAVARRO,

Case No. 1:20-cv-00524-JLT-SKO (PC)

Plaintiff,

**ORDER DISCHARGING ORDER TO
SHOW CAUSE**

J. ST. CLAIR, et al.,

**ORDER DIRECTING PLAINTIFF TO FILE
OPPOSITION OR STATEMENT OF NON-
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

Defendants.

30-DAY DEADLINE

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. INTRODUCTION

On February 25, 2022, Defendants filed a motion for summary judgment on the grounds that there is no genuine dispute of material fact and Defendants are entitled to judgment as a matter of law. (Doc. 38.) Pursuant to Local Rule 230(l), Plaintiff had 21 days to file an opposition or a statement of non-opposition to the motion. Plaintiff failed to do so.

On April 7, 2022, the Court issued an Order to Show Cause (OSC) why this action should not be dismissed for Plaintiff's failure to prosecute. (Doc. 42.) Plaintiff was given 21 days within which to respond to the OSC, or, alternatively, to file an opposition to the motion for summary judgment or a statement of non-opposition. (*Id.*) More than 21 days have passed, and Plaintiff has

1 failed to respond in any way.

2 **II. DISCUSSION**

3 As set forth above, Plaintiff failed to file an opposition or statement of non-opposition to
4 Defendants' motion for summary judgment. Plaintiff also failed to respond to this Court's OSC.
5 Out of an abundance of caution and as explained below, Plaintiff will be afforded one final
6 opportunity to file an opposition or statement of non-opposition to Defendants' motion for
7 summary judgment before the undersigned recommends dismissal of this action for Plaintiff's
8 failure to prosecute. *See DeJohnette v. Gonzalez*, 1:17-cv-00696-DAD-JLT (PC), 2018 WL
9 6419670 at *1 (E.D. Cal. Dec. 6, 2018).

10 Defendants filed their motion for summary judgment on February 25, 2022. (Doc. 38.)
11 The proof of service indicates that Plaintiff was served via U.S. Mail at the "California Health
12 Care Facility, P.O. Box 213040, Stockton, CA 95213" on that same date. (*Id.* at 3; *see also* Doc.
13 38-1 at 4; Doc. 38-2 at 31; Doc. 38-3 at 18; Doc. 38-4 at 214; Doc. 38-5 at 9; Doc. 38-6 at 8; Doc.
14 38-7 at 14.) On March 3, 2022, Plaintiff filed a Notice of Change of Address dated February 28,
15 2022. (Doc. 41.) Plaintiff provided a new address of 1261 West Sonya Lane, Apt. #208 in Santa
16 Maria, California 93458. (*Id.*)

17 Defendants did not receive notice of Plaintiff's change of address until the notice was
18 docketed with the Court on March 3, 2022. It is therefore likely that Plaintiff did not receive
19 Defendants' motion for summary judgment because Plaintiff was served at his previous place of
20 incarceration via U.S. Mail only three days before Plaintiff executed the notice of change of
21 address setting forth his release from state prison.

22 To ensure Plaintiff has in fact received notice of Defendants' motion for summary
23 judgment and has been afforded an opportunity to respond to the motion, the Court will discharge
24 the OSC, direct the Clerk of the Court to serve Plaintiff with Defendants' motion for summary
25 judgment at Plaintiff's current address in Santa Maria, and will afford Plaintiff 30 days within
26 which to file an opposition or statement of non-opposition to the motion.

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III. CONCLUSION AND ORDER

For the reasons stated above, IT IS HEREBY ORDERED that:

1. The Order to Show Cause issued April 7, 2022 (Doc. 42) is hereby DISCHARGED;
2. The Clerk of the Court is DIRECTED to serve Plaintiff with Defendants' Motion for Summary Judgment (Doc. 38) at Plaintiff's current address on file with the Court; and
3. **Within 30 days** of the date of service of this Order, Plaintiff SHALL file an opposition to Defendants' motion for summary judgment, or, alternatively, a statement of non-opposition to the motion. Any request or motion for an extension of time must be accompanied by a showing of good cause.

Plaintiff is advised that a failure to comply with this Order will result in a recommendation that this case be dismissed with prejudice for a failure to prosecute.

IT IS SO ORDERED.

Dated: May 6, 2022

/s/ Sheila K. Oberto

UNITED STATES MAGISTRATE JUDGE