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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANIEL QUINTERO,
Plaintiff,
v.
TRISTAIN LEMON, et al.
Defendants.

No. 1:23-cv-01233-ADA-SAB (PC)
FINDINGS AND RECOMMENDATION
RECOMMENDING DENIAL OF
PLAINTIFF’S MOTION FOR SUMMARY
JUDGMENT
(ECF No. 16)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

On November 27, 2023, Plaintiff filed a motion for summary judgment. (ECF No. 16.) Plaintiff’s motion must be denied.

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A party moving for summary judgment must include a “Statement of Undisputed Facts.” Local Rule 260(a). Furthermore, this Court's local rule requires each motion of summary judgment to include “a ‘Statement of Undisputed Facts’ that shall enumerate discretely each of the specific material facts relied upon in support of the motion and cite the particular points of any pleading, affidavit, deposition, interrogatory answer, admission, or other document relied upon to establish that fact.” To establish the absence of a genuine factual dispute, Plaintiff must

1 cite “to particular parts of materials in the record, including depositions, documents,
2 electronically stored information, affidavits or declarations, stipulations (including those made for
3 purposes of the motion only), admissions, interrogatory answers, or other materials ...” Fed. R.
4 Civ. P. 56(c)(1)(A); see also Local Rule 260(a).

5 As an initial matter, on October 16, 2023, Findings and Recommendations were issued
6 recommending dismissal of the action for failure to state a cognizable claim for relief. (ECF No.
7 14.) Plaintiff filed objections to the Findings and Recommendations on October 26, 2023, which
8 is pending review by the District Judge. (ECF No. 15.) Accordingly, Plaintiff has not and cannot
9 show that he is entitled to summary judgment on the merits of his alleged claims.

10 Further, Plaintiff’s motion fails to comport with Fed. R. Civ. P. 56(a) and Local Rule
11 260(a). Plaintiff’s motion is procedurally deficient because it neither contains a statement of
12 undisputed facts, nor cites to any evidence to establish a fact. As a result, Plaintiff’s motion is
13 procedurally deficient under Fed. R. Civ. P. 56 and Local Rule 260(a).

14 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff’s motion for
15 summary judgment be DENIED in its entirety.

16 This Findings and Recommendation will be submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
18 **days** after being served with this Findings and Recommendation, the parties may file written
19 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
20 Findings and Recommendation.” The parties are advised that failure to file objections within the
21 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,
22 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23 IT IS SO ORDERED.

24 Dated: November 28, 2023

25 
26 UNITED STATES MAGISTRATE JUDGE