

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3
4 DUANE JOHNSON,

No. 2:08-CV-2046 RCF (P)

5 Plaintiff,

6 v.

**INFORMATIONAL ORDER
REGARDING SUMMARY
JUDGMENT**

7 E. ROBINSON,

8 Defendant.

9
10 Defendant Robinson filed a motion for summary judgment on February 19, 2010. The
11 Court issues this order to remind plaintiff of his obligations to respond to the motion.

12 Under Eastern District Local Rule 230(1), plaintiff’s opposition – if any – to the granting
13 of the motion shall be served and filed not more than 21 days after the date upon which
14 defendants’ motion for summary judgment was served.

15 **Motions in Prisoner Actions.** All motions, except motions to dismiss for lack of
16 prosecution, filed in actions wherein one party is incarcerated and proceeding in
17 propria persona, shall be submitted upon the record without oral argument unless
18 otherwise ordered by the Court. Such motions need not be noticed on the motion
19 calendar. Opposition, if any, to the granting of the motion shall be served and filed
20 by the responding party not more than twenty-one (21) days after the date of service
21 of the motion. A responding party who has no opposition to the granting of the
22 motion shall serve and file a statement to that effect, specifically designating the
23 motion in question. Failure of the responding party to file an opposition or to file a
24 statement of no opposition may be deemed a waiver of any opposition to the granting
25 of the motion and may result in the imposition of sanctions. The moving party may,
26 not more than seven (7) days after the opposition is served, serve and file a reply to
the opposition. All such motions will be deemed submitted twenty-eight (28) days
after the service of the motion or when the reply is filed, whichever comes first. *See*
L.R. 135.

23 E.D. Cal. Local R. 230(1).

24 Plaintiff is also reminded of his obligations for opposing a motion for summary judgment.
25 The Court advised plaintiff how to oppose a motion for summary judgment in the Second
26 Informational Order entered by the Court on June 2, 2009. That order states:

1 At some point in the litigation, one or more defendants might move for summary
2 judgment as to some or all of plaintiff's claims. In accordance with *Klinge v.*
3 *Eikenberry*, 849 F.2d 409 (9th Cir. 1988), plaintiff is advised of the following
4 requirements for opposing a motion for summary judgment made by defendants
5 under Fed. R. Civ. P. 56. Such a motion is a request for an order for judgment on
6 some or all of plaintiff's claims in favor of defendants without trial. *See* Fed. R. Civ.
7 P. 56(b). Defendant(s)' motion will set forth the facts that defendants contend are not
8 reasonably subject to dispute and that entitle defendant to judgment as a matter of
9 law. *See* Fed. R. Civ. P. 56(c).

6 Plaintiff has the right to oppose a motion for summary judgment. To oppose the
7 motion, plaintiff must show proof of his claims. Plaintiff may agree with the facts
8 set forth in defendant(s)' motion but argue that defendant(s) are not entitled to
9 judgment as a matter of law. Plaintiff may show defendant(s)' facts are disputed in
10 one or more of the following ways: (1) plaintiff may rely upon statements made
11 under the penalty of perjury in the complaint if the complaint shows that plaintiff has
12 personal knowledge of the matters stated and if plaintiff calls to the Court's attention
13 those parts of the complaint upon which he relies; (2) plaintiff may also serve and file
14 affidavits or declarations¹ setting forth the facts that plaintiff believes prove his
15 claims (the persons who sign the affidavit or declaration must have personal
16 knowledge of the facts stated); (3) plaintiff may also rely upon written records, but
17 plaintiff must prove that the records are what he claims they are;² (4) plaintiff may
18 also rely upon all or any part of the transcript of one or more depositions, answers to
19 interrogatories, or admissions obtained in this proceeding. Should plaintiff fail to
20 contradict defendant(s)' motion with affidavits, declarations or other evidence,
21 defendant(s)' evidence will be taken as true, and final judgment may be entered
22 without a full trial. *See* Fed. R. Civ. P. 56(e).

15 If there is some good reason why such facts are not available to plaintiff when
16 required to oppose such a motion, the Court will consider a request to postpone
17 considering defendant(s)' motion. *See* Fed. R. Civ. P. 56(f). If plaintiff does not
18 serve and file a request to postpone consideration of defendant(s)' motion or written
19 opposition to the motion, the Court might consider plaintiff's failure to act to be a
20 waiver of opposition to defendant(s)' motion. Plaintiff's waiver of opposition to
21 defendant(s)' motion might result in the entry of summary judgment against plaintiff.

20 ¹ An affidavit is a written declaration or statement of facts, made voluntarily, and
21 confirmed by the oath or affirmation of the party making it, taken before an officer having
22 authority to administer such oath. An unsworn declaration has the same effect as an affidavit,
23 provided that it is dated and signed under penalty of perjury, as follows: "I declare under penalty
24 of perjury that the foregoing is true and correct." 28 U.S.C. § 1746. Affidavits and declarations
25 must be made on personal knowledge and must set forth facts as would be admissible in
26 evidence. *See* Fed. R. Civ. P. 56(e).

25 ² Sworn or certified copies of all papers referred to in an affidavit must be attached to the
26 affidavit and served on the opposing party. Fed. R. Civ. P. 56(e).

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A motion supported by affidavits or declarations that are unsigned will be stricken.

See Docket #20.

DATED: February 22, 2010

/s/ Raymond C. Fisher
Raymond C. Fisher
United States Circuit Judge
Sitting by Designation