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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT TUNSTALL,  
Plaintiff,  
v.  
MIKE KNOWLES, et al.,  
Defendants.

No. 2:08-cv-3176 WBS KJN P

ORDER

Plaintiff is a state prisoner, proceeding through counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims defendant prison officials at California Medical Facility (“CMF”) violated his federal constitutional and statutory rights by denying him access to sign language classes.

On April 17, 2014, defendants filed a document entitled “Notice of Renewal of Motion for Summary Judgment” (ECF No. 198), in which they seek to renew a motion for summary judgment originally filed on April 27, 2011 (ECF No. 139). Defendants therein also brief the applicability to this action of Pride v. Correa, 719 F.3d 1130 (9th Cir. 2013), as ordered by this court on March 6, 2014. (ECF No. 197.) Defendants therein also contend that plaintiff’s request for injunctive relief has been rendered moot by his recent transfer to the California Health Care Facility in Stockton, California. (See ECF No. 195.) Plaintiff has to date failed to oppose the notice of renewal – perhaps because he previously filed oppositions both to the original motion on

1 May 10, 2011 (ECF Nos. 143, 147), and to a prior attempt at renewal (ECF Nos. 165-167). The  
2 court will consider these earlier filings by plaintiff when it decides defendants' renewed motion.

3 On April 18, 2014, plaintiff filed a motion for partial summary judgment. (ECF No. 199.)  
4 While this motion was filed one day after the deadline for filing dispositive motions in this matter  
5 (see ECF No. 197), the court finds good cause to grant an extension of time nunc pro tunc to  
6 April 17, 2014. Accordingly, plaintiff's motion shall be deemed timely filed. On May 8, 2014,  
7 defendants filed an opposition to plaintiff's motion for summary judgment (ECF No. 201), to  
8 which plaintiff has not filed a reply.

9 Despite plaintiff's failure to file an opposition to defendants' notice of renewal, the court  
10 deems it necessary to hear from him regarding the applicability of Pride, 719 F.3d at 1130, to this  
11 action, and the potential mootness of his request for injunctive relief based on his prison transfer.  
12 In addition, the court believes it would be helpful to hear plaintiff's arguments on reply to  
13 defendants' opposition to his motion for summary judgment.

14 Local Rule 230(l) provides in part: "Failure of the responding party to file written  
15 opposition or to file a statement of no opposition may be deemed a waiver of any opposition to  
16 the granting of the motion . . . ."

17 Further, Rule 41(b) of the Federal Rules of Civil Procedure provides:

18 **Involuntary Dismissal; Effect.** If the plaintiff fails to prosecute or  
19 to comply with these rules or a court order, a defendant may move  
20 to dismiss the action or any claim against it. Unless the dismissal  
21 order states otherwise, a dismissal under this subdivision (b) and  
any dismissal not under this rule--except one for lack of  
jurisdiction, improper venue, or failure to join a party under Rule  
19--operates as an adjudication on the merits.

22 Id.

23 Good cause appearing, IT IS HEREBY ORDERED that:

- 24 1. Plaintiff's motion for summary judgment (ECF No. 199) is deemed timely-filed.
- 25 2. Within fourteen days from the date of this order, plaintiff shall file either (a) an  
26 opposition to defendants' notice of renewal of motion for summary judgment (ECF  
27 No. 198), which includes briefing on (i) the applicability to this action of Pride v.  
28 Correa, 719 F.3d 1130 (9th Cir. 2013), and (ii) the potential mootness of this action


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based on plaintiff's prison transfer, or (b) a statement of non-opposition to the motion. Plaintiff's opposition, if any, may be no more than fifteen (15) pages in length, exclusive of any exhibits. Defendants are granted leave to file a reply to plaintiff's opposition, if any, within seven days of its filing. Defendants' reply may be no more than five (5) pages in length, exclusive of any exhibits. Defendants' motion for summary judgment will be deemed submitted once defendants' deadline for filing a reply has passed.

- 3. Plaintiff is granted leave to file a reply to defendants' opposition to plaintiff's motion for summary judgment (ECF No. 201) within fourteen days from the date of this order. Plaintiff's reply, if any, may be no more than ten (10) pages in length, exclusive of any exhibits. Plaintiff's motion for summary judgment will be deemed submitted once plaintiff's deadline for filing a reply has passed.

Dated: November 19, 2014

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE