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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

K. JAMEL WALKER,

Plaintiff,

No. 2:09-cv-0569 WBS KJN P

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

ORDER

On April 24, 2012, plaintiff filed a First Amended Complaint (Dkt. No. 36), which defendants request that this court screen pursuant to Section 1915A, 28 United States Code (Dkt. No. 37). The court finds the First Amended Complaint generally conforms to the parameters set forth in this court’s findings and recommendations filed February 22, 2012, as adopted by the district judge on March 22, 2012. (Dkt. Nos. 34, 35.) While construction of plaintiff’s legal claims requires frequent reference to the alleged facts, the amended complaint contains no claim that the court finds patently frivolous or malicious, or clearly without merit.

All defendants named in the First Amended Complaint have been served.

Accordingly, IT IS HEREBY ORDERED that:

1. Defendants shall reply to the complaint within the time provided in Fed. R. Civ. P. 12(a).

1           2. Unless otherwise ordered, all motions to dismiss, motions for summary  
2 judgment, motions concerning discovery, motions pursuant to Fed. R. Civ. P. 7, 11, 12, 15, 41,  
3 55, 56, 59 and 60, and E.D. Cal. R. 110, shall be briefed pursuant to L.R. 230(l). Failure to  
4 timely oppose such a motion may be deemed a waiver of opposition to the motion. See L.R.  
5 230(l). Opposition to all other motions need be filed only as directed by the court.

6           3. If plaintiff is released from prison while this case is pending, any party may  
7 request application of other provisions of L.R. 230 in lieu of L.R. 230(l). Until such a motion is  
8 granted, the provisions of L.R. 230(l) will govern all motions described in #2 above regardless of  
9 plaintiff's custodial status. See L.R. 102(d).

10           4. Pursuant to Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003), the  
11 court hereby informs plaintiff of the following requirements for opposing a motion to dismiss for  
12 failure to exhaust administrative remedies pursuant to Fed. R. Civ. P. 12(b). Such a motion is a  
13 request that the court dismiss without prejudice any unexhausted claims. The moving party may  
14 submit affidavits or declarations under penalty of perjury and admissible documents to support  
15 the motion to dismiss. To oppose the motion, plaintiff may likewise file declarations under  
16 penalty of perjury and admissible documents. Plaintiff may rely on plaintiff's statements made  
17 under penalty of perjury in the complaint if the complaint shows that plaintiff has personal  
18 knowledge of the matters stated and plaintiff specifies the parts of the complaint on which  
19 plaintiff relies. Plaintiff may also rely on one or more affidavits or declarations sworn to by other  
20 persons who have personal knowledge of relevant matters. In addition, plaintiff may rely on  
21 written records, but plaintiff must prove that the records are what plaintiff asserts they are. If  
22 plaintiff fails to contradict defendants' evidence with admissible evidence, the court may rely on  
23 defendants' evidence. In the event both sides submit matters outside of the pleadings, the court  
24 may look beyond the pleadings and decide disputed issues of fact. If plaintiff does not file a  
25 written opposition to the motion, the court may consider the failure to act as a waiver of  
26 opposition to the motion. See L.R. 230(l). If the court grants the motion to dismiss, whether

1 opposed or unopposed, plaintiff's unexhausted claims will be dismissed without prejudice.

2 5. If defendants move to dismiss for failure to exhaust administrative remedies,  
3 defendants must contemporaneously serve with the motion, but in a separate document, a copy of  
4 the attached Wyatt Notice. See Woods v. Carey, 684 F.3d 934, 935 (9th Cir. 2012); Wyatt, 315  
5 F.3d at 1115, 1120 n.15. **Failure to do so may constitute grounds for denial of the motion.**

6 6. Pursuant to Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc), and  
7 Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988), the court hereby informs plaintiff of the  
8 following requirements for opposing a motion for summary judgment pursuant to Fed. R. Civ. P.  
9 56. Such a motion is a request for an order for judgment in favor of the defendants without trial.  
10 A defendant's motion for summary judgment will set forth the facts that the defendant contends  
11 are not reasonably subject to dispute and that entitle the defendant to judgment. To oppose a  
12 motion for summary judgment, plaintiff must show proof of his or her claims. Plaintiff may do  
13 this in one or more of the following ways. Plaintiff may rely on plaintiff's statements made  
14 under penalty of perjury in the complaint if the complaint shows that plaintiff has personal  
15 knowledge of the matters stated and plaintiff specifies those parts of the complaint on which  
16 plaintiff relies. Plaintiff may serve and file one or more affidavits or declarations setting forth  
17 the facts that plaintiff believes prove plaintiff's claims; the person who signs an affidavit or  
18 declaration must have personal knowledge of the facts stated. Plaintiff may rely on written  
19 records, but plaintiff must prove that the records are what plaintiff asserts they are. Plaintiff may  
20 rely on all or any part of the transcript of one or more depositions, answers to interrogatories, or  
21 admissions obtained in this proceeding. If plaintiff fails to contradict the defendant's evidence  
22 with counteraffidavits or other admissible evidence, the court may accept defendant's evidence  
23 as true and grant the motion. If there is some good reason why such facts are not available to  
24 plaintiff when required to oppose a motion for summary judgment, the court will consider a  
25 request to postpone consideration of the defendant's motion. See Fed. R. Civ. P. 56(d). If  
26 plaintiff does not serve and file a written opposition to the motion, or a request to postpone

1 consideration of the motion, the court may consider the failure to act as a waiver of opposition to  
2 the defendant's motion. See L.R. 230(l). If the court grants the motion for summary judgment,  
3 whether opposed or unopposed, judgment will be entered for the defendant without a trial and the  
4 case will be closed as to that defendant.

5 7. If defendants move for summary judgment, defendant must contemporaneously  
6 serve with the motion, but in a separate document, a copy of the attached Rand Notice. See  
7 Woods, 684 F.3d at 935; Rand, 154 F.3d at 957. **Failure to do so may constitute grounds for**  
8 **denial of the motion.**

9 8. Unsigned affidavits or declarations will be stricken, and affidavits or  
10 declarations not signed under penalty of perjury have no evidentiary value.

11 9. Each party proceeding without counsel shall keep the court informed of a  
12 current address at all times while the action is pending. Any change of address must be reported  
13 promptly to the court in a separate document captioned for this case and entitled "Notice of  
14 Change of Address." A notice of change of address must be properly served on other parties.  
15 Service of documents at the address of record for a party is fully effective. See L.R. 182(f). A  
16 party's failure to inform the court of a change of address may result in the imposition of  
17 sanctions including dismissal of the action.

18 10. The Clerk of the Court shall serve on plaintiff a copy of the Local Rules of  
19 Court.

20 11. The failure of any party to comply with this order, the Federal Rules of Civil  
21 Procedure, or the Local Rules of Court, may result in the imposition of sanctions including, but  
22 not limited to, dismissal of the action or entry of default. See Fed. R. Civ. P. 41(b).

23 SO ORDERED.

24 DATED: September 13, 2012

25   
KENDALL J. NEWMAN  
26 UNITED STATES MAGISTRATE JUDGE

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1 Wyatt Notice\*

2 The court requires that you be provided with this notice regarding the requirements for  
3 opposing a motion to dismiss for failure to exhaust administrative remedies.

4 When a defendant moves to dismiss some or all of your claims for failure to exhaust  
5 administrative remedies, the defendant is requesting that the court dismiss claims for which you  
6 did not exhaust available administrative remedies. The defendant may submit affidavits or  
7 declarations under penalty of perjury and admissible documents in support of the motion.

8 To oppose the motion, you may submit proof of specific facts regarding the exhaustion of  
9 administrative remedies. To do this, you may refer to specific statements made in your complaint  
10 if you signed your complaint under penalty of perjury and if your complaint shows that you have  
11 personal knowledge of the matters stated. You may also submit declarations setting forth facts  
12 regarding exhaustion of your claims, as long as the person who signs the declaration has personal  
13 knowledge of the facts stated. You may also submit all or part of deposition transcripts, answers  
14 to interrogatories, admissions, and other authenticated documents. If you fail to contradict the  
15 defendant's evidence with your own evidence, the court may accept the defendant's evidence as  
16 the truth and grant the motion. If you do not respond to the motion, the court may consider your  
17 failure to act as a waiver of your opposition. See L.R. 230(1).

18 If the court grants the defendant's motion, whether opposed or unopposed, your  
19 unexhausted claims will be dismissed. If all of your claims are unexhausted, your entire case will  
20 be over. If, however, you exhaust administrative remedies for your claims at a later date, you  
21 may raise those claims in a new action.  
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26 \* This notice is provided to ensure that you, a pro se prisoner plaintiff, "have fair, timely  
and adequate notice of what is required" to oppose a motion to dismiss for failure to exhaust  
administrative remedies. See Woods v. Carey, 684 F.3d 934, 935 (9th Cir. 2012); Wyatt v.  
Terhune, 315 F.3d 1108, 1115, 1120 n.15 (9th Cir. Cal. 2003).

Rand Notice\*\*

The court requires that you be provided with this notice regarding the requirements for opposing a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

When a defendant moves for summary judgment, the defendant is requesting that the court grant judgment in defendant's favor without a trial. If there is no real dispute about any fact that would affect the result of your case, the defendant who asked for summary judgment is entitled to judgment as a matter of law, which will end your case against that defendant. A motion for summary judgment will set forth the facts that the defendant asserts are not reasonably subject to dispute and that entitle the defendant to judgment.

To oppose a motion for summary judgment, you must show proof of your claims. To do this, you may refer to specific statements made in your complaint if you signed your complaint under penalty of perjury and if your complaint shows that you have personal knowledge of the matters stated. You may also submit declarations setting forth the facts that you believe prove your claims, as long as the person who signs the declaration has personal knowledge of the facts stated. You may also submit all or part of deposition transcripts, answers to interrogatories, admissions, and other authenticated documents. For each of the facts listed in the defendant's Statement of Undisputed Facts, you must admit the facts that are undisputed, and deny the facts that are disputed. If you deny a fact, you must cite to the proof that you rely on to support your denial. See L.R. 260(b). If you fail to contradict the defendant's evidence with your own evidence, the court may accept the defendant's evidence as the truth and grant the motion. The court will consider a request to postpone consideration of the defendant's motion if you submit a declaration showing that for a specific reason you cannot present such facts in your opposition. If you do not respond to the motion, the court may consider your failure to act as a waiver of your opposition. See L.R. 230(l).

If the court grants the defendant's motion, whether opposed or unopposed, judgment will be entered for that defendant without a trial and the case will be closed as to that defendant.

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\*\* This notice is provided to ensure that you, a pro se prisoner plaintiff, "have fair, timely and adequate notice of what is required" to oppose a motion for summary judgment. Woods v. Carey, 684 F.3d 934, 935 (9th Cir. 2012); Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998).