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

MICHAEL JACKSON,

Plaintiff,

No. 2:09-cv-02911-DAD P

vs.

JOHN W. HAVILAND, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a former state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. The parties have consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c). See Docs. No. 6 & 24. Pending before the court is defendant Herrera’s motion for summary judgment.

On August 3, 2012, the court provided plaintiff with the notice required by Woods v. Carey, 684 F.3d 934, 939, Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc), and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988). (Doc. No. 34.) Plaintiff was also provided additional time to file a supplemental opposition to defendant’s motion for summary judgment, or in the alternative, to inform the court that no supplemental opposition would be filed and that the court should proceed with its consideration of the pending motion based upon his opposition that was filed with the court on November 30, 2011. On August 13, 2012, the court’s August 3

1 order served on plaintiff at his address of record was returned to the court as undeliverable.
2 Subsequently, counsel for defendant Herrera advised the court that he believed that plaintiff's
3 current address was in Richmond, California. On August 23, 2012, the court issued an order
4 requiring plaintiff to provide the court with a notice of change of address, the Clerk of the Court
5 was directed to provide plaintiff with a copy of the August 3, 2012 order, and the court again
6 ordered plaintiff to file his supplemental opposition to the pending summary judgment motion or
7 a statement that no supplemental opposition would be filed. The court's August 23, 2012 order
8 was served at plaintiff's address of record and at the Richmond address provided by defense
9 counsel for plaintiff. On September 4, 2012, the court's August 23, 2012 order was again
10 returned to the court as undeliverable. On September 9, 2012, defendant Herrera filed a further
11 notice of plaintiff's failure to timely file a supplemental opposition to the summary judgment
12 motion and requested that his pending motion for summary judgment be granted in its entirety.

13 Local Rule 183 provides the following:

14 If mail directed to a plaintiff in propria persona by the Clerk is
15 returned by the U.S. Postal Service, and if such plaintiff fails to
16 notify the Court and opposing parties within sixty-three (63) days
thereafter of a current address, the Court may dismiss the action
without prejudice for failure to prosecute.

17 L.R. 183(b). The court intends to dismiss this action pursuant to Local Rule 183(b) if plaintiff
18 fails to provide a notice of change of address by October 15, 2012. By this order, the court will
19 deny without prejudice defendant Herrera's motion for summary judgment and grant defendant
20 leave to re-file this motion should this action not be dismissed pursuant to Local Rule 183(b).

21 Accordingly, IT IS HEREBY ORDERED that:

22 1. Defendant Herrera's motion for summary judgment (Doc. No. 27), filed on
23 September 22, 2011, is denied without prejudice to its renewal if necessary;

24 2. Should plaintiff file and serve a notice of change of address on or before
25 October 15, 2012, within thirty days from the filing date of that notice of change of address,
26 defendant Herrera may re-file his motion for summary judgment by serving plaintiff with the

1 motion and the notice required by Woods v. Carey, 684 F.3d 934, 939, Rand v. Rowland, 154
2 F.3d 952, 957 (9th Cir. 1998) (en banc), and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir.
3 1988);

4 3. If plaintiff fails to file and serve the required notice of change of address by
5 October 15, 2012, the court will pursuant to Local Rule 183 dismiss this action without prejudice
6 due to plaintiff's failure to prosecute this action; and

7 4. The Clerk of the Court shall serve this order on plaintiff at his address of
8 record.

9 DATED: September 12, 2012.

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12 _____
13 DALE A. DROZD
14 UNITED STATES MAGISTRATE JUDGE

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