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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. On September 13, 2012, the court denied defendant Herrera’s motion for summary judgment without prejudice and stated the court’s intention to dismiss this action should plaintiff fail to file the required notice of change of address by October 15, 2012. On October 9, 2012, plaintiff filed his notice of change of address. As directed by the court in its September 13, 2012 order, on October 15, 2012 defendant Herrera then filed his renewed motion for summary judgment. However, plaintiff has failed to file an opposition to that renewed motion for summary judgment.¹

¹ Of course, plaintiff may elect to file a new opposition to the renewed motion for summary judgment. In the alternative, if plaintiff files a notice with the court indicating that despite the notice provided regarding how to oppose a motion for summary judgment, he wishes

1 Local Rule 230(l) provides in part: “Failure of the responding party to file an
2 opposition or to file a statement of no opposition may be deemed a waiver of any opposition to
3 the granting of the motion and may result in the imposition of sanctions.” On August 3, 2012,
4 plaintiff was advised of the requirements for opposing a motion for summary judgment such as
5 the renewed motion now before the court and was also advised that the failure to oppose such a
6 motion may be deemed a waiver of opposition to the motion. (See Doc. No. 34.) With this
7 order, the court again provides plaintiff with the notice required by Woods v. Carey, 684 F.3d
8 934 (9th Cir. 2012), Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc), and Klinge
9 v. Eikenberry, 849 F.2d 409 (9th Cir. 1988).

10 Local Rule 110 provides that failure to comply with the Local Rules “may be
11 grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or
12 within the inherent power of the Court.” In the order filed September 9, 2010, plaintiff was
13 advised that failure to comply with the Local Rules may result in a recommendation that the
14 action be dismissed.

15 Good cause appearing, IT IS HEREBY ORDERED that within twenty-one days of
16 the date of this order, plaintiff shall file his opposition to defendant Herrera’s renewed motion for
17 summary judgment. In the alternative, if plaintiff no longer wishes to pursue this action, he shall
18 file a request to dismiss this action without prejudice pursuant to Rule 41(a) of the Federal Rules
19 of Civil Procedure.

20 DATED: November 26, 2012.

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22 DAD:4
23 jack2911.ordoppo



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

24 the court to consider the opposition he filed in response to defendant Herrera’s original motion as
25 his opposition to the renewed motion for summary judgment, the court will do so. However, the
26 court will not consider the opposition plaintiff filed in response to defendant Herrera’s first
motion for summary judgment as his opposition to the renewed motion unless he files a notice
requesting the court to do so.

1 **Rand Notice to Plaintiff**

2 This notice is provided to ensure that you, a pro se plaintiff, “have fair, timely and
3 adequate notice of what is required” to oppose a motion for summary judgment. See Woods v.
4 Carey, 684 F.3d 934 (9th Cir. 2012); Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998). The
5 court requires that you be provided with this notice regarding the requirements for opposing a
6 motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

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

13 To oppose a motion for summary judgment, you must show proof of your claims. To do
14 this, you may refer to specific statements made in your complaint if you signed your complaint
15 under penalty of perjury and if your complaint shows that you have personal knowledge of the
16 matters stated. You may also submit declarations setting forth the facts that you believe prove
17 your claims, as long as the person who signs the declaration has personal knowledge of the facts
18 stated. You may also submit all or part of deposition transcripts, answers to interrogatories,
19 admissions, and other authenticated documents. For each of the facts listed in the defendant’s
20 Statement of Undisputed Facts, you must admit the facts that are undisputed, and deny the facts
21 that are disputed. If you deny a fact, you must cite to the proof that you rely on to support your
22 denial. See L.R. 260(b). If you fail to contradict the defendant’s evidence with your own
23 evidence, the court may accept the defendant’s evidence as the truth and grant the motion.

24 The court will consider a request to postpone consideration of the defendant’s motion if
25 you submit a declaration showing that for a specific reason you cannot present such facts in your

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1 opposition. If you do not respond to the motion, the court may consider your failure to act as a
2 waiver of your opposition. See L.R. 230(1).

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

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