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

ANTHONY R. TURNER,

Plaintiff,

No. 2: 10-cv-1848 MCE KJN P

vs.

WARDEN SALINAS, et al.,

Defendants.

ORDER AND

ORDER TO SHOW CAUSE

Plaintiff is a state prisoner proceeding without counsel with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are cross-motions for summary judgment.

On September 2, 2011, defendants filed a reply to plaintiff’s opposition to their summary judgment motion. Defendants’ reply contains new evidence, i.e. the declarations of defendants Colon and Hall. Accordingly, plaintiff is granted twenty-one days from the date of this order to file a supplemental opposition addressing this new evidence. See Provenz v. Miller, 102 F.3d 1478, 1483 (9th Cir. 1996) (“We agree with the Seventh Circuit, which held that ‘[w]here new evidence is presented in a reply to a motion for summary judgment, the district court should not consider the new evidence without giving the [non-]movant an opportunity to respond.’”). Defendants may file a supplemental reply within seven days thereafter.

1           In their summary judgment motion, defendants also argue that in failing to  
2 respond to requests for admissions, plaintiff has admitted that defendants did not violate his  
3 constitutional rights. See Federal Rule of Civil Procedure 36(a)(3) (a matter is admitted unless,  
4 within thirty days after being served, the party to whom the request is directed serves on the  
5 requesting party a written answer or objection . . .). For example, defendants argue that by  
6 failing to respond to request for admission one (“Hall did not violate your rights under the First  
7 Amendment”), plaintiff has admitted that defendant Hall did not violate his First Amendment  
8 rights.

9           Within twenty-one days of the date of this order, plaintiff shall show cause for his  
10 failure to respond to defendants’ request for admissions.

11           Accordingly, IT IS HEREBY ORDERED that within twenty-one days of the date  
12 of this order, plaintiff may file a supplemental opposition to defendants’ summary judgment  
13 motion; defendants may file a supplemental reply within seven days thereafter; within twenty-one  
14 days of the date of this order, plaintiff shall show cause for his failure to respond to defendants’  
15 request for admissions.

16 DATED: September 6, 2011

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19 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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