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

CHRISTOPHER GRABEK,

Plaintiff,

No. CIV S-10-2892 WBS GGH P

vs.

KATHLEEN DICKINSON, Warden, et al.,

Defendants.

ORDER

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On February 17, 2012, defendants filed a motion for summary judgment. However, it appears that defendants have failed to serve plaintiff at his current address. Therefore, defendants will be ordered to re-serve the motion upon plaintiff at his RJ Donovan address and to file proof of such re-service within three days.

Although file-stamped as filed on February 27, 2012, by application of the mailbox rule,<sup>1</sup> plaintiff filed a purported motion (or cross-motion) for summary judgment on February 17, 2012. However, this would-be summary judgment motion is not in compliance with the requirements of Fed. R. Civ. P. 56 and Local Rule 260(a), inasmuch as plaintiff fails to

<sup>1</sup> Pursuant to Houston v. Lack, 487 U.S. 266, 275-76, 108 S. Ct. 2379, 2385 (1988)(pro se prisoner filing is dated from the date prisoner delivers it to prison authorities); Douglas v. Noelle, 567 F.3d 1103, 1109 (9th Cir. 2009), holding that “the Houston mailbox rule applies to § 1983 complaints filed by *pro se* prisoners”).

1 provide a “statement of undisputed facts” or even a memorandum of points and authorities in  
2 support of his motion. Instead, in his putative dispositive motion, he simply appends  
3 unauthenticated medical records (as well as portions of defendants’ answer) to a statement to the  
4 effect that the medical documents show that he has had a number of emergency treatments for his  
5 medical condition, which plaintiff believes demonstrates that defendants’ deliberate indifference  
6 in not having paid a bill from UCSF which delayed his surgery subjecting plaintiff to  
7 unnecessary pain. See docket # 45. This filing does not constitute a motion or cross-motion for  
8 summary judgment. The court must vacate plaintiff’s motion for summary judgment, but  
9 plaintiff may make use of the documentation contained within the filing within any opposition to  
10 defendants’ motion for summary judgment.

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. Defendants must re-serve their motion for summary judgment, filed on  
13 February 17, 2012, upon plaintiff at his current address at RJ Donovan and must file proof of the  
14 re-service within three days;

15 2. Plaintiff’s defective motion for summary judgment, filed at docket # 45, is  
16 vacated without prejudice to plaintiff’s use of the documentation therein within his opposition to  
17 defendants’ pending summary judgment motion;

18 3. In light of the apparently defective initial service of defendants’ motion for  
19 summary judgment, plaintiff will be granted until April 15, 2012 to file his opposition to the  
20 motion; thereafter, defendants will have seven days to file any reply.

21 DATED: March 8, 2012

22 /s/ Gregory G. Hollows  
23 UNITED STATES MAGISTRATE JUDGE

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