1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 FOR THE EASTERN DISTRICT OF CALIFORNIA 9 10 11 WESLEY MITCHELL. No. 2: 11-cv-1240 JAM AC P Plaintiff. 12 13 v. MATTHEW L. CATE, et al., 14 **ORDER** 15 Defendants. 16 Plaintiff, a state prisoner, is proceeding pro se with a civil rights action pursuant to 42 17 U.S.C. § 1983. Pending before the court are plaintiff's motion for summary judgment, ECF No. 18 19 64, filed on January 27, 2014, and defendants' February 3, 2014 motion for summary judgment, 20 ECF No. 65. This court has adjudicated two motions by the defendants to file exhibits under seal 21 in support of their motion for summary judgment. See Orders at ECF Nos. 68, 81. The first 22 motion was denied as overbroad but defendants were granted leave to renew it. The amended 23 motion to seal was granted in part. As to that portion which defendants were permitted to file under seal, the court specified: 24 25 Defendants' amended motion to seal documents in support of their motion for summary judgment, ECF No. 71, is granted in part. 26 Defendants shall provide to the Clerk of Court pursuant to Local Rule 141(e)(2)(1) an electronic copy of the following documents 27 for filing under seal: 28 Exhibit A: pages A1 through A3, A5 through A11, and A13; 1

Exhibit B: pages B14 through B16.

Order, filed on April 28, 2014, ECF No. 81 at 7.

A review of the case docket reveals that the referenced exhibits have not been submitted or filed under seal. Defendants' second amended statement of disputed facts is therefore not adequately supported; in addition, a review of those "facts" indicates that several end in incomplete sentences and without citation to evidentiary support. See, e.g., ECF No. 82, defendants' second amended separate statement of undisputed facts, Nos. 42, 46, 52.

The court will now vacate defendants' motion for summary judgment. Defendants will be granted seven (7) days to submit the documents for electronic sealing identified in the order of April 28, 2014. Defendants must also submit a third amended separate statement of undisputed facts that are complete and include citation to supporting evidence. Defendants' motion for summary judgment will be deemed renewed upon the date of defendants' compliance with this order. In addition, plaintiff will have thirty days to file his response to defendants' third amended statement of undisputed facts.

Defendants must also, within seven days, show cause why further sanctions should not be imposed for the failure to comply with a court order. The timing for adjudication of plaintiff's dispositive motion is unaffected by this order.

Accordingly, IT IS ORDERED that:

- 1. Defendants' February 3, 2014 motion for summary judgment, ECF No. 65, is hereby VACATED from the court's calendar;
- 2. Within seven (7) days: (a) defendants must submit the documents for sealing, pursuant to Local Rule 141(e)(2)(i), as identified in the order of April 28, 2014 (and herein), (b) must file a third amended separate statement of undisputed facts which must be corrected as noted above and (c) show cause why additional sanctions should not be imposed for failure to comply with an order of the court;
 - 3. Defendants' motion for summary judgment will be renewed upon the court's calendar

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1	as of the date of their compliance with this order ¹ ; however, the parties need not brief the motion
2	further with the exception that plaintiff will have thirty days, upon service of defendants' third
3	amended separate statement of undisputed facts, to file a response thereto;
4	4. Adjudication of plaintiff's dispositive motion may proceed and is unaffected by this
5	order.
6	DATED: July 23, 2014
7	Allison Claire
8	UNITED STATES MAGISTRATE JUDGE
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Assuming defendants' compliance with this order, their motion for summary judgment, as renoticed, will not be deemed untimely filed.