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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LATHAHN MCELROY,
Plaintiff,
v.
GUSTAFSON, et al.,
Defendants.

No. 2:12-cv-1518-TLN-EFB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. The parties have filed cross-motions for summary judgment.¹ Presently before the court is defendants’ motion for leave to supplement their cross-motion for summary judgment. ECF No. 46. Therein, defendants’ counsel declares that he obtained additional records after defendants filed their cross-motion which he believes to be relevant to the motion. *Id.* at ¶¶ 8-11. Defendants have filed both the supplemental records and an amended statement of undisputed facts concurrently with their motion to supplement. ECF Nos. 46-1, 46-2. Defendants’ counsel further declares that he believes that defendants’ request will not prejudice plaintiff and that defendants are not opposed to the court giving plaintiff additional time to serve

¹ On September 13, 2013, plaintiff filed a motion for partial summary judgment. ECF No. 34. On January 24, 2014, defendants filed an opposition to plaintiff’s motion and a cross-motion for summary judgment. ECF No. 44.

1 and file his opposition to defendants' cross-motion for summary judgment. ECF No. 46 at ¶ 14.

2 Good cause appearing, IT IS HEREBY ORDERED that:

3 1. Defendants' motion for leave to supplement their motion for summary judgment with
4 additional evidence and to file an amended statement of undisputed facts, ECF No. 46, is
5 GRANTED.

6 2. Within twenty-one (21) days of this order, plaintiff shall file an opposition to
7 defendants' cross-motion for summary judgment that complies with the requirements of Federal
8 Rule of Civil Procedure 56 and Eastern District Local Rule 260(b).²

9 Dated: March 25, 2014.

10 
11 EDMUND F. BRENNAN
12 UNITED STATES MAGISTRATE JUDGE

13 _____
14 ² Defendants have included a warning to plaintiff pursuant to *Rand v. Rowland*, 154 F.3d
15 952, 957 (9th Cir. 1998) (en banc) as part of their cross-motion for summary judgment. See ECF
16 No. 44-1. However, in an abundance of caution, the court again informs plaintiff of the
17 requirements for opposing a motion for summary judgment pursuant to Fed. R. Civ. P. 56. Such
18 a motion is a request for an order for judgment in favor of the defendant without trial. A
19 defendant's motion for summary judgment will set forth the facts that the defendant contends are
20 not reasonably subject to dispute and that entitle the defendant to judgment. To oppose a motion
21 for summary judgment, plaintiff must show proof of his or her claims. Plaintiff may do this in
22 one or more of the following ways. Plaintiff may rely on plaintiff's statements made under
23 penalty of perjury in the complaint if the complaint shows that plaintiff has personal knowledge
24 of the matters stated and plaintiff specifies those parts of the complaint on which plaintiff relies.
25 Plaintiff may serve and file one or more affidavits or declarations setting forth the facts that
26 plaintiff believes establish plaintiff's claims; the person who signs an affidavit or declaration must
27 have personal knowledge of the facts stated. Plaintiff may rely on written records, but plaintiff
28 must prove that the records are what plaintiff asserts they are. Plaintiff may rely on all or any part
of the transcript of one or more depositions, answers to interrogatories, or admissions obtained in
this proceeding. If plaintiff fails to contradict the defendant's evidence with counteraffidavits or
other admissible evidence, the court may accept defendant's evidence as true and grant the
motion. If there is some good reason why such facts are not available to plaintiff when required
to oppose a motion for summary judgment, the court will consider a request to postpone
consideration of the defendant's motion. See Fed. R. Civ. P. 56(d). If plaintiff does not serve and
file a written opposition to the motion, or a request to postpone consideration of the motion, the
court may consider the failure to act as a waiver of opposition to the defendant's motion. See
L.R. 230(l). If the court grants the motion for summary judgment, whether opposed or
unopposed, judgment will be entered for the defendant without a trial and the case will be closed
as to that defendant.