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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAMUEL WINDHAM, JR.,  
Plaintiff,  
v.  
CALIFORNIA MEDICAL FACILITY, et  
al.,  
Defendants.

No. 2:15-cv-1058 MCE CKD P

ORDER

Plaintiff is a California prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. He proceeds with claims for negligence arising under California law and denial of adequate medical care arising under the Eighth Amendment against defendants Sabin and Yun.

On May 26, 2016, plaintiff filed a document in which plaintiff seeks “summary judgment.” In order to obtain summary judgment as to a particular claim, a plaintiff must point to evidence indicating all material facts with respect to that claim are not in dispute and then explain why judgment as a matter of law should be entered on those facts. Fed. R. Civ. P. 56(a) & (c). Plaintiff has not done this. Instead, he essentially reasserts portions of his pleadings and attaches several exhibits.

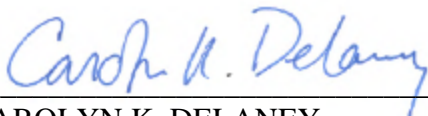
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1 While it is not clear, it appears plaintiff asserts he is entitled to “summary judgment”  
2 because defendants did not respond to plaintiff’s amended complaint. Failing to file a responsive  
3 pleading is not a basis for summary judgment. Rather, that would be a basis for entry of default  
4 under Rule 55 of the Federal Rules of Civil Procedure. In any case, defendants Sabin and Yun  
5 did respond to plaintiff’s amended complaint on February 10, 2016 and denied that they violated  
6 any of plaintiff’s rights arising under California or Federal law.

7 For all of these reasons, plaintiff is not entitled to summary judgment under Rule 56 of the  
8 Federal Rules of Civil Procedure and is not entitled to entry of default under Rule 55.

9 Accordingly, IT IS HEREBY ORDERED that plaintiff’s May 26, 2016 “Motion Request,  
10 Resubmitted Summary Judgment” (ECF No. 30) is denied without prejudice to plaintiff filing a  
11 motion for summary judgment that complies with Rule 56 of the Federal Rules of Civil  
12 Procedure.

13 Dated: September 2, 2016

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16 CAROLYN K. DELANEY  
17 UNITED STATES MAGISTRATE JUDGE

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