

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL C. TOMASINI,
Plaintiff,
v.
JAMES CHAU, et al.,
Defendants.

No. 2:18-cv-00286-DAD-AC

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Currently pending before the court is defendants’ motion for summary judgment. ECF No. 74. The motion has been fully briefed by the parties. ECF Nos. 76-77.

Neither plaintiff’s second amended complaint nor his opposition docketed on January 19, 2024 are signed under penalty of perjury.¹ However, an unverified complaint or unsworn statements made in a party’s brief cannot be considered as evidence in opposition to summary judgment. Moran v. Selig, 447 F.3d 748, 759 & n. 16 (9th Cir. 2006) (stating that an unverified complaint cannot be considered as evidence on motion for summary judgment). A verified

¹ Plaintiff’s first amended complaint was signed under penalty of perjury because plaintiff utilized the pre-printed form complaint used in this judicial district. See ECF No. 12. The second amended complaint is all hand-written and did not utilize the form complaint so there is no attestation clause included with plaintiff’s signature.

1 complaint may be used as an affidavit in opposition to summary judgment if it is based on
2 personal knowledge and sets forth specific facts that are admissible as evidence. Schroeder v.
3 McDonald, 56 F.3d 454, 460 (9th Cir. 1995). Federal law requires a verification to be sworn or
4 signed under penalty of perjury. See 28 U.S.C. § 1746 (providing that, if “any matter is required
5 or permitted to be supported, evidenced, established, or proved by ... verification,” an unsworn
6 statement is sufficient if “subscribed ... as true under penalty of perjury”).²

7 In light of plaintiff’s pro se status, the court will offer plaintiff the opportunity to submit a
8 declaration signed under penalty of perjury attesting to the contents of his second amended
9 complaint as well as his four page opposition to defendants’ summary judgment within 21 days
10 from the date of this order. Defendants’ motion for summary judgment will be deemed submitted
11 on the papers following the expiration of this deadline.

12 Accordingly, IT IS HEREBY ORDERED that plaintiff may submit a declaration signed
13 under penalty of perjury verifying the contents of his second amended complaint as well as his
14 opposition to summary judgment within 21 days from the date of this order.

15 DATED: March 7, 2024

16 
17 ALLISON CLAIRE
18 UNITED STATES MAGISTRATE JUDGE
19
20
21
22
23
24
25
26

27 ² This statute also provides form language that complies with this requirement if a document is
28 executed within the United States. “I declare (or certify, verify, or state) under penalty of perjury
that the foregoing is true and correct. Executed on (date). 28 U.S.C. § 1746(2).