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

JOSEPH MCINERNEY,

No. C 09-00430 JSW

Plaintiff,

**ORDER RESETTING HEARING
ON MOTION FOR SUMMARY
JUDGMENT AND RAND NOTICE**

v.

CITY & COUNTY OF SAN FRANCISCO, et
al.,

Defendants.

_____ /

This matter is currently set for a hearing on July 2, 2010 at 9:00 a.m. on Defendants’ Motion for Summary Judgment, to Dismiss Unserved Defendants, and for Judgment on the Pleadings. Defendants have moved, pursuant to Federal Rule of Civil Procedure 56, for summary judgment on the ground that there is no genuine dispute regarding any material issue of fact. Having not received a timely opposition brief to the motion from Plaintiff, Joseph McInerney (“McInerney”) the Court **HEREBY VACATES** the hearing date and **RESETS** the hearing for **August 6, 2010 at 9:00 a.m.** The Initial Case Management Conference set for that date is **VACATED**.

McInerney has an obligation to file an opposition to Defendants’ motion for summary judgment and failure to do so may result in the **dismissal** of this case with prejudice. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end Plaintiff’s case. *See Rand v. Rowland*, 154 F.3d 952, 953-54 (9th Cir. 1998) (en banc). A principal purpose of the summary judgment procedure is to identify and dispose of factually supported claims. *See Celotex Corp. v. Cattrett*, 477 U.S. 317, 323-24 (1986). In order to

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1 withstand a motion for summary judgment, the opposing party must set forth specific
2 facts showing that there is a genuine issue of material fact in dispute. Fed. R. Civ. P. 56(e). A
3 dispute about a material fact is genuine “if the evidence is such that a reasonable jury could
4 return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
5 (1986). In the absence of such facts, “the moving party is entitled to a judgment as a matter of
6 law.” *Celotex Corp.*, 477 at 323.

7 In opposing summary judgment, McInerney is not entitled to rely on the allegations of
8 his complaint. *See* Fed. R. Civ. P. 56(e); *cf. S. A. Empresa de Viacao Aerea Rio Grandense*
9 (*Varig Airlines*) *v. Walter Kidde & Co.*, 690 F.2d 1235, 1238 (9th Cir. 1982) (stating that “a
10 party cannot manufacture a genuine issue of material fact merely by making assertions in its
11 legal memoranda”). Rather, McInerney’s response must set forth specific facts supported by
12 admissible evidence, *i.e.*, affidavits or certified deposition testimony, showing that there is a
13 genuine issue for trial. *See id.*; *see also Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996)
14 (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir. 1995), and stating that it is
15 not a district court’s task to “scour the record in search of a genuine issue of triable fact”). If
16 summary judgment is granted, McInerney’s case will be dismissed and there will be no trial.
17 *See Rand*, 154 F.3d at 953-54.

18 Accordingly, McInerney has until **Friday, July 9, 2010**, to file an opposition to
19 Defendants’ motion. Defendants may file a reply brief no later than **July 16, 2010**. If no
20 opposition is filed, summary judgment may be granted. If summary judgment is granted,
21 McInerney’s case will be dismissed. If Plaintiff McInerney files an opposition, and if the Court
22 determines that the matter is suitable for resolution without oral argument, it will so advise the
23 parties in advance of the hearing date.

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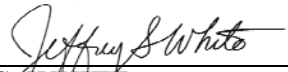
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If the parties wish to modify this schedule, they may submit for the Court's consideration a stipulation and proposed order demonstrating good cause for any modification requested.

IT IS SO ORDERED.

Dated: June 15, 2010



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 JOSEPH MCINERNEY,
5 Plaintiff,

Case Number: CV09-00430 JSW

6 **CERTIFICATE OF SERVICE**

7 v.


8 SF CITY & COUNTY et al,
9 Defendant.

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
11 Court, Northern District of California.

12 That on June 15, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
14 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
15 located in the Clerk's office.

16 Joseph McInerney
17 P.O. Box 2625
18 San Jose, CA 95113

Dated: June 15, 2010


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk