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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6 DAVID MAURICE GOMEZ,
7
8 Plaintiff,

9 v.

10 A. HEDGEPEETH, et al.,
11
12 Defendants.

No. C-11-3784 TEH (PR)

ORDER GRANTING PLAINTIFF LEAVE
TO FILE LATE OPPOSITION TO
DEFENDANTS' MOTION FOR
DISMISSAL AND SUMMARY JUDGMENT

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14 Plaintiff David Maurice Gomez, a state prisoner
15 incarcerated at Salinas Valley State Prison (SVSP), has filed this
16 civil rights action under 42 U.S.C. § 1983 regarding incidents that
17 took place at SVSP. On April 12, 2012, this Court ordered service
18 of Plaintiff's complaint and set a briefing schedule for Defendants
19 to file a dispositive motion. Doc. #5. The briefing schedule
20 required Defendants to file a dispositive motion within ninety days
21 from the date of the Order and for Plaintiff to file an opposition
22 no later than thirty days after Defendants served Plaintiff with
23 the motion.

24 After the Court granted several requests by Defendants to
25 extend the time to file their dispositive motion, they filed a
26 motion for dismissal and summary judgment on November 9, 2012.
27 Doc. #49. Plaintiff's opposition was due thirty days later, on
28 December 9, 2012. To date, Plaintiff has not filed an opposition
nor has he requested an extension of time in which to do so. In

1 the interests of justice, the Court grants Plaintiff leave to file
2 his opposition late, but he must file it within thirty days from
3 the date of this Order.

4 Plaintiff is provided the following warning regarding
5 what he must do to oppose Defendants' motion to dismiss based on
6 lack of exhaustion.

7 The defendants have made a motion to dismiss pursuant to
8 Rule 12(b) of the Federal Rules of Civil Procedure, on the ground
9 you have not exhausted your administrative remedies. The motion
10 will, if granted, result in the dismissal of unexhausted claims,
11 albeit without prejudice. When a party you are suing makes a
12 motion to dismiss for failure to exhaust, and that motion is
13 properly supported by declarations (or other sworn testimony)
14 and/or documents, you may not simply rely on what your complaint
15 says. You must "develop a record" and present it in your
16 opposition in order to dispute any "factual record" presented by
17 the defendants in their motion to dismiss. Wyatt v. Terhune, 315
18 F.3d 1108, 1120 n.14 (9th Cir. 2003). You must set out specific
19 facts that contradict the facts shown in the defendants'
20 declarations and documents and show that you have exhausted your
21 claims in one or more of the following: (1) declarations, which are
22 statements signed under penalty of perjury by you or others who
23 have personal knowledge of relevant matters; (2) authenticated
24 documents, which are documents accompanied by a declaration showing
25 where they came from and why they are authentic; and (3) statements
26 in your complaint insofar as they were made under penalty of
27 perjury and they show that you have personal knowledge of the
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1 matters stated therein. If you do not submit your own evidence in
2 opposition, the motion to dismiss, if appropriate, may be granted
3 and the unexhausted claims dismissed.

4 Plaintiff is provided the following warning regarding
5 what he must do to oppose Defendants' motion for summary judgment.

6 A motion for summary judgment under Rule 56 of the
7 Federal Rules of Civil Procedure will, if granted, end your case.
8 Rule 56 tells you what you must do in order to oppose a motion for
9 summary judgment. Generally, summary judgment must be granted when
10 there is no genuine issue of material fact -- that is, if there is
11 no real dispute about any fact that would affect the result of your
12 case, the party who asked for summary judgment is entitled to
13 judgment as a matter of law, which will end your case. When a
14 party you are suing makes a motion for summary judgment that is
15 properly supported by declarations (or other sworn testimony), you
16 cannot simply rely on what your complaint says. Instead, you must
17 set out specific facts in declarations, depositions, answers to
18 interrogatories, or authenticated documents, as provided in Rule
19 56(c), that contradict the facts shown in the defendants'
20 declarations and documents and show that there is a genuine issue
21 of material fact for trial. If you do not submit your own evidence
22 in opposition, summary judgment, if appropriate, may be entered
23 against you. If summary judgment is granted [in favor of the
24 defendants], your case will be dismissed and there will be no
25 trial.

26 CONCLUSION

27 Plaintiff is granted leave to file a late opposition to
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1 Defendants' motion for dismissal and summary judgment. Plaintiff
2 must file his opposition within thirty days from the date of this
3 Order.

4 IT IS SO ORDERED.

5 DATED 04/03/2013



THELTON E. HENDERSON
United States District Judge

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