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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRANLETT EUGENE KIMMONS,
Plaintiff,
v.
A. AVILAR,
Defendant.

Case No. [14-cv-00954-JD](#)

ORDER

Plaintiff, a former state prisoner, proceeds with a pro se civil rights complaint under 42 U.S.C. § 1983. This case was stayed and referred for mediation but failed to settle. Therefore, the Court orders the following:

1. The **STAY** in this case is **LIFTED**.
2. In order to expedite the resolution of this case, the Court orders as follows:
 - a. No later than sixty days from the date this order is served, defendant shall file a motion for summary judgment or other dispositive motion. The motion shall be supported by adequate factual documentation and shall conform in all respects to Federal Rule of Civil Procedure 56, and shall include as exhibits all records and incident reports stemming from the events at issue. If defendant is of the opinion that this case cannot be resolved by summary judgment, he shall so inform the court prior to the date his summary judgment motion is due. All papers filed with the court shall be promptly served on the plaintiff.

1 b. At the time the dispositive motion is served, defendant shall also serve, on a
2 separate paper, the appropriate notice or notices required by *Rand v. Rowland*, 154 F.3d 952, 953-
3 954 (9th Cir. 1998) (en banc), and *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003).
4 *See Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012) (*Rand* and *Wyatt* notices must be
5 given at the time motion for summary judgment or motion to dismiss for nonexhaustion is filed,
6 not earlier); *Rand* at 960 (separate paper requirement).

7 c. Plaintiff’s opposition to the dispositive motion, if any, shall be filed with
8 the court and served upon defendant no later than thirty days from the date the motion was served
9 upon him. Plaintiff must read the attached page headed “NOTICE -- WARNING,” which is
10 provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc),
11 and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

12 If defendant files a motion for summary judgment claiming that plaintiff failed to exhaust
13 his available administrative remedies as required by 42 U.S.C. § 1997e(a), plaintiff should take
14 note of the attached page headed “NOTICE -- WARNING (EXHAUSTION),” which is provided
15 to him as required by *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003).

16 d. If defendant wishes to file a reply brief, he shall do so no later than fifteen
17 days after the opposition is served upon him.

18 e. The motion shall be deemed submitted as of the date the reply brief is due.
19 No hearing will be held on the motion unless the Court so orders at a later date.

20 3. All communications by plaintiff with the Court must be served on defendant, or
21 defendant’s counsel once counsel has been designated, by mailing a true copy of the document to
22 defendants or defendants’ counsel.

23 4. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
24 No further court order under Federal Rule of Civil Procedure 30(a)(2) is required before the
25 parties may conduct discovery.

26 5. It is plaintiff’s responsibility to prosecute this case. Plaintiff must keep the court
27 informed of any change of address by filing a separate paper with the clerk headed “Notice of
28 Change of Address.” He also must comply with the court’s orders in a timely fashion. Failure to

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do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: October 26, 2017



JAMES DONATO
United States District Judge

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NOTICE -- WARNING (SUMMARY JUDGMENT)

If defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact-- that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.

NOTICE -- WARNING (EXHAUSTION)

If defendants file a motion for summary judgment for failure to exhaust, they are seeking to have your case dismissed. If the motion is granted it will end your case.

You have the right to present any evidence you may have which tends to show that you did exhaust your administrative remedies. Such evidence may be in the form of declarations (statements signed under penalty of perjury) or authenticated documents, that is, documents accompanied by a declaration showing where they came from and why they are authentic, or other sworn papers, such as answers to interrogatories or depositions. If defendants file a motion for summary judgment for failure to exhaust and it is granted, your case will be dismissed and there will be no trial.

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 BRANLETT EUGENE KIMMONS,
4 Plaintiff,
5 v.
6 A. AVILAR,
7 Defendant.
8

Case No. [14-cv-00954-JD](#)

CERTIFICATE OF SERVICE

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

11
12 That on October 26, 2017, I SERVED a true and correct copy(ies) of the attached, by
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.
16

17 Branlett Eugene Kimmons
18 140 A Tony Diaz Drive
Woodland, CA 95776

19
20 Dated: October 26, 2017
21

22 Susan Y. Soong
23 Clerk, United States District Court

24
25 By: 
26 LISA R. CLARK, Deputy Clerk to the
27 Honorable JAMES DONATO
28