

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

3 THOMAS RAY WOODSON,

No. C 07-04925 CW (PR)

4 Plaintiff,

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS

5 v.

6 J. RODRIGUEZ, et al.,

(Docket no. 25)

7 Defendants.
8 _____/

9 INTRODUCTION

10 Plaintiff Thomas Ray Woodson, a state prisoner currently
11 incarcerated at Calipatria State Prison, filed the present pro se
12 civil rights action pursuant to 42 U.S.C. § 1983 alleging a
13 constitutional rights violation while incarcerated at Salinas
14 Valley State Prison (SVSP). In an Order dated May 21, 2008, the
15 Court granted Plaintiff's motion to proceed in forma pauperis and
16 found that Plaintiff presented a cognizable claim of excessive
17 force. Plaintiff's retaliation claim based on his alleged
18 retaliatory transfer to High Desert State Prison (HDSP) was
19 dismissed with leave to amend. He was instructed to file an
20 amended retaliation claim within thirty days of the date of the
21 order. His remaining retaliation claim based on delays in medical
22 care was dismissed with prejudice. The Court issued an order for
23 service of Plaintiff's excessive force claim.

24 On June 23, 2008, Plaintiff filed his amended retaliation
25 claim.

26 Defendants now move to dismiss the complaint on the grounds
27 that Plaintiff's amended retaliation cause of action fails to state
28 a claim upon which relief can be granted under Federal Rule of

1 Civil Procedure 12(b)(6) and that Plaintiff has failed to exhaust
2 his administrative remedies as to his excessive force claim.
3 Plaintiff has filed an opposition, and Defendants have filed a
4 reply. For the reasons discussed below, the Court GRANTS in part
5 Defendants' motion to dismiss and DENIES it in part.

6 BACKGROUND

7 In its previous order, the Court summarized the facts alleged
8 by Plaintiff as follows:

9 Plaintiff alleges that Defendants SVSP Sergeant
10 Kircher and SVSP Correctional Officers J. Rodriguez, E.
11 Camarena, J. Parra and D. Vega used excessive physical
12 force in violation of the Eighth Amendment.
13 Specifically, Plaintiff claims that at around 1:00 p.m.
14 on March 23, 2006, a mass cell search occurred because a
15 sheet pan was missing from the kitchen. Defendants
16 Rodriguez, Camarena and Parra approached Plaintiff's
17 cell during the search, ordered Plaintiff to put his
18 hands through the food port in order to place handcuffs
19 on him, and handcuffed him for cell removal.
20 Afterwards, Defendants Rodriguez and Camarena
21 "thrash[ed] Plaintiff's cell" while Defendant Parra
22 detained Plaintiff against the wall outside of his cell.
23 Plaintiff then attempted to inform Defendant Kircher
24 "about the harrassment [sic] he was going through under
25 the guise of a cell search." (Compl. at 4.) Plaintiff
26 slightly turned his head to convey his message and
27 stated, "I need to speak with you Sergeant, I am being
28 harassed." (Id.) When Plaintiff received no response,
he asked Defendant Kircher if he was "condoning this
harrassment [sic]." (Id.) Defendant Kircher ignored
Plaintiff and ordered Defendants Parra and Vega to
remove Plaintiff from the area. As Defendants Parra and
Vega removed Plaintiff, Plaintiff asked Defendant
Kircher again if he was "sanctioning this harrassment
[sic]." Defendant Kircher then ordered Defendants Parra
and Vega "to take Plaintiff down." (Id.) Defendant
Parra kicked Plaintiff's feet out from under him causing
him to fall face first onto the pavement and to suffer
from a swollen right eye. While Plaintiff was on the
ground, Defendant Parra "used further unnecessary brut
force by bending Plaintiffs [sic] cuffed right wrist and
arm up towards Plaintiff's head causing excruciating
pain to Plaintiffs [sic] wrist and shoulder joints."
(Id.) Defendant Vega "dropped his knee with [his] full
body weight [on] Plaintiffs [sic] neck and upper back,
laughing and giggling at Plaintiff's squeels [sic] of
pain." (Id.) In response to the commotion, Defendants

1 Camarena and Rodriguez along with "several other
2 unidentified guards" approached Plaintiff while he was
3 on the floor and began kicking Plaintiff in the legs and
4 hips.

5 After shackling Plaintiff's legs, Defendants Parra
6 and Vega forced Plaintiff to stand up and walk with his
7 boxers down exposing his genitalia. Plaintiff was then
8 taken outside where Defendants Parra and Vega threw him
9 to the ground again damaging his knees, dislocating his
10 shoulder, and scraping the skin off of his swollen right
11 eye. Plaintiff told Defendant Kircher that his shoulder
12 was dislocated. Defendant Kircher instructed Defendants
13 Camarena and Rodriguez to take over as Plaintiff's
14 escorts. Defendant Kircher later ordered them to check
15 Plaintiff's handcuffs and to put him down. After his
16 handcuffs were checked, Plaintiff was yanked to his feet
17 by Defendants Rodriguez and Camarena and again "thrown"
18 to the cement pavement, which caused his shoulder to
19 "pop[] back into [its] socket." (Id. at 5.)

20 Subsequently, Plaintiff was placed in a standing
21 room only holding cell. While in the cell, he asked for
22 a doctor to treat his dislocated shoulder and for
23 pictures to be taken of his injuries, but Nurse Moore
24 denied Plaintiff's request. After some time had passed,
25 Doctor Sue arrived and found several injuries on
26 Plaintiff's body after conducting a visual examination.
27 As a result, Doctor Sue ordered Nurse Moore to document
28 Plaintiff's injuries on a CDC Form 7219. Plaintiff was
escorted back to the general population at approximately
4:15 p.m.

Plaintiff filed several 602 inmate appeals, but he
claims they were screened out. After filing more 602
appeals, Plaintiff claims that he received a retaliatory
CDC 115 write-up on April 5, 2006. Plaintiff alleges he
eventually exhausted his administrative remedies with
respect to these claims. He seeks monetary compensation
and injunctive relief for his physical and emotional
injuries.

(May 21, 2008 Order of Service at 1-3.)

DISCUSSION

I. Failure to State a Claim

A. Standard for Review

A complaint must contain a "short and plain statement of the
claim showing that the pleader is entitled to relief." Fed. R.
Civ. P. 8(a). When considering a motion to dismiss under Rule

1 12(b)(6) for failure to state a claim, dismissal is appropriate
2 only when the complaint does not give the defendant fair notice of
3 a legally cognizable claim and the grounds on which it rests. See
4 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1964
5 (2007).

6 In considering whether the complaint is sufficient to state a
7 claim, the district court must accept all factual allegations as
8 true and construe them in the light most favorable to the
9 plaintiff. Erickson v. Pardus, 551 U.S. 89, 127 S. Ct. 2197, 2200
10 (2007); NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir.
11 1986). However, the court need not accept as true allegations that
12 are legal conclusions, unwarranted deductions of fact or
13 unreasonable inferences. See Sprewell v. Golden State Warriors,
14 266 F.3d 979, 988, amended, 275 F.3d 1187 (9th Cir. 2001).
15 Dismissal can be based on the lack of a cognizable legal theory or
16 the absence of sufficient facts alleged under a cognizable legal
17 theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699
18 (9th Cir. 1990).

19 A plaintiff may negate his claim by including unnecessary
20 details that contradict it. Sprewell, 266 F.3d at 988. A court,
21 for example, is not required to accept as true conclusory
22 allegations which are contradicted by documents referred to in the
23 complaint. Bell Atl. Corp., 127 S. Ct. at 1965; Steckman v. Hart
24 Brewing, Inc., 143 F.3d 1293, 1295-96 (9th Cir. 1998).

25 "[C]onclusory allegations without more are insufficient to defeat a
26 motion to dismiss for failure to state a claim." McGlinchy v.
27 Shell Chemical Co., 845 F.2d 802, 810 (9th Cir. 1988). A court "is
28 not required to accept legal conclusions cast in the form of

1 factual allegations if those conclusions cannot reasonably be drawn
2 from the facts alleged." Clegg v. Cult Awareness Network, 18 F.3d
3 752, 754-55 (9th Cir. 1994).

4 B. Analysis

5 In his amended complaint, Plaintiff claims that his transfer
6 from SVSP to HDSP was the result of retaliation by Defendants for
7 Plaintiff's filing of inmate grievances. (Am. Compl. at 2-3.)

8 Defendants first argue that Plaintiff does not allege that any
9 of the named Defendants were responsible for the transfer. This
10 argument is unavailing because, as discussed below, Plaintiff names
11 additional parties in his amended retaliation claim and alleges
12 they are responsible for the transfer. In the alternative,
13 Defendants also move to dismiss Plaintiff's amended retaliation
14 cause of action for failure to state a claim upon which relief can
15 be granted.

16 Plaintiff claims that on July 20, 2006, he "was taken to [the]
17 Inmate Classification Committee [ICC] in retaliation and put up for
18 adverse transfer to High Desert State Prison over 500 miles away
19 from Plaintiffs [sic] residence despite the fact that Plaintiff was
20 not in ad-seg under disciplinary circumstances." (Am. Compl. 2-3.)
21 Plaintiff claims he expressed his dissatisfaction with the
22 committee members' "arbitrary and capricious actions in deciding to
23 punitively . . . transfer Plaintiff involuntarily for exercising
24 his First Amendment constitutional right to file a prison
25 grievance." (Id. at 3.) Plaintiff claims his concerns were
26 ignored by ICC Chairman Moore as well as SVSP Correctional
27 Counselors Meden and Garcia. Finally, Plaintiff claims:
28 "Deliberate indifference persisted from the committee members even

1 after Plaintiff expressed he had done nothing to deserve an
2 involuntary adverse transfer and that it would put him and his
3 family in significant hardship." (Id. at 3.) On November 30,
4 2006, a subsequent committee hearing was held, during which
5 Plaintiff claims the committee members "reinstitut[ed] and
6 reincorporat[ed] the same arbitrary and capricious action with no
7 apparent legitimate penalogical [sic] purpose." (Id.) Plaintiff
8 claims that he complained about the retaliatory transfer to ICC
9 Chairperson L. Trexler as well as SVSP Lieutenant B. Rankin and
10 Correctional Counselor Meden.¹ Plaintiff claims that these prison
11 officials "all laughed at Plaintiff and said, 'Hey we don't want to
12 make it seem like we're retaliating against you, where would you
13 like us to transfer you.'" (Id.) Plaintiff claims that he
14 responded, "[I]f you are adamant about transferring me because I
15 reported staff misconduct, it should not be an adverse transfer nor
16 should the facility be so far away from Plaintiff [sic] family and
17 home, CCI [California Correctional Institution] facility would be
18 sufficient." (Id.) Plaintiff alleges that "ICC rescinded the
19 first transfer location on paper and on Dec. 26, 2006 Plaintiff was
20 transferred to HDSP anyway, even though that location was
21 rescinded." (Id.) Plaintiff names additional parties in his
22 amended claim -- Moore, Meden, Garcia, Trexler and Rankin -- as

23

24 ¹ In his amended complaint, Plaintiff also complains of
25 additional retaliatory actions, including "excessive ad-seg placement"
26 and "misappropriation of property." (Am. Compl. at 2-3.) However,
27 Plaintiff did not allege such retaliatory actions in his original
28 complaint. Moreover, the Court granted Plaintiff leave to amend only
his claim of a retaliatory transfer from SVSP to HDSP. (May 21, 2008
Order of Service at 9.) Therefore, Plaintiff's claims of other
retaliatory actions are DISMISSED without prejudice to filing a motion
for leave to amend to add them to this action.

1 those liable for the retaliatory transfer and claims that the
2 "suspect timing of the foregoing arbitrary and capricious actions
3 came soon after the prison grievance for the March 23, 2006
4 incident and served no purpose other than retaliation and chilling
5 effect on Plaintiff's ability to exercise his First Amendment right
6 to actively pursue litigation." (Id. (citing Hines v. Gomez, 108
7 F.3d 265, 269 (9th Cir. 1997).)

8 "Within the prison context, a viable claim of First Amendment
9 retaliation entails five basic elements: (1) An assertion that a
10 state actor took some adverse action against an inmate (2) because
11 of (3) that prisoner's protected conduct, and that such action
12 (4) chilled the inmate's exercise of his First Amendment rights,
13 and (5) the action did not reasonably advance a legitimate
14 correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th
15 Cir. 2005) (footnote omitted). To prove retaliation, a plaintiff
16 must show that the defendants took adverse action against him or
17 her that "would chill or silence a person of ordinary firmness from
18 future First Amendment activities." White v. Lee, 227 F.3d 1214,
19 1228 (9th Cir. 2000) (citing Mendocino Envtl. Ctr. v. Mendocino
20 County, 192 F.3d 1283, 1300 (9th Cir. 1999)).

21 Retaliation is not established simply by showing adverse
22 activity by a defendant after protected speech; rather, the
23 plaintiff must show a nexus between the two. See Huskey v. City of
24 San Jose, 204 F.3d 893, 899 (9th Cir. 2000). However, retaliatory
25 motive may be shown by the timing of the alleged retaliatory act,
26 as well as by direct evidence. Bruce v. Ylst, 351 F.3d 1283, 1288-
27 89 (9th Cir. 2003).

28

1 Although prison officials are invested with broad discretion
2 to make decisions to transfer inmates to other prisons, they may
3 not retaliate against inmates for the exercise of their First
4 Amendment rights. However, a retaliation claim is not stated where
5 the prisoner does not allege that the defendants' actions caused
6 him some injury, Resnick v. Hayes, 213 F.3d 443, 449 (9th Cir.
7 2000), or, in the case of alleged retaliatory transfer, if the
8 decision may be upheld on a constitutionally valid basis, Sher v.
9 Coughlin, 739 F.2d 77, 82 (2d Cir. 1984). Here, the allegations in
10 Plaintiff's amended retaliation claim still do not allege any nexus
11 between his grievances and the transfer. Plaintiff bases his claim
12 on what he considers the "suspect" or "dubious timing" of the
13 alleged retaliatory transfer. (Am. Compl. at 1, 3.) The Court had
14 previously informed Plaintiff that his allegation "that the
15 transfer occurred after the grievances were filed does not, without
16 more, establish retaliation." (May 21, 2008 Order of Service at 7
17 (citing Huskey, 204 F.3d 893 at 899).) The Court cannot accept as
18 true Plaintiff's allegation that the alleged retaliatory transfer
19 "came soon after the prison grievance for the March 23, 2006
20 incident" because this allegation is contradicted by allegations in
21 his amended retaliation claim. See Sprewell, 266 F.3d at 988; see
22 also Bell Atl. Corp., 127 S. Ct. at 1965; Steckman, 143 F.3d at
23 1295-96. Specifically, he claims that the alleged retaliatory
24 transfer did not take place until December 26, 2006, nine months
25 after the March 23, 2006 incident. Plaintiff fails to state a
26 claim of retaliatory transfer against the newly named parties.

27 Accordingly, the Court GRANTS Defendants' motion to dismiss
28 Plaintiff's cause of action for retaliatory transfer for failure to

1 state a claim. Because Plaintiff has already been granted leave to
2 amend this claim, the dismissal is without further leave to amend.
3 See Janicki Logging Co. v. Mateer, 42 F.3d 561, 566 (9th Cir. 1994)
4 (futility grounds to deny leave to amend).

5 II. Failure to Exhaust Administrative Remedies

6 A. Standard of Review

7 The Prison Litigation Reform Act of 1995 (PLRA) amended 42
8 U.S.C. § 1997e to provide that "[n]o action shall be brought with
9 respect to prison conditions under [42 U.S.C. § 1983], or any other
10 Federal law, by a prisoner confined in any jail, prison, or other
11 correctional facility until such administrative remedies as are
12 available are exhausted." 42 U.S.C. § 1997e(a). Although once
13 within the discretion of the district court, exhaustion in prisoner
14 cases covered by § 1997e(a) is now mandatory. Porter v. Nussle,
15 534 U.S. 516, 524 (2002). All available remedies must now be
16 exhausted; those remedies "need not meet federal standards, nor
17 must they be 'plain, speedy, and effective.'" Id. (citation
18 omitted). Even when the prisoner seeks relief not available in
19 grievance proceedings, notably money damages, exhaustion is a
20 prerequisite to suit. Id.; Booth v. Churner, 532 U.S. 731, 741
21 (2001). Similarly, exhaustion is a prerequisite to all prisoner
22 suits about prison life, whether they involve general circumstances
23 or particular episodes, and whether they allege excessive force or
24 some other wrong. Porter, 534 U.S. at 532.

25 The PLRA's exhaustion requirement cannot be satisfied "by
26 filing an untimely or otherwise procedurally defective
27 administrative grievance or appeal." Woodford v. Ngo, 548 U.S. 81,
28 84 (2006). "The text of 42 U.S.C. § 1997e(a) strongly suggests

1 that the PLRA uses the term 'exhausted' to mean what the term means
2 in administrative law, where exhaustion means proper exhaustion."
3 Id. at 92. Therefore, the PLRA exhaustion requirement requires
4 proper exhaustion. Id. "Proper exhaustion demands compliance with
5 an agency's deadlines and other critical procedural rules because
6 no adjudicative system can function effectively without imposing
7 some orderly structure on the course of its proceedings." Id. at
8 90-91 (footnote omitted); Jones v. Bock, 549 U.S. 199, 218 (2007)
9 (compliance with prison grievance procedures is required by the
10 PLRA to "properly exhaust"). The level of detail necessary in a
11 grievance to comply with the grievance procedures will vary from
12 system to system and claim to claim, but it is the prison's
13 requirements, and not the PLRA, that define the boundaries of
14 proper exhaustion. Id.

15 The State of California provides its prisoners the right to
16 appeal administratively "any departmental decision, action,
17 condition or policy" perceived by those individuals as adversely
18 affecting their welfare. Cal. Code Regs. tit. 15, § 3084.1(a). It
19 also provides them the right to file appeals alleging misconduct by
20 correctional officers and officials. Id. § 3084.1(e). As to
21 content, the regulations only instruct the prisoner to "describe
22 the problem and action requested" Id. at § 3084.2(a).

23 In order to exhaust available administrative remedies within
24 this system, a prisoner must proceed through several levels of
25 appeal: (1) informal resolution, (2) formal written appeal on a 602
26 inmate appeal form, (3) second level appeal to the institution head
27 or designee, and (4) third level appeal to the Director of the
28 California Department of Corrections and Rehabilitation (CDCR).

1 Barry v. Ratelle, 985 F. Supp. 1235, 1237 (S.D. Cal. 1997) (citing
2 Cal. Code Regs. tit. 15, § 3084.5). A final decision from the
3 Director's level of review satisfies the exhaustion requirement
4 under § 1997e(a). Id. at 1237-38.

5 Non-exhaustion under § 1997e(a) is an affirmative defense
6 which should be brought by defendants in an unenumerated motion to
7 dismiss under Federal Rule of Civil Procedure 12(b). Wyatt v.
8 Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003).

9 B. Analysis

10 In the present case, Defendants correctly raise non-exhaustion
11 in an unenumerated motion to dismiss. Defendants argue that
12 Plaintiff did not properly exhaust his administrative remedies
13 prior to the filing of his complaint as mandated by § 1997e(a).
14 Defendants acknowledge that Plaintiff submitted an inmate grievance
15 regarding his excessive force claim and that it was denied at the
16 Director's level of review. (Mot. to Dismiss at 9; Defs.' Ex. A.)
17 However, they contend that the contents of this grievance were not
18 sufficient to raise the issues Plaintiff pursues in this case.
19 Specifically, they argue that Plaintiff's grievance "did not
20 request any monetary, punitive or nominal damages, which is the
21 relief he seeks in this Court." (Id. (citing to Compl., Ex. A).)
22 They point out that his grievance "requested solely that his
23 allegations of excessive force be investigated, that the officers
24 involved be disciplined, and that the institution abide by the no-
25 reprisal policy." (Id.) They argue that Plaintiff did not comply
26 with the procedural requirements of the California regulations
27 mentioned above, specifically with Title 15 of the California Code
28 of Regulations § 3084.2(a), which requires that an inmate "describe

1 the problem and action requested" (Id. (citing Cal. Code
2 Regs. tit. 15, § 3084.2(a)).) In sum, Defendants argue that while
3 Plaintiff submitted and exhausted his grievance, he did not request
4 monetary compensation in his grievance and therefore he did not
5 exhaust his claim for money damages. Plaintiff contends that his
6 administrative grievance satisfied the exhaustion requirements
7 because he specifically complained in the grievance about the
8 misconduct of Defendants at issue in this action.

9 Recently, the Ninth Circuit adopted the Seventh Circuit's
10 standard articulated in Strong v. David as the proper standard of
11 factual specificity required when a prison's grievance procedures
12 do not specify the requisite level of detail. Griffin v. Arpaio,
13 No. 06-16132, slip op. 2771, 2777 (9th Cir. Mar. 5, 2009) (citing
14 Strong v. David, 297 F.3d 646, 650 (7th Cir. 2002). Strong held
15 that, when a prison's grievance procedures are silent or incomplete
16 as to factual specificity, "a grievance suffices if it alerts the
17 prison to the nature of the wrong for which redress is sought."
18 Id. Thus, according to the Ninth Circuit, a grievance "need not
19 contain every fact necessary to prove each element of an eventual
20 legal claim." Griffin, slip op. at 2778. "The primary purpose of
21 a grievance is to alert the prison to a problem and facilitate its
22 resolution, not to lay groundwork for litigation." Id. (citing
23 Johnson v. Johnson, 385 F.3d 503, 522 (5th Cir. 2004), cited with
24 approval in Jones, 549 U.S. at 219).

25 Here, Plaintiff's problem concerned the use of excessive force
26 against him by Defendants. Notifying the prison officials at SVSP
27 of that problem did not require him to raise his claim for money
28 damages. Plaintiff's grievance, which identified the Defendants in

1 this action, alleged that these Defendants used excessive force
2 against him. Plaintiff's grievance was sufficient to satisfy the
3 exhaustion requirement in that it placed prison officials on notice
4 as to the misconduct and allowed them to take any action they saw
5 fit to take. Moreover, Plaintiff fully exhausted his excessive
6 force claim because he pursued his appeal through the final level
7 of review.

8 Accordingly, the Court DENIES Defendants' motion to dismiss
9 Plaintiff's excessive force claim for failure to exhaust
10 administrative remedies.

11 CONCLUSION

12 For the foregoing reasons,

13 1. The Court GRANTS in part and DENIES in part Defendants'
14 motion to dismiss (docket no. 25). Plaintiff's amended retaliation
15 claim is DISMISSED without further leave to amend. Plaintiff's
16 action may proceed with his remaining excessive force claim.

17 2. In order to expedite the resolution of this case, the
18 Court further orders:

19 a. Defendants shall answer the complaint no later than
20 thirty (30) days from the date of this Order. In addition, no
21 later than ninety (90) days from the date of this Order, Defendants
22 shall file a motion for summary judgment or other dispositive
23 motion. The motion shall be supported by adequate factual
24 documentation and shall conform in all respects to Federal Rule of
25 Civil Procedure 56. If Defendants are of the opinion that this
26 case cannot be resolved by summary judgment, they shall so inform
27 the Court prior to the date the summary judgment motion is due.
28

1 All papers filed with the Court shall be promptly served on
2 Plaintiff.

3 b. Plaintiff's opposition to the dispositive motion
4 shall be filed with the Court and served on Defendants no later
5 than thirty (30) days after the date on which Defendants' motion is
6 filed. The Ninth Circuit has held that the following notice should
7 be given to pro se plaintiffs facing a summary judgment motion:

8 The defendants have made a motion for summary
9 judgment by which they seek to have your case dismissed.
10 A motion for summary judgment under Rule 56 of the
Federal Rules of Civil Procedure will, if granted, end
your case.

11 Rule 56 tells you what you must do in order to
12 oppose a motion for summary judgment. Generally, summary
13 judgment must be granted when there is no genuine issue
14 of material fact -- that is, if there is no real dispute
15 about any fact that would affect the result of your case,
16 the party who asked for summary judgment is entitled to
17 judgment as a matter of law, which will end your case.
18 When a party you are suing makes a motion for summary
19 judgment that is properly supported by declarations (or
20 other sworn testimony), you cannot simply rely on what
21 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 [in favor of the
defendants], your case will be dismissed and there will
be no trial.

22 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en
23 banc).

24 Plaintiff is advised to read Rule 56 of the Federal Rules of
25 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
26 (party opposing summary judgment must come forward with evidence
27 showing triable issues of material fact on every essential element
28 of his claim). Plaintiff is cautioned that because he bears the

1 burden of proving his allegations in this case, he must be prepared
2 to produce evidence in support of those allegations when he files
3 his opposition to Defendants' dispositive motion. Such evidence
4 may include sworn declarations from himself and other witnesses to
5 the incident, and copies of documents authenticated by sworn
6 declaration. Plaintiff will not be able to avoid summary judgment
7 simply by repeating the allegations of his complaint.

8 c. If Defendants wish to file a reply brief, they shall
9 do so no later than thirty (30) days after the date Plaintiff's
10 opposition is filed.

11 d. The motion shall be deemed submitted as of the date
12 the reply brief is due. No hearing will be held on the motion
13 unless the Court so orders at a later date.

14 3. Discovery may be taken in this action in accordance with
15 the Federal Rules of Civil Procedure. Leave of the Court pursuant
16 to Rule 30(a)(2) is hereby granted to Defendants to depose
17 Plaintiff and any other necessary witnesses confined in prison.

18 4. All communications by Plaintiff with the Court must be
19 served on Defendants by mailing a true copy of the document to
20 Defendants' counsel.

21 5. It is Plaintiff's responsibility to prosecute this case.
22 Plaintiff must keep the Court informed of any change of address and
23 must comply with the Court's orders in a timely fashion.


24 6. Extensions of time are not favored, though reasonable
25 extensions will be granted. Any motion for an extension of time
26 must be filed no later than fifteen (15) days prior to the deadline
27 sought to be extended.

28 7. This Order terminates Docket no. 25.

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IT IS SO ORDERED.

DATED: 3/24/09



CLAUDIA WILKEN
United States District Judge

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

4 THOMAS RAY WOODSON,

5 Plaintiff,

6 v.

7 J. RODRIGUEZ et al,

8 Defendant.

Case Number: CV07-04925 CW

CERTIFICATE OF SERVICE

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

11 That on March 24, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Thomas Ray Woodson P-76095
16 "C" Facility Calipatria State Prison
17 Calipatria, CA 92253

Dated: March 24, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California