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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 CLAYTON DEL THIBODEAU,
11 Plaintiff,
12 v.
13 ADT LLC, d/b/a ADT SECURITY
14 SERVICES, a/k/a/ ADT HOLDINGS,
15 INC.,
16 Defendant.

Case No.: 3:16-cv-02680-GPC-AGS

ORDER

**(1) DIRECTING PLAINTIFF TO
FILE SECOND AMENDED
OPPOSITION BRIEF [DKT. No. 49.]**

**(2) RESTATING BRIEFING
SCHEDULE**

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19 On September 21, 2017, Defendant ADT LLC, d/b/a ADT Security Services, filed
20 an Amended Motion for Summary Judgment following the Court's order to re-serve
21 Defendant. Dkt. Nos. 48, 49. On October 12, 2017, Plaintiff filed his Opposition to
22 Defendant's Motion for Summary Judgment. Dkt. No. 55. Defendant filed a Reply on
23 November 3, 2017 alleging that Plaintiff had filed an opposition exceeding page limits
24 and failed to file affidavits/declarations with his pleadings.

25 On November 6, 2017, the Court issued an Order directing Plaintiff to file an
26 Amended Opposition. Dkt. No. 57. In that Order, the Court directed Plaintiff to file an
27 Amended Opposition no later than Friday, December 1, 2017, struck from the record
28 Plaintiff's Opposition to Defendant's Motion for Summary Judgment (Dkt. No. 55),

1 issued a *Rand* notice advising Plaintiff of what was required to oppose a Motion for
2 Summary Judgment, and continued the hearing date from December 8, 2017 to January
3 19, 2018. Dkt. No. 57.

4 On November 9, 2017, Plaintiff submitted an Amended Response in Opposition
5 where he included some declarations, spent a majority of the brief making procedural
6 challenges to Plaintiff’s Reply, and requested that the Court accept his Opposition filed
7 on October 12, 2017. Dkt. No. 59. Plaintiff’s brief does not show any awareness of the
8 Court’s Order issued on November 6, 2017 and appears to challenge the procedural
9 arguments made in Defendant’s Reply rather than the substantive arguments made in
10 Defendant’s Motion for Summary Judgment. *See* Dkt. No. 57. Moreover, Plaintiff
11 requests that the Court “accept Plaintiff’s Opposition as filed on October 12, 2017” when
12 the Court has already struck this Opposition from the record and requested that Plaintiff
13 file an Amended Opposition brief. The Court concludes that Plaintiff’s Dkt. No. 59
14 Supplemental Opposition was filed before Plaintiff received the Court’s scheduling order.
15 Accordingly, the Court will allow Plaintiff to file a revised **Second Amended**
16 **Opposition** that substantively addresses Defendant’s Amended Motion for Summary
17 Judgment (Dkt. No. 49). If Plaintiff wishes to file an opposition that exceeds 25 pages in
18 length, he should file a Motion requesting this relief.

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20 The Court also re-issues the following notice to Plaintiff:

21 Defendant is making a motion for summary judgment under Rule 56 of the
22 Federal Rules of Civil Procedure which, if granted, will end your case as to
23 the issues noticed by Defendant by granting judgment in favor of Defendant.
24 Rule 56 tells you what you must do in order to oppose a motion for summary
25 judgment. Generally summary judgment must be granted when there is no
26 genuine issue of material fact—that is, if there is no real dispute about any
27 fact that would affect the result of your case, the party who asked for summary
28 judgment is entitled to judgment as a matter of law. When a party you are

1 suing makes a motion for summary judgment that is properly supported by
2 declarations (or other sworn testimony), you cannot simply rely on what the
3 complaint says. Instead, you must set out specific facts in *declarations*,
4 *depositions*, *answers to interrogatories*, or *authenticated documents*, as
5 provided in Rule 56(c). The evidence in those documents must contradict the
6 facts shown in the defendant's declarations and documents and show that
7 there is a genuine issue of material fact for trial. If you do not submit your
8 own evidence in opposition, summary judgment, if appropriate, may be
9 entered against you as to the issues Defendant is challenging.

10 *See Rand v. Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998) (with alterations) (emphasis
11 added).

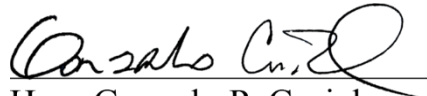
12 For the sake of clarity, the Court reissues the following scheduling order:

13 Plaintiff shall file any Second Amended Opposition no later than **Friday,**
14 **December 1, 2017**. The opposition shall not exceed 25 pages (exhibits and declarations
15 are not included in this page count). Further, Plaintiff shall include in any amended
16 opposition a revised separate statement of material facts that includes citations to sworn
17 affidavits or declarations. Defendant shall file any reply no later than **Friday, December**
18 **15, 2017**. Further, the Clerk of Court is directed to send Plaintiff a copy of Dkt. No. 57.

19 A hearing for this matter is scheduled for **January 19, 2017** at **1:30 p.m.** in
20 Courtroom 2D.

21 **IT IS SO ORDERED.**

22 Dated: November 13, 2017

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24 Hon. Gonzalo P. Curiel
25 United States District Judge
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