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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLARENCE HOWARD,
Plaintiff,
v.
GRADTILLO, et al.,
Defendants.

CASE NO. 1:05-cv-00906-AWI-GBC (PC)

ORDER PERMITTING PLAINTIFF
OPPORTUNITY TO WITHDRAW
OPPOSITION AND FILE AMENDED
OPPOSITION IN LIGHT OF SEPARATELY-
ISSUED SUMMARY JUDGMENT NOTICE

(Doc. 79; Doc. 82; Doc. 86)

/ TWENTY-ONE DAY DEADLINE

I. Procedural History and *Woods v. Carey*

Plaintiff Clarence Howard (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s amended complaint, filed June 22, 2009, against Defendants Bennett, Avila and Jones (“Defendants”) for excessive force on April 3, 2003, in violation of the Eighth Amendment. Doc. 22; Doc. 27.

On May 17, 2010, the Court issued a second informational order, advising Plaintiff that Defendants may file a motion for summary judgment and how Plaintiff must oppose the motion in order to avoid dismissal, pursuant to *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998). Doc. 30-1. On March 16, 2012, Defendants filed a motion for summary judgment. Doc. 79. On May 8, 2012, Plaintiff filed an opposition and supporting declaration in response to the motion for summary judgment. Doc. 82; Doc. 83. On May 11, 2012, Defendants filed a Reply to Plaintiff’s opposition. Doc. 84. On July 2,

1 2012, Plaintiff filed a surrepley. Doc. 85. On July 18, 2012, Defendants file a notice pursuant to *Rand*
2 *v. Rowland*, 154 F.3d 952 (9th Cir. 1998). Doc. 86.

3 On July 6, 2012, the Ninth Circuit found that the notice and warning of requirements for
4 opposing a defendant's motion for summary judgment should be issued contemporaneously when a
5 defendant files a motion for summary judgment, as opposed to a year or more in advance. *Woods v.*
6 *Carey*, --- F.3d ---, 2012 WL 2626912, at * 4 (9th Cir. Jul. 6, 2012). In order to address the time delay
7 between providing notice and the filing of Defendants' motion, Defendants filed a notice to Plaintiff,
8 in accordance with *Woods*.

9 **II. Plaintiff has Option to (1) Stand on Existing Opposition to Motion for Summary**
10 **Judgment or (2) File Amended Opposition Per Amended Second Informational Order**

11 In light of the separately-issued notice pursuant to *Woods*, the Court will provide Plaintiff with
12 two options upon receipt of this order. Plaintiff may either: 1) stand on his previously-filed opposition;
13 or 2) withdraw the existing opposition and file an amended opposition.

14 Accordingly, it is HEREBY ORDERED that:

- 15 1. Within **twenty-one (21) days** from the date of service of this order, Plaintiff may elect
16 to:
 - 17 a. Stand on his existing opposition already submitted to the Court; or
 - 18 b. Withdraw his opposition and file an amended opposition;
- 19 2. If Plaintiff does not elect to file an amended opposition in response to this order within
20 **twenty-one (21) days**, the Court will consider his existing opposition in resolving
21 Defendants' motion for summary judgment;
- 22 3. If Plaintiff elects to file an amended opposition, the Court will not consider Defendants'
23 existing reply; and
- 24 4. Defendants may file an amended reply pursuant to Local Rule 230(1).

25
26 IT IS SO ORDERED.

27 Dated: August 1, 2012

28 
UNITED STATES MAGISTRATE JUDGE