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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD JEREMIAH GILES, III,)	No. CV 1:07-CV-00197-CKJ
Plaintiff,)	
vs.)	ORDER
CAPTAIN SOTO, <i>et al.</i> ,)	
Defendants.)	

On May 28, 2010, Defendants filed a Motion for Summary Judgment. Defendants' Motion for Summary Judgment is now pending before the Court. The Ninth Circuit Court of Appeals requires the Court to provide pro se prisoners with notice of the requirements of Summary Judgment under Rule 56 of the Federal Rules of Civil Procedure. *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998). Similarly, the Ninth Circuit has required notice be provided when a motion to dismiss has been filed. *See Wyatt v. Terhune*, 315 F.3d 1108 (9th Cir. 2003). Therefore, this Court notifies the Plaintiff of his rights and responsibilities pursuant to *Rand*.

ACCORDINGLY, the Court **NOTIFIES** Plaintiff as follows:

1. Defendants are seeking to have your case dismissed through a Motion for Summary Judgment under Rule 56 of the Federal Rules of Civil Procedure or, in the Alternative, a Motion to Dismiss. Summary judgment means that instead of going to trial where you and Defendants can argue your versions of the facts and present witnesses in support of your versions, the Court decides the case after reading the Motion, your

1 Response, and Defendants' Reply. **IF THE COURT GRANTS THE MOTION FOR**
2 **SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION TO DISMISS,**
3 **YOUR CASE WILL BE OVER AND THERE WILL BE NO TRIAL.** Rule 56 tells you
4 what you must do in order to oppose the motion.

5 a. Generally, a Motion for Summary Judgment must be granted when the
6 Court finds that, through the Motion for Summary Judgment, Defendants have demonstrated
7 there is no real dispute about any fact that would affect the outcome of your case, and the
8 Court is able to decide that the Defendants are entitled to judgment as a matter of law.

9 b. When Defendants support a Motion for Summary Judgment with proper
10 declarations (or other sworn testimony) or other evidence, you cannot merely rely on what
11 your Complaint says to defend your version of the issues and facts. Instead, you must show
12 that there is a genuine issue of material fact. In order to do this, you must also set out
13 specific facts in declarations, depositions, answers to interrogatories, or authenticated
14 documents, as provided in Rule 56(e), that contradict the facts shown in the Defendants'
15 declarations and documents.

16 c. The declarations or other sworn testimony setting out your **specific**
17 **facts** must be made on personal knowledge, must set forth such facts as would be admissible
18 as evidence, and must affirmatively show that the affiant is competent to testify regarding
19 the matters in the declaration or other sworn testimony. *See* Local Rules of the United
20 States District Court for the Eastern District of California ("L.R.") 142.

21 d. If the Court determines that any of the declarations or other sworn
22 testimony are made in bad faith, the Court may order the party employing the bad faith to
23 pay the other party for costs associated with controverting that testimony, including the other
24 party's attorney's fees.

25 2. If you do not submit your own evidence in opposition to the Motion, the
26 moving party's evidence might be taken as truth and final Judgment might be entered against
27 you without a trial. **IF THAT OCCURS, YOUR CASE WILL BE OVER AND THERE**
28 **WILL BE NO TRIAL.**

