

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES ERIC MALLET,
Plaintiff,
v.
J. McGUINNESS, et al.,
Defendants.

CASE NO. 1:07-cv-00721-LJO-GBC (PC)
ORDER PROVIDING PLAINTIFF OPTION TO
(1) STAND ON EXISTING OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT OR
(2) FILE AMENDED OPPOSITION PER
AMENDED SECOND INFORMATIONAL
ORDER
Docs. 43, 46

/ TWENTY-ONE DAY DEADLINE

I. Procedural History, *Woods v. Carey*, and Contemporaneous Notice

On May 16, 2007, Plaintiff James Eric Mallett (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983.

On July 6, 2012, the Ninth Circuit found that the notice and warning of requirements for opposing a defendant’s motion for summary judgment should be issued contemporaneously when a defendant files a motion for summary judgment, as opposed to a year or more in advance. *Woods v. Carey*, --- F.3d ---, 2012 WL 2626912, at * 4 (9th Cir. Jul. 6, 2012).

On December 15, 2010, the Court issued a second informational order, advising Plaintiff that Defendant 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. 31. On April 30, 2012, Defendant filed a motion for summary judgment. Doc. 43. On May 23, 2012, Plaintiff filed an opposition to the motion for summary judgment. Doc. 46. On May 30, 2012, Defendant filed a Reply to Plaintiff’s opposition. Doc. 49. In order to address the time delay between

1 providing notice and the filing of Defendant's motion, the Court issued an amended second
2 informational order to Plaintiff, in accordance with *Woods*.

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

5 In light of the separately-issued amended second informational order and notice pursuant to
6 *Woods*, the Court will provide Plaintiff with two options upon receipt of the notice and this order.
7 Plaintiff may either (1) stand on his previously-filed opposition or (2) withdraw the existing
8 opposition and file an amended opposition.

9 Accordingly, it is HEREBY ORDERED that:

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

20
21 IT IS SO ORDERED.

22 Dated: July 23, 2012

23 
24 UNITED STATES MAGISTRATE JUDGE