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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO DIVISION**
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13 CHARLES AUSTIN PARKS,
14 CDCR #K-72151,

15 Plaintiff,

16 vs.

17 R. TAIT, et al.,
18

19 Defendants.
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Civil No. 08-1031 MLH (JMA)

**ORDER PROVIDING NOTICE
PURSUANT TO *KLINGELE* / *RAND*
TO PRO SE PRISONER
OF REQUIREMENTS FOR
OPPOSING SUMMARY
JUDGMENT**

21
22 **This notice is required to be given to Plaintiff pursuant to *Rand v. Rowland*, 154 F.3d**
23 **952 (9th Cir. 1998) (en banc) and *Klingele v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988):¹**
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25 ¹ *Klingele* and *Rand* together require the district court “as a bare minimum,” to ensure that a pro
26 se prisoner has “fair notice of the requirements of the summary judgment rule.” *Klingele*, 849 F.2d at
27 411 (quotations omitted). “It would not be realistic to impute to a prison inmate ... an instinctual
28 awareness that the purpose of a motion for summary judgment is to head off a full-scale trial by
conducting a trial in miniature, on affidavits, so that not submitting counter affidavits is the equivalent
of not presenting any evidence at trial.” *Jacobsen v. Filler*, 790 F.2d 1362, 1364 n.4 (9th Cir. 1986)
(internal quotation omitted). Actual knowledge or any level of legal sophistication does not obviate the
need for judicial explanation. *Rand*, 113 F.3d at 1523 (citing *Klingele*, 849 F.2d at 411-12). Thus, the

1 Defendants have filed a Motion to Dismiss and a Motion for Summary Judgment pursuant
2 to FED.R.CIV.P. 56 [Doc. No.64], by which they seek to have your case dismissed. A Motion
3 for Summary Judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted,
4 end your case.

5 Rule 56 tells you what you must do in order to oppose a Motion for Summary Judgment.
6 Generally, summary judgment must be granted when there is no genuine issue of material fact--
7 that is, if there is no real dispute about any fact that would affect the result of your case, and the
8 party who asked for summary judgment is entitled to judgment as a matter of law, which will
9 end your case. When a party you are suing makes a motion for summary judgment that is
10 properly supported by declarations (or other sworn testimony), you cannot simply rely on what
11 your complaint says. Instead, you must set out specific facts in declarations, depositions,
12 answers to interrogatories, or authenticated documents, as provided by Rule 56(e), that
13 contradict the facts shown in the defendants' declarations and documents and show that there
14 is a genuine issue of material fact for trial. If you do not submit your own evidence in
15 opposition, summary judgment, if appropriate, may be entered against you. If summary
16 judgment is granted, your case will be dismissed and there will be no trial.

17 **Conclusion and Order**

18 Accordingly, **IT IS ORDERED** that Defendants' Motion for Summary Judgment has
19 been calendared for hearing on **Monday, July 26, 2010**, in Courtroom 13.² Your Opposition
20 (including any supporting documents) must be filed with the Court and served on all parties by
21 **Monday, July 12, 2010**. Defendants are instructed that Plaintiff shall *not* be limited in the
22 amount of copies necessary to prepare his Opposition. *See* Cal. Code Regs. tit. 15, § 3162(c).
23 If you do not wish to oppose Defendants' Motion, you should file and serve a "Notice of Non-

24 _____
25 district court must ensure that the prisoner knows "about his 'right to file counter-affidavits or other
26 responsive materials and [to] alert[] [him] to the fact that his failure to so respond might result in the
entry of summary judgment against him.'" *Jacobsen*, 790 F.2d at 1365 n.8 (quoting *Klinge*, 849 F.2d
at 411).

27 ² While this case was randomly referred upon filing to the Honorable Magistrate Judge Jan M.
28 Adler pursuant to 28 U.S.C. § 636(b)(1)(B) for disposition, the Court has determined that a Report and
Recommendation regarding the disposition of Defendants' Motion for Summary Judgment is
unnecessary.

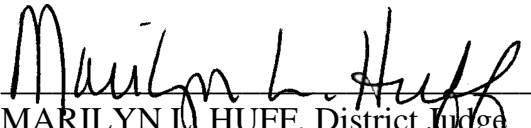
1 Opposition” by that same date to let both the Court and Defendants know that the Motion is
2 unopposed.

3 If you do file and serve an Opposition, Defendants must file and serve their Reply to that
4 Opposition by **Monday, July 19, 2010.**

5 At the time appointed for hearing, the Court will, in its discretion, consider Defendants’
6 Motion to Dismiss and Motion for Summary Judgment pursuant to FED.R.CIV.P. 56 as submitted
7 on the papers, and will issue its written opinion soon thereafter. Thus, unless otherwise ordered,
8 no appearances are required and no oral argument will be heard.

9 IT IS SO ORDERED.

10 Dated: June 4, 2010

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12 MARILYN L. HUFF, District Judge
13 UNITED STATES DISTRICT COURT
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