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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KEVIN GUNN,

Plaintiff,

v.

JAMES TILTON, et al.,

Defendants.

CASE NO. 1:08-cv-01038-LJO-GBC (PC)

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

(Doc. 41; Doc. 100; Doc. 104)

TWENTY-ONE DAY DEADLINE

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**I. Procedural History and *Woods v. Carey***

Plaintiff Kevin Gunn (“Plaintiff”) is a state prisoner proceeding in forma pauperis (“IFP”) in this civil rights action pursuant to 42 U.S.C. § 1983. On May 19, 2010, Defendants filed a motion for summary judgment. Doc. 41. On July 31, 2012, Plaintiff filed an opposition in response to the motion for summary judgment. Doc. 100; Doc. 101; Doc. 102; Doc. 103. On August 6, 2012, Defendants filed a notice pursuant to *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998). Doc. 104.

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. *Woods v. Carey*, --- F.3d ---, 2012 WL 2626912, at \* 4 (9th Cir. Jul. 6, 2012). In order to address the time delay between providing notice and the filing of

1 Defendants' motion, Defendants filed a notice to Plaintiff, in accordance with *Woods*.

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

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

7 Accordingly, it is HEREBY ORDERED that:

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

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19 IT IS SO ORDERED.

20 Dated: August 7, 2012

  
21 UNITED STATES MAGISTRATE JUDGE

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