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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

SERGIO ALEJANDRO GAMEZ,
CDCR #C-47759,

Plaintiff,

vs.

F. GONZALES, et al.,

Defendants.

Civil No. 08-1113 MJL (PCL)

ORDER:

**(1) VACATING HEARING DATE
AND RESETTING HEARING DATE
FOR JULY 18, 2011; AND**

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

This notice is required to be given to Plaintiff pursuant to *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) (en banc) and *KlingeLe v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988):¹

¹ *KlingeLe* and *Rand* together require the district court “as a bare minimum,” to ensure that a pro se prisoner has “fair notice of the requirements of the summary judgment rule.” *KlingeLe*, 849 F.2d at 411 (quotations omitted). “It would not be realistic to impute to a prison inmate ... an instinctual

1 Defendants have filed a Motion for Summary Judgment pursuant to FED.R.CIV.P. 56, by
2 which they seek to have your case dismissed. A Motion for Summary Judgment under Rule 56
3 of the Federal Rules of Civil Procedure will, if granted, end your case.

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

16 **Conclusion and Order**

17 Accordingly, **IT IS ORDERED** that:

18 (1) Plaintiff's Motion for Summary Judgment and Defendants' Cross-Motion for
19 Summary Judgment have been calendared for hearing on **Monday, July 18, 2011**, in Courtroom
20 14. The previous hearing date of June 6, 2011 is **VACATED**. Defendants' Opposition to
21 Plaintiff's Motion and Plaintiff's Opposition to Defendants Cross-Motion (including any
22 supporting documents) must be filed with the Court and served on all parties by **Tuesday, July**
23 **5, 2011**. Defendants are instructed that Plaintiff shall *not* be limited in the amount of copies

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25 awareness that the purpose of a motion for summary judgment is to head off a full-scale trial by
26 conducting a trial in miniature, on affidavits, so that not submitting counter affidavits is the equivalent
27 of not presenting any evidence at trial." *Jacobsen v. Filler*, 790 F.2d 1362, 1364 n.4 (9th Cir. 1986)
28 (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 *Klinge*, 849 F.2d at 411-12). Thus, the
district court must ensure that the prisoner knows "about his 'right to file counter-affidavits or other
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).

1 necessary to prepare his Opposition. See Cal. Code Regs. tit. 15, § 3162(c). If either party
2 chooses not to file an Opposition, that party should file and serve a “Notice of Non-Opposition”
3 by that same date to let both the Court and all parties know that the Motion is unopposed.

4 If either party does file and serve an Opposition, the other party must file and serve their
5 Reply to that Opposition by **Monday, July 11, 2011**.

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

10 **IT IS SO ORDERED.**

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12 DATED: May 26, 2011

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14 M. James Lorenz
15 United States District Court Judge
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