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**NOT FOR PUBLICATION**

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IN THE UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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Donnie Phillips,

No. 1:08-CV-1388-FJM

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Plaintiff,

**ORDER**

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vs.

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Timothy Turmezei, et al.,

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Defendants.

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Defendants have filed a Motion for Summary Judgment (doc. 52) pursuant to Rule 56 of the Federal Rules of Civil Procedure.

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**NOTICE--WARNING TO PLAINTIFF**

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***THIS NOTICE IS REQUIRED TO BE GIVEN TO YOU BY THE COURT***

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Pursuant to Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988) and Rand v.

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Rowland, 154 F.3d 952 (9th Cir. 1998), plaintiff is advised of the following requirements

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for opposing a motion for summary judgment made by defendants pursuant to Rule 56 of

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the Federal Rules of Civil Procedure. Such a motion is a request for an order for

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judgment on some or all of plaintiff's claims in favor of defendants without trial. See

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Rule 56(b). Defendants' motion will set forth the facts which defendants contend are not

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reasonably subject to dispute and that entitle defendant to judgment as a matter of law.

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See Rule 56(c).

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1 Plaintiff has the right to oppose a motion for summary judgment. To oppose the  
2 motion, plaintiff must show proof of his or her claims. Plaintiff may agree with the facts  
3 set forth in defendants' motion but argue that defendants are not entitled to judgment as a  
4 matter of law. Plaintiff may show defendants' facts are disputed in one or more of the  
5 following ways: (1) plaintiff may rely upon statements made under the penalty of perjury  
6 in the complaint if the complaint shows that plaintiff has personal knowledge of the  
7 matters stated and if plaintiff calls to the court's attention those parts of the complaint  
8 upon which plaintiff relies; (2) plaintiff may also serve and file affidavits or declarations<sup>1</sup>  
9 setting forth the facts which plaintiff believes prove plaintiff's claims (the persons who  
10 sign the affidavit or declaration must have personal knowledge of the facts stated); (3)  
11 plaintiff may also rely upon written records but plaintiff must prove that the records are  
12 what plaintiff claims they are<sup>2</sup>; (4) plaintiff may also rely upon all or any part of the  
13 transcript of one or more depositions, answers to interrogatories, or admissions obtained  
14 in this proceeding. If plaintiff uses affidavits or declarations they must be signed, or else  
15 they will be stricken. Should plaintiff fail to contradict defendants' motion with  
16 affidavits, declarations, or other evidence, defendants' evidence will be taken as truth, and  
17 final judgment may be entered without a full trial. See Rule 56(e).

18 If there is some good reason why such facts are not available to plaintiff when  
19 required to oppose such a motion, the court will consider a request to postpone  
20 considering defendants' motion. See Rule 56(f). If plaintiff does not serve and file a  
21 request to postpone consideration of defendants' motion or written opposition to the  
22 motion, the court may consider plaintiff's failure to act as a waiver of opposition to

23 <sup>1</sup> An affidavit is a written declaration or statement of facts, made voluntarily, and  
24 confirmed by the oath or affirmation of the party making it, taken before an officer having  
25 authority to administer such oath. An unsworn declaration has the same effect as an affidavit,  
26 provided that it is dated and signed under penalty of perjury, as follows: "I declare under  
27 penalty of perjury that the foregoing is true and correct." 28 U.S.C. § 1746. Affidavits and  
28 declarations must be made on personal knowledge and must set forth facts as would be  
admissible in evidence. See Rule 56(e).

<sup>2</sup> Sworn or certified copies of all papers referred to in an affidavit must be attached  
to the affidavit and served on the opposing party. Rule 56(e).

1 defendants' motion. Plaintiff's waiver of opposition to defendants' motion may result in  
2 the entry of summary judgment against plaintiff.

3 Rule 260, LRCiv. also requires that you include with your response to the Motion  
4 for Summary Judgment a separate statement of facts in opposition to the Motion for  
5 Summary Judgment. Your separate statement of facts must include numbered paragraphs  
6 corresponding to the defendants' ("moving party's") separate statement of facts:

7 (b) **Opposition.** Any party opposing a motion for summary  
8 judgment or summary adjudication shall reproduce the itemized facts in the  
9 Statement of Undisputed Facts and admit those facts that are undisputed  
10 and deny those that are disputed, including with each denial a citation to the  
11 particular portions of any pleading, affidavit, deposition, interrogatory  
12 answer, admission, or other document relied upon in support of that denial.  
13 The opposing party may also file a concise "Statement of Disputed Facts,"  
14 and the source thereof in the record, of all additional material facts as to  
15 which there is a genuine issue precluding summary judgment or  
16 adjudication. The opposing party shall be responsible for the filing of all  
17 evidentiary documents cited in the opposing papers. If a need for discovery  
18 is asserted as a basis for denial of the motion, the party opposing the motion  
19 shall provide a specification of the particular facts on which discovery is to  
20 be had or the issues on which discovery is necessary.

21 LRCiv. 260(b).

22 You must timely respond to all motions. The opposition time for the motion for  
23 summary judgment is 21 days after the filing of the motion, plus three days allotted for  
24 mailing. The failure of any party to comply with this order, the Federal Rules of Civil  
25 Procedure, or the Local rules of the Court, may result in the imposition of sanctions  
26 including, but not limited to, dismissal of the action or entry of default. See Brydges v.  
27 Lewis, 18 F.3d 651 (9th Cir. 1994) (per curiam).

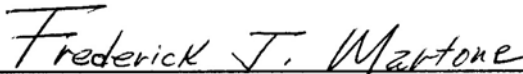
28 **IT IS ORDERED** that plaintiff must file a response to defendants' Motion for  
Summary Judgment, together with a separate Statement of Facts and supporting affidavits  
or other appropriate exhibits, no later **December 20, 2010**, with three days afforded for  
mailing.

**IT IS FURTHER ORDERED** that defendants may file a reply within 7 days after  
service of Plaintiff's response.

**IT IS FURTHER ORDERED** that the Motion for Summary Judgment will be

1 deemed ready for decision without oral argument on the day following the date set for  
2 filing a reply unless otherwise ordered by the Court.

3 DATED this 7<sup>th</sup> day of December, 2010.

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 Frederick J. Martone  
7 United States District Judge  
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