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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VIRGIL E. HOLT,
Plaintiff,

CASE NO. 1:09-cv-00800-AWI-GBC (PC)

v.

R. NICHOLAS, et al.,
Defendants.

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

(Doc. 79; Doc. 86)

_____ / TWENTY-ONE DAY DEADLINE

I. Procedural History and *Woods v. Carey*

Plaintiff Virgil E. Holt, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 4, 2009. Doc. 1. On June 11, 2012, Defendants filed a motion for summary judgment. Doc. 79. On August 1, 2012, Defendants filed a notice pursuant to *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998). Doc. 86.

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 Defendants’ motion, Defendants filed a notice to Plaintiff, in accordance with *Woods*. Doc. 86.

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

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

6 Accordingly, it is HEREBY ORDERED that:

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

18 IT IS SO ORDERED.

19 Dated: August 8, 2012


UNITED STATES MAGISTRATE JUDGE

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