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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DENELL CAVER,

Case No. 1:11-cv-01025-AWI-SKO (PC)

Plaintiff,

ORDER REQUIRING DEFENDANTS TO
SERVE PLAINTIFF WITH *RAND* NOTICE
WITHIN TEN DAYS AND PROVIDING
PLAINTIFF WITH OPPORTUNITY TO FILE
AMENDED OPPOSITION

v.

E. GOMEZ, et al.,

Defendants.

(Docs. 76 and 78)

Plaintiff Denell Caver (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 20, 2011. This action is proceeding on Plaintiff’s second amended complaint, filed on April 10, 2012, against Defendants Gomez, Stark, and Garcia (“Defendants”) for acting with deliberate indifference to Plaintiff’s safety, in violation of the Eighth Amendment of the United States Constitution.

On January 23, 2015, Defendants filed a motion for summary judgment which included the representation that a *Rand* notice would be served concurrently with the motion. *Woods v. Carey*, 684 F.3d 934, 935-36 (9th Cir. 2012); *Rand v. Rowland*, 154 F.3d 952, 960-61 (9th Cir. 1998). On February 11, 2015, Plaintiff filed an opposition in which he stated he was not served with a *Rand* notice, and the Court was not able to locate the notice, either. Plaintiff is entitled to service of the notice concurrently with the motion, *Woods*, 684 F.3d at 938-41; *Rand*, 154 F.3d at 960-61, and this deficiency entitles him to an opportunity to file an amended opposition, *Labatad v. Corrections Corp. of America*, 714 F.3d 1155, 1159 (9th Cir. 2013) (per curiam).

1 Accordingly, it is HEREBY ORDERED that:

2 1. Within **ten (10) days** from the date of service of this order, Defendants shall serve
3 Plaintiff with a *Rand* notice;

4 2. Plaintiff may either (1) stand on the opposition he filed on February 11, 2015, or
5 (2) file an amended opposition that is complete within itself;¹ and

6 3. If Plaintiff elects to file an amended opposition once he receives the *Rand* notice,
7 he must do so within **thirty (30) days** from the date of service of the notice.

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9 IT IS SO ORDERED.

10 Dated: February 19, 2015

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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28 ¹ Plaintiff is not required to file an amended opposition, but he is entitled to the opportunity to do so and the Court will not consider two separate oppositions. Therefore, if Plaintiff chooses to file an amended opposition, the opposition filed on February 11, 2015, will not be considered and it will be ordered stricken from the record.