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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VERNON WAYNE McNEAL,

Plaintiff,

No. 2:05-cv-00441 GEB EFB P

vs.

EVERT, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Currently pending are the undersigned’s findings and recommendations to resolve defendants’ May 30, 2008 motion for summary judgment. In those findings and recommendations, the undersigned recommends that defendants’ motion be granted in part. However, in light of recent Ninth Circuit case authority and to ensure that plaintiff has “fair, timely and adequate notice” of what is required of him to oppose defendants’ motion for summary judgment, the court must vacate those findings and recommendations, and deny the motion entirely without prejudice to its re-filing, and to concurrently serving plaintiff with notice of the requirements for opposing a motion for summary judgment. *See Woods v. Carey*, ___ F.3d ___, Nos. 09-15548, 09-16113, 2012 U.S. App. LEXIS 13779 (9th Cir. July 6, 2012) (“The only satisfactory practice to ensure that prisoners receive adequate notice pursuant to *Rand* and

1 Wyatt is to provide such notice *at the time that the relevant motions are filed.*" (emphasis
2 added)); *Rand v. Rowland*, 154 F.3d 952, 960 (1998) (en banc) (requiring that the notice state
3 that the court has required that it be given and that it be set forth in a separate document that is
4 served with the moving papers).

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. The June 29, 2012 findings and recommendations (Dckt. No. 138) are vacated.

7 2. Defendants' motion for summary judgment (Dckt. No. 83) is denied without
8 prejudice.

9 3. Within thirty days of the date of this order, defendants may re-file and re-serve their
10 motion for summary judgment. Defendants must contemporaneously serve with the motion, but
11 in a separate document, a copy of the attached "*Rand* Notice," which provides plaintiff with
12 notice of the requirements for opposing a motion for summary judgment. **Failure to do so may**
13 **constitute grounds for denial of the motion.**

14 4. If defendants re-serve their motion, plaintiff may thereafter file and serve an amended
15 opposition within thirty days. If plaintiff fails to file an amended opposition, the court will
16 consider his existing opposition in resolving defendants' motion.

17 5. If plaintiff files an amended opposition, defendants may thereafter file an amended
18 reply within fourteen days.

19 6. Plaintiff's July 17, 2012 motion for an extension of time to file objections to the June
20 29, 2012 findings and recommendations is denied as moot.

21 DATED: July 31, 2012.

22 
23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
25
26

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE EASTERN DISTRICT OF CALIFORNIA

4 VERNON WAYNE McNEAL,

5 Plaintiff,

No. CIV S-05-441 GEB EFB P

6 vs.

7 EVERT, et al.,

8 Defendants.

RAND NOTICE*

9 _____ /
10 The court requires that you be provided with this notice regarding the requirements for
11 opposing a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

12 When a defendant moves for summary judgment, the defendant is requesting that the
13 court grant judgment in defendant's favor without a trial. If there is no real dispute about any
14 fact that would affect the result of your case, the defendant who asked for summary judgment is
entitled to judgment as a matter of law, which will end your case against that defendant. A
motion for summary judgment will set forth the facts that the defendant asserts are not
reasonably subject to dispute and that entitle the defendant to judgment.

15 To oppose a motion for summary judgment, you must show proof of your claims. To do
16 this, you may refer to specific statements made in your complaint if you signed your complaint
17 under penalty of perjury and if your complaint shows that you have personal knowledge of the
18 matters stated. You may also submit declarations setting forth the facts that you believe prove
19 your claims, as long as the person who signs the declaration has personal knowledge of the facts
20 stated. You may also submit all or part of deposition transcripts, answers to interrogatories,
21 admissions, and other authenticated documents. For each of the facts listed in the defendant's
22 Statement of Undisputed Facts, you must admit the facts that are undisputed, and deny the facts
that are disputed. If you deny a fact, you must cite to the proof that you rely on to support your
denial. *See* L.R. 260(b). If you fail to contradict the defendant's evidence with your own
evidence, the court may accept the defendant's evidence as the truth and grant the motion. The
court will consider a request to postpone consideration of the defendant's motion if you submit a
declaration showing that for a specific reason you cannot present such facts in your opposition.
If you do not respond to the motion, the court may consider your failure to act as a waiver of
your opposition. *See* L.R. 230(1).

23 If the court grants the defendant's motion, whether opposed or unopposed, judgment will
24 be entered for that defendant without a trial and the case will be closed as to that defendant.

25 _____
26 * This notice is provided to ensure that you, a pro se prisoner plaintiff, "have fair, timely
and adequate notice of what is required" to oppose a motion for summary judgment. *See Woods*
v. Carey, ___ F.3d ___, Nos. 09-15548, 09-16113, 2012 U.S. App. LEXIS 13779, at *1 (9th Cir.
July 6, 2012); *Rand v. Rowland*, 154 F.3d 952, 957 (9th Cir. 1998)