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

KEVIN GALIK,

Plaintiff,

No. 2: 09-cv-0152 WBS KJN P

vs.

A. NANGALAMA, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action filed pursuant to 42 U.S.C. § 1983. Presently pending is defendants' motion for summary judgment, which is now fully briefed by the parties. However, pursuant to the Ninth Circuit's recent decision in Woods v. Carey, __ F.3d __, 2012 WL 2626912 (9th Cir., July 06, 2012), it is necessary to deem the pending motion re-noticed as of the filing date of this order, and to provide contemporaneous notice to plaintiff of the requirements for opposing a motion for summary judgment.

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1 The Ninth Circuit requires that pro se prisoner plaintiffs be provided notice of the
2 requirements for opposing a motion for summary judgment “at the time the defendants’ motions
3 are filed.” Woods, 2012 WL 2626912 at *1, *5, citing Rand v. Rowland, 154 F.3d 952, (9th Cir.
4 1998) (en banc); see also Klinge v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988). The
5 district court may provide such notice if defendants fail to do so. Woods, 2012 WL 2626912 at
6 *5. When provided by defendant, the notification must be set forth in “a separate document,
7 served with the moving papers, and state[] that the court has required that it be given.” Rand,
8 154 F.3d at 960; Woods, 2012 WL 2626912 at *4. The Ninth Circuit held that these
9 requirements apply to both “pending and future cases.” Woods at *6.

10 In the present case, defendants filed a motion for summary judgment without
11 apparently providing the requisite notice to plaintiff. (See Dkt. No. 69.) Plaintiff opposed the
12 motion, and defendant filed a reply. (Dkt. Nos. 73, 74.) In light of Woods, this court finds it
13 necessary to deem defendants’ motion for summary judgment re-noticed as of the filing date of
14 this order, and to contemporaneously notify plaintiff of the requirements for opposing the
15 motion, as set forth below.

16 For the foregoing reasons, IT IS HEREBY ORDERED that:

17 1. The motion for summary judgment filed by defendants on April 18, 2012 (Dkt.
18 No. 69), is deemed re-noticed as of the filing date of this order, and shall be so designated on the
19 docket by the Clerk of Court.

20 2. Plaintiff is hereby informed of the following requirements for opposing a
21 motion for summary judgment:

22 Pursuant to Woods v. Carey, ___ F.3d ___, 2012 WL 2626912 (9th
23 Cir., July 06, 2012, Rand v. Rowland, 154 F.3d 952, 957 (9th Cir.
24 1998) (en banc), and Klinge v. Eikenberry, 849 F.2d 409 (9th
25 Cir. 1988), the following requirements apply for opposing a motion
26 for summary judgment pursuant to Fed. R. Civ. P. 56. Such a
motion is a request for an order for judgment in favor of the
defendant without trial. A defendant’s motion for summary
judgment will set forth the facts that the defendant contends are not
reasonably subject to dispute and that entitle the defendant to

1 judgment.

2 To oppose a motion for summary judgment, plaintiff must show
3 proof of his or her claims. Plaintiff may do this in one or more of
4 the following ways. Plaintiff may rely on plaintiff's statements
5 made under penalty of perjury in the complaint if the complaint
6 shows that plaintiff has personal knowledge of the matters stated
7 and plaintiff specifies those parts of the complaint on which
8 plaintiff relies. Unsigned affidavits or declarations will be
9 stricken, and affidavits or declarations not signed under penalty of
10 perjury have no evidentiary value. Plaintiff may serve and file one
11 or more affidavits or declarations setting forth the facts that
12 plaintiff believes prove plaintiff's claims; the person who signs an
13 affidavit or declaration must have personal knowledge of the facts
14 stated. Plaintiff may rely on written records, but plaintiff must
15 prove that the records are what plaintiff asserts they are. Plaintiff
16 may rely on all or any part of the transcript of one or more
17 depositions, answers to interrogatories, or admissions obtained in
18 this proceeding.

19 If plaintiff fails to contradict the defendant's evidence with
20 counteraffidavits or other admissible evidence, the court may
21 accept defendant's evidence as true and grant the motion. If there
22 is some good reason why such facts are not available to plaintiff
23 when required to oppose a motion for summary judgment, the
24 court will consider a request to postpone consideration of the
25 defendant's motion. See Fed. R. Civ. P. 56(d).

26 If plaintiff does not serve and file a written opposition to the
27 motion, or a request to postpone consideration of the motion, the
28 court may consider the failure to act as a waiver of opposition to
29 the defendant's motion. See L.R. 230(l).


30 If the court grants the motion for summary judgment, whether
31 opposed or unopposed, judgment will be entered for the defendant
32 without a trial and the case will be closed as to that defendant. In
33 the present case, summary judgment for defendant would end the
34 entire case.

35 3. Within twenty-one days after the service date of this order, plaintiff may file an
36 opposition to defendants' motion for summary judgment, L.R. 230(l), by filing and serving: (a) a
37 new comprehensive opposition to the motion, including all pertinent exhibits; (b) a supplemental
38 opposition, and any new exhibits; OR (c) a statement that plaintiff chooses to rely on his
39 previously-filed opposition and exhibits.

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1 4. Within seven days after the date of service of the opposition, defendants may
2 file and serve: (a) a new comprehensive reply to plaintiff's opposition; (b) a supplemental reply;
3 or (c) a statement that defendants choose to rely on their previously-filed reply.

4 DATED: July 18, 2012

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7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE

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