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

JERRY W. BAKER,

Plaintiff,

No. 2:10-cv-1208 GEB KJN P

vs.

C/O SMITH, et al.,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 7, 2012, the undersigned filed findings and recommendations that were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. On July 6, 2012, plaintiff filed an unverified document entitled “Response to Summary Judgment,” raising specific factual allegations as to defendant Smith only. (Dkt. No. 89.) On July 9, 2012, defendants filed a reply. (Dkt. No. 90.) Defendants contend that plaintiff’s “opposition” is untimely, and if construed as objections, is “legally defective and completely inadequate.” (Id. at 2.)

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1 However, recently the Ninth Circuit issued an order requiring that all prisoners
2 proceeding pro se must be provided contemporaneous notice of certain requirements for
3 opposing a motion for summary judgment. Woods v. Carey, __ F.3d __, 2012 WL 2626912,*1,
4 *5, (9th Cir. July 6, 2012), citing Rand v. Rowland, 154 F.3d 952, (9th Cir. 1998) (en banc); see
5 also Klingele v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988). The district court may
6 provide such notice if defendants fail to do so. Woods, 2012 WL 2626912 at *5. When
7 provided by defendant, the notification must be set forth in “a separate document, served with the
8 moving papers, and state[] that the court has required that it be given.” Rand, 154 F.3d at 960;
9 Woods, 2012 WL 2626912 at *4. These requirements apply to both “pending and future cases.”
10 Woods at *6.

11 The instant motion for summary judgment was filed on October 12, 2011, and
12 apparently contained no notice under Rand or Klingele. (Dkt. No. 71.) Although the court
13 earlier provided notice concerning the requirements of Rand and Klingele, it was issued on
14 September 20, 2010, over a year before the motion was filed. (Dkt. No. 22.) Such is not fair
15 notice under Woods. Id. at *1. In addition, as noted by defendants, plaintiff has been in and out
16 of jail since the filing of this action. This raises concerns that plaintiff may not have retained, or
17 have current access to, defendants’ motion. Woods at *5. Therefore, the court finds that the
18 June 7, 2012 findings and recommendations must be vacated, and defendants’ motion for
19 summary judgment is denied without prejudice to its re-filing, so long as the renewed motion is
20 accompanied by the notice required by Woods, as set forth below.


21 Once the motion is re-filed, the parties are cautioned that this court is not inclined
22 to entertain requests for extensions of time.

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. The June 7, 2012 findings and recommendations (dkt. no. 86) are vacated;
25 2. Defendants’ October 12, 2011 motion for summary judgment (dkt. no. 71) is
26 denied without prejudice;

1 3. Within thirty days from the date of this order, defendants shall file and re-serve
2 the motion for summary judgment, accompanied by the attached notice to plaintiff under Rand.
3 Pursuant to Local Rule 230(1), plaintiff shall file his opposition within twenty-one days from the
4 date defendants re-file their motion. Any reply shall be filed fourteen days thereafter.

5 DATED: July 17, 2012

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7 
8 KENDALL J. NEWMAN
9 UNITED STATES MAGISTRATE JUDGE

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