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

DEAVON E. TORRENCE,

Plaintiff,

No. 2:10-cv-1222 KJM KJN P

vs.

F. HSEUH, et al.,

Defendants.

ORDER

_____ /

On June 22, 2012, defendants filed a motion for summary judgment. The notice included with the motion advised plaintiff of his obligations under Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc), and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988), and directed plaintiff's attention to the court's December 7, 2010 order which contained specific information as to plaintiff's obligations for opposing a motion for summary judgment.

However, on July 6, 2012, the Ninth Circuit issued an order requiring that all prisoners proceeding pro se must be provided contemporaneous notice of certain requirements for opposing a motion for summary judgment. Woods v. Carey, 2012 WL 2626912,*1 (9th Cir. July 06, 2012), citing Rand and Klinge. The district court may provide such notice if defendants fail to do so. Woods, 2012 WL 2626912 at *5. When provided by defendant, the notification must be set forth in "a separate document, served with the moving papers, and state[]

1 that the court has required that it be given.” Rand, 154 F.3d at 960; Woods, 2012 WL 2626912
2 at *4. These requirements apply to both “pending and future cases.” Woods at *6.

3 On July 10, 2012, defendants served a supplemental notice for the motion for
4 summary judgment, in an effort to comply with Woods. In an abundance of caution, the court
5 will provide plaintiff with the notice required under Woods, and will grant plaintiff an extension
6 of time to file an opposition.

7 IT IS HEREBY ORDERED that:

8 1. Plaintiff is hereby informed of the following requirements for opposing a
9 motion for summary judgment:

10 Rand Notice¹

11 Plaintiff is informed that the following requirements apply for
12 opposing a motion for summary judgment pursuant to Fed. R. Civ.
13 P. 56. Such a motion is a request for an order for judgment in
14 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 judgment.

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

24
25 ¹ This notice is provided to ensure that you, a pro se prisoner plaintiff, “have fair, timely
26 and adequate notice of what is required” to oppose a motion for summary judgment. See Woods
v. Carey, 2012 WL 2626912 at *1 (9th Cir. July 6, 2012); Rand v. Rowland, 154 F.3d 952, 957
(9th Cir. 1998) (en banc), and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988).


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

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

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

11 2. Plaintiff is granted thirty days from the date of this order in which to file an
12 opposition. Defendants' reply, if any, shall be filed within seven days thereafter.

13 DATED: July 18, 2012

14 
15 _____
KENDALL J. NEWMAN
16 UNITED STATES MAGISTRATE JUDGE

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