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

TRI D. NGUYEN,

Plaintiff,

No. 2: 10-cv-1461 WBS KJN P

vs.

BARTOS, 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. On May 30, 2012, the undersigned recommended that defendants’ summary judgment motion be granted. 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 vacate the May 30, 2012 findings and recommendations, deem defendants’ summary judgment 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.

The Ninth Circuit requires that pro se prisoner plaintiffs be provided notice of the requirements for opposing a motion for summary judgment “at the time the defendants’ motions are filed.” Woods, 2012 WL 2626912 at \*1, \*5, citing Rand v. Rowland, 154 F.3d 952, (9th Cir. 1998) (en banc); see also Klinge v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988). The

1 district court may provide such notice if defendants fail to do so. Woods, 2012 WL 2626912 at  
2 \*5. When provided by defendant, the notification must be set forth in “a separate document,  
3 served with the moving papers, and state[] that the court has required that it be given.” Rand,  
4 154 F.3d at 960; Woods, 2012 WL 2626912 at \*4. The Ninth Circuit held that these  
5 requirements apply to both “pending and future cases.” Woods at \*6.

6 In the present case, defendants filed a motion for summary judgment without  
7 apparently providing the requisite notice to plaintiff. (See Dkt. No. 48.) Plaintiff did not oppose  
8 defendants’ motion. In light of Woods, this court finds it necessary to deem defendants’ motion  
9 for summary judgment re-noticed as of the filing date of this order, and to contemporaneously  
10 notify plaintiff of the requirements for opposing the motion, as set forth below.

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

12 1. The motion for summary judgment filed by defendants on September 23, 2011  
13 (Dkt. No. 48) is deemed re-noticed as of the filing date of this order, and shall be so designated  
14 on the docket by the Clerk of Court.

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

17 Pursuant to Woods v. Carey, \_\_\_ F.3d \_\_\_, 2012 WL 2626912 (9th  
18 Cir., July 06, 2012, Rand v. Rowland, 154 F.3d 952, 957 (9th Cir.  
19 1998) (en banc), and Klinge v. Eikenberry, 849 F.2d 409 (9th  
20 Cir. 1988), the following requirements apply for opposing a motion  
21 for summary judgment pursuant to Fed. R. Civ. P. 56. Such a  
22 motion is a request for an order for judgment in favor of the  
23 defendant without trial. A defendant’s motion for summary  
24 judgment will set forth the facts that the defendant contends are not  
25 reasonably subject to dispute and that entitle the defendant to  
26 judgment.

To oppose a motion for summary judgment, plaintiff must show  
proof of his or her claims. Plaintiff may do this in one or more of  
the following ways. Plaintiff may rely on plaintiff’s statements  
made under penalty of perjury in the complaint if the complaint  
shows that plaintiff has personal knowledge of the matters stated  
and plaintiff specifies those parts of the complaint on which  
plaintiff relies. Unsigned affidavits or declarations will be  
stricken, and affidavits or declarations not signed under penalty of

1 perjury have no evidentiary value. Plaintiff may serve and file one  
2 or more affidavits or declarations setting forth the facts that  
3 plaintiff believes prove plaintiff's claims; the person who signs an  
4 affidavit or declaration must have personal knowledge of the facts  
5 stated. Plaintiff may rely on written records, but plaintiff must  
6 prove that the records are what plaintiff asserts they are. Plaintiff  
7 may rely on all or any part of the transcript of one or more  
8 depositions, answers to interrogatories, or admissions obtained in  
9 this proceeding.

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

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


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

26 3. Within twenty-one days after the service date of this order, plaintiff may file an  
opposition to defendants' motion for summary judgment, L.R. 230(l).

4. Within seven days after the date of service of the opposition, defendants may  
file a reply.

5. The May 30, 2012 findings and recommendations (Dkt. No. 59) are vacated.

DATED: July 18, 2012

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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