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

CARL WICKLUND,

Plaintiff,

No. 2: 10-cv-2161 JAM KJN P

vs.

QUEEN OF THE VALLEY  
MEDICAL CENTER, 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 31, 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 31, 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.

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

7 In the present case, defendants filed a motion for summary judgment without  
8 apparently providing the requisite notice to plaintiff. (See Dkt. No. 27.) Plaintiff opposed the  
9 motion and defendants filed a reply. (Dkt. Nos. 33, 35.) In light of Woods, this court finds it  
10 necessary to deem defendants’ motion for summary judgment re-noticed as of the filing date of  
11 this order, and to contemporaneously notify plaintiff of the requirements for opposing the  
12 motion, as set forth below.

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

14 1. The motion for summary judgment filed by defendants on December 28, 2011  
15 (Dkt. No. 27) is deemed re-noticed as of the filing date of this order, and shall be so designated  
16 on the docket by the Clerk of Court.

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

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

1 shows that plaintiff has personal knowledge of the matters stated  
2 and plaintiff specifies those parts of the complaint on which  
3 plaintiff relies. Unsigned affidavits or declarations will be  
4 stricken, and affidavits or declarations not signed under penalty of  
5 perjury have no evidentiary value. Plaintiff may serve and file one  
6 or more affidavits or declarations setting forth the facts that  
7 plaintiff believes prove plaintiff's claims; the person who signs an  
8 affidavit or declaration must have personal knowledge of the facts  
9 stated. Plaintiff may rely on written records, but plaintiff must  
10 prove that the records are what plaintiff asserts they are. Plaintiff  
11 may rely on all or any part of the transcript of one or more  
12 depositions, answers to interrogatories, or admissions obtained in  
13 this proceeding.

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

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

25 If the court grants the motion for summary judgment, whether  
26 opposed or unopposed, judgment will be entered for the defendant  
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.

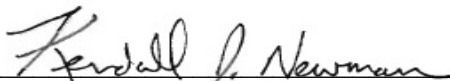
3. Within twenty-one days after the service date of this order, plaintiff may file an  
opposition to defendants' motion for summary judgment, L.R. 230(l), by filing and serving: (a) a  
new comprehensive opposition to the motion, including all pertinent exhibits; (b) a supplemental  
opposition, and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

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

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5. The May 31, 2012 findings and recommendations (Dkt. No. 36) are vacated.

DATED: July 18, 2012

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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