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

ANDREW RAMIREZ,

Plaintiff,

No. 2: 11-cv-0045 KJN P

vs.

D. SWINGLE, 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 July 20, 2012, defendants filed a summary judgment motion.

The Ninth Circuit requires that pro se prisoner plaintiffs be provided with notice of the requirements for opposing a motion for summary judgment “at the time the defendants’ motions are filed.” Woods v. Carey, __ F.3d __, 2012 WL 2626912 at * 5 (9th Cir., July 6, 2012), 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 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[] that the court has required that it be given.” Rand, 154 F.3d at 960; Woods, 2012 WL 2626912

1 at *4. The Ninth Circuit held that these requirements apply to both “pending and future cases.”
2 Woods at *6.

3 In the present case, defendants’ motion contains notice to plaintiff of the
4 requirements for opposing summary judgment motions. However, in an abundance of caution,
5 the court issues the instant order containing this notice.

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

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

9 Pursuant to Woods v. Carey, ___ F.3d ___, 2012 WL 2626912 (9th
10 Cir., July 06, 2012, Rand v. Rowland, 154 F.3d 952, 957 (9th Cir.
11 1998) (en banc), and Klinge v. Eikenberry, 849 F.2d 409 (9th
12 Cir. 1988), the following requirements apply for opposing a motion
13 for summary judgment pursuant to Fed. R. Civ. P. 56. Such a
14 motion is a request for an order for judgment in favor of the
15 defendant without trial. A defendant’s motion for summary
16 judgment will set forth the facts that the defendant contends are not
17 reasonably subject to dispute and that entitle the defendant to
18 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
24 or more affidavits or declarations setting forth the facts that
25 plaintiff believes prove plaintiff’s claims; the person who signs an
26 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.

If plaintiff fails to contradict the defendant’s evidence with
counteraffidavits or other admissible evidence, the court may
accept defendant’s evidence as true and grant the motion. If there
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

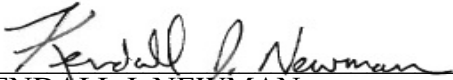
1 defendant's motion. See Fed. R. Civ. P. 56(d).

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

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

11 2. Plaintiff's opposition to defendant's summary judgment motion is due within
12 twenty-one days of the date of this order; defendants' reply to plaintiff's opposition is due seven
13 days thereafter.

14 DATED: July 25, 2012

15 
16 _____
17 KENDALL J. NEWMAN
18 UNITED STATES MAGISTRATE JUDGE

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