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

GILBERTO SANCHEZ,

Plaintiff,

v.

JOSEPH CHUDY,

Defendant.

No. C-10-4882 TEH (PR)

ORDER GIVING ADDITIONAL NOTICE;  
DEADLINE FOR PARTIES TO FILE  
SUPPLEMENTAL MATERIALS

On June 26, 2012, Defendant Joseph Chudy filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Doc #23. According to the Court's February 22, 2011 Order of Service, Plaintiff must file his opposition to the summary judgment no later than thirty days after service of Defendant's motion. Doc. #5. Defendant served his motion on Plaintiff more than thirty days ago and Plaintiff has not filed an opposition. Before the Court rules on Defendant's motion, it provides additional notice to Plaintiff.

In Rand v. Rowland, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and Klinge v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988), the Ninth Circuit held that pro se prisoner litigants

1 must be given a warning about the requirements of Rule 56 of the  
2 Federal Rules of Civil Procedure pertaining to summary judgment and  
3 the consequences of such a motion. In Wyatt v. Terhune, 315 F.3d  
4 1108, 1120 n. 4 (9th Cir. 2003), the court required a somewhat  
5 similar warning about unenumerated motions to dismiss for failure to  
6 exhaust. This court routinely provides these warnings in its orders  
7 of service for prisoner pro se civil rights complaints.

8           The Ninth Circuit now has held that the notices must be  
9 provided at the time the motions are filed, and that notices given  
10 in advance of such motions are not sufficient. Woods v. Carey, 684  
11 F.3d 934, 939-40 (9th Cir. 2012). The new rule applies to all  
12 pending cases. Id. at 941. In this case Defendants has moved for  
13 summary judgment. Plaintiff has not opposed the motion and the time  
14 for him to do so has passed. Because the motion for summary  
15 judgment was filed before the opinion in Woods came down, the Rand  
16 notice was not given with the motion as required by Woods.


17           Plaintiff shall take notice of the following warning:  
18 Plaintiff is advised that a motion for summary judgment under Rule  
19 56 of the Federal Rules of Civil Procedure will, if granted, end  
20 your case. Rule 56 tells you what you must do in order to oppose a  
21 motion for summary judgment. Generally, summary judgment must be  
22 granted when there is no genuine issue of material fact - that is,  
23 if there is no real dispute about any fact that would affect the  
24 result of your case, the party who asked for summary judgment is  
25 entitled to judgment as a matter of law, which will end your case.  
26 When a party you are suing makes a motion for summary judgment that  
27 is properly supported by declarations (or other sworn testimony),  
28

1 you cannot simply rely on what your complaint says. Instead, you  
2 must set out specific facts in declarations, depositions, answers to  
3 interrogatories, or authenticated documents, as provided in Rule  
4 56(e), that contradicts the facts shown in the Defendants'  
5 declarations and documents and show that there is a genuine issue of  
6 material fact for trial. If you do not submit your own evidence in  
7 opposition, summary judgment, if appropriate, may be entered against  
8 you. If summary judgment is granted, your case will be dismissed  
9 and there will be no trial. Rand, 154 F.3d at 962-63 (App. A).

10 If, after considering the above warning, Plaintiff wishes  
11 to file an opposition, he shall do so by September 7, 2012. If  
12 Plaintiff files an opposition, Defendants may file a reply within  
13 fourteen days thereafter.

14 IT IS SO ORDERED.

15 DATED 08/20/2012

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\_\_\_\_\_  
17 THELTON E. HENDERSON  
18 United States District Judge

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