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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDIBERTO CABRERA,)	No. C 11-2676 JSW (PR)
Plaintiff,)	ORDER PROVIDING PLAINTIFF NOTICE AND WARNING
v.)	
OFFICER DEE, et al.,)	
Defendants.)	
)	

Plaintiff, a county jail inmate, filed this pro se civil rights action under 42 U.S.C. § 1983. Defendants have filed a motion for summary judgment. Pursuant to *Woods v. Carey*, No. 09-15548, slip op. 7871, 7884-85 (9th Cir. July 6, 2012), the following notices and warnings are provided to Plaintiff for a second time.

Plaintiff must read the following “NOTICE -- WARNING (SUMMARY JUDGMENT),” which is provided to him pursuant to *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). To the extent defendants argue that Plaintiff failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997e(a), plaintiff should also read the “NOTICE -- WARNING (EXHAUSTION)” which is provided to him pursuant to *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003):

1 **NOTICE -- WARNING (SUMMARY JUDGMENT)**

2 If defendants move for summary judgment, they are seeking to have your case
3 dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil
4 Procedure will, if granted, end your case.

5 Rule 56 tells you what you must do in order to oppose a motion for summary
6 judgment. Generally, summary judgment must be granted when there is no genuine issue
7 of material fact--that is, if there is no real dispute about any fact that would affect the
8 result of your case, the party who asked for summary judgment is entitled to judgment as
9 a matter of law, which will end your case. When a party you are suing makes a motion
10 for summary judgment that is properly supported by declarations (or other sworn
11 testimony), you cannot simply rely on what your complaint says. Instead, you must set
12 out specific facts in declarations, depositions, answers to interrogatories, or authenticated
13 documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's
14 declarations and documents and show that there is a genuine issue of material fact for
15 trial. If you do not submit your own evidence in opposition, summary judgment, if
16 appropriate, may be entered against you. If summary judgment is granted, your case will
17 be dismissed and there will be no trial.

18 **NOTICE -- WARNING (EXHAUSTION)**

19 If defendants file an unenumerated motion to dismiss for failure to exhaust, they
20 are seeking to have your case dismissed. If the motion is granted it will end your case.

21 You have the right to present any evidence you may have which tends to show
22 that you did exhaust your administrative remedies. Such evidence may be in the form of
23 declarations (statements signed under penalty of perjury) or authenticated documents,
24 that is, documents accompanied by a declaration showing where they came from and
25 why they are authentic, or other sworn papers, such as answers to interrogatories or
26 depositions.

27 If defendants file a motion to dismiss and it is granted, your case will be dismissed
28 and there will be no trial.

IT IS SO ORDERED.

DATED: July 11, 2012



JEFFREY S. WHITE
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 EDEBERTO CABRERA,
6 Plaintiff,

Case Number: CV11-02676 JSW

7 **CERTIFICATE OF SERVICE**

8 v.

9 OFC DEE et al,

10 Defendant.
_____ /

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
12 District Court, Northern District of California.

13 That on July 11, 2012, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17
18 Ediberto Cabrera
19 885 N. San Pedro Street
20 DTY 532 07048290
San Jose, CA 95110

21 Dated: July 11, 2012

22 
23 Richard W. Wieking, Clerk
24 By: Jennifer Ottolini, Deputy Clerk
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