

United States District Court
For the Northern District of California

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E-Filed 2/26/13

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAMES EARL HARVEY,
Plaintiff,
v.
J. HINDT, et al.,
Defendants.

No. C 11-4332 RS (PR)
**ORDER DENYING MOTION TO
DISMISS;**
**ORDER DIRECTING DEFENDANTS
TO FILE A MOTION FOR
SUMMARY JUDGMENT**

Defendants' motion to dismiss the action on grounds that plaintiff has failed to state claims for relief (Docket No. 14) is DENIED. Plaintiff's allegations, when liberally construed, appear to state claims for relief. Defendants' grounds for dismissal are more properly raised in a motion for summary judgment. **Accordingly, defendants shall file a motion for summary judgment on or before June 1, 2013.** Plaintiff shall file and serve on defendants his opposition, if any, within 45 days after the motion for summary judgment has been filed. If plaintiff files an opposition, defendants may, but are not required to, file a reply, which shall be filed and served on plaintiff within 15 days after plaintiff's opposition is filed. Extensions of time must be filed no later than the deadline sought to be extended and must be accompanied by a showing of good cause.

No. C 11-4332 RS (PR)
ORDER DENYING DEFS.' MOT. TO DISMISS

1 Defendants are reminded that a recent decision from the Ninth Circuit requires that
2 pro se prisoner-plaintiffs be given “notice of what is required of them in order to oppose”
3 summary judgment motions at the time of filing of the motions, rather than when the court
4 orders service of process or otherwise before the motions are filed. *Woods v. Carey*, 684
5 F.3d 934, 935 (9th Cir. 2012). **Defendants shall provide the following notice to plaintiff**
6 **when they file and serve any motion for summary judgment:**

7 The defendants have made a motion for summary judgment by which they seek
8 to have your case dismissed. A motion for summary judgment under Rule 56
of the Federal Rules of Civil Procedure will, if granted, end your case.

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

23 *Rand v. Rowland*, 154 F.3d 952, 962–63 (9th Cir. 1998).

24 The parties’ motion to stay discovery pending resolution of the motion to dismiss
25 (Docket No. 17) is DENIED as moot. The Clerk shall terminate Docket No. 14 and 17.

26 **IT IS SO ORDERED.**

27 DATED: February 26, 2013

28 
RICHARD SEEBORG
United States District Judge