IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GONZALO ERAUSQUIN,

Plaintiff,

v.

COUNTY OF CONTRA COSTA; CONTRA COSTA SHERIFF DEPARTMENT; OFFICER MICHAEL RECTOR; OFFICER CHRISTOPHER HAMBLIN; SHERIFF DAVID LIVINGSTON; DOES 1-30,

Defendants.

/

No. C 12-0169 WHA (PR)

ORDER DENYING MOTION FOR SUMMARY JUDGMENT WITHOUT PREJUDICE

(Docket No. 11)

Plaintiff, an inmate in the Contra Costa County Jail, filed this pro se civil rights action pursuant to 42 U.S.C. 1983. Defendants removed the case to federal court and have filed a motion for summary judgment. A pro se prisoner is entitled to "fair notice" of the requirements of Rule 56 of the Federal Rules of Civil Procedure pertaining to summary judgment and the consequences of such a motion. *See Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc) (reaffirming holding of *Klingele v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988)). Such a notice was given to plaintiff on April 17, 2012, when a scheduling order was issued. That is no longer sufficient, however. Notice must be given at the time the motion for summary judgment is filed, rather than when the court orders service of process or otherwise before the

motion is filed. *Woods v. Carey*, No. 09-15548, slip op. 7871, 7874 (9th Cir. July 6, 2012). Defendants did not give plaintiff the notice required by *Rand* when they filed their motion for summary judgment. Consequently, under *Woods*, the motion for summary judgment (docket number 11) is **DENIED**. Defendants may re-file their motion within **28 days** of the date this order is filed provided that it is accompanied by a proof of service showing that defendants served plaintiff with the *Rand* notice at the same time that they served him with their motion.

IT IS SO ORDERED.

Dated: August 8, 2012.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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