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

WAYNE JEROME ROBERTSON,)	No. C 12-4698 JSW (PR)
Plaintiff,)	ORDER DENYING MOTION FOR SUMMARY JUDGMENT WITHOUT PREJUDICE; SETTING NEW MOTION SCHEDULE
v.)	
SGT. W. STRUFFERT, et al.,)	
Defendants.)	
<hr/>		(Docket No. 21)

Plaintiff, a California prisoner proceeding pro se, filed this civil rights complaint under 42 U.S.C. § 1983 against officials at Pelican Bay State Prison. On October 25, 2012, defendants were ordered served and dispositive motions were scheduled. Defendants filed a motion for summary judgment on March 12, 2013, but Plaintiff did not receive it because Defendants served the motion and exhibits on him at the wrong address. They notified the Court that they re-served him at the correct address on May 30, 2013. However, on neither occasion did they include *Rand* warning when they served him, despite having been ordered to do so in the Order of Service.¹ See *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc). The *Rand* notice must be given at the time of filing of the motion. *Woods v. Carey*, 684 F.3d 934, 939 (9th Cir.

¹The Order of Service also ordered Defendants to file an answer, but they did not do so until they were ordered to do so again on June 14, 2013.

1 2012); *Labatad v. Corrections Corp. of America*, 714 F.3d 1155, 1159 (9th Cir. 2013)
2 (internal quotation and citation omitted). “The *Rand* notice must issue so that the litigant
3 will receive the motion and the notice reasonably contemporaneously.” *Id.* Defendants
4 did not serve plaintiff the *Rand* notice until June 25, 2013. This does not satisfy the rule
5 in *Woods* and *Labatad*. This is especially true here as Plaintiff had already filed his
6 opposition when the notice was served, and therefore he did not have the benefit of a
7 “reasonably contemporaneous[.]” *Rand* notice when he prepared the opposition.
8 Defendants were warned in the Order of Service that if they did not serve Plaintiff with
9 the *Rand* notice at the same time that they served him with the summary motion, that the
10 motion would be denied without prejudice. Accordingly, Defendants’ motion for
11 summary judgment is DENIED without prejudice to refiling in accordance with the
12 following:

13 1. No later than **August 12, 2013**, Defendants shall file a new motion for
14 summary judgment or other dispositive motion. If Defendants are of the opinion that this
15 case cannot be resolved by summary judgment, they shall so inform the court prior to the
16 date the summary judgment motion is due. All papers filed with the court shall be
17 promptly served on the Plaintiff. Along with their motion, defendants shall file proof
18 that they served plaintiff the applicable *Rand* notice at the same time they served him
19 with their motion. Failure to do so will result in the summary dismissal of their motion
20 without prejudice.

21 2. If Plaintiff wishes to file an opposition to Defendants’ motion for summary
22 judgment, he must do so on or before **September 15, 2013**. Alternatively, he may by
23 that date indicate that he wishes to oppose the summary judgment with the opposition he
24 filed on June 24, 2013 (dkt. 36), and the Court will deem that as the opposition to
25 Defendants’ motion for summary judgment. .

26 Plaintiff must read the attached page headed “NOTICE -- WARNING,” which is
27 provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en
28 banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

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

5
6 WAYNE J ROBERTSON,
7 Plaintiff,

Case Number: CV12-04698 JSW

CERTIFICATE OF SERVICE

8 v.

9 W STRUFFERT et al,

10 Defendant.
11 _____/

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

14 That on July 25, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
17 receptacle located in the Clerk's office.

18 Wayne J. Robertson #C-24851
19 S.V.S.P.
20 P.O. Box 1050
21 Soledad, CA 93960

22 Dated: July 25, 2013



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