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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARLON O. DAVIS,
Plaintiff,
v.
G. KALISHER, et al.,
Defendants.

Case No. [15-cv-05997-SI](#)

ORDER
Re: Dkt. Nos. 22 and 25

Defendants have filed a request for a short extension of the deadline so that their motion for summary judgment filed on March 7, 2017, four days after the deadline, will be timely. Their request for an extension of the deadline is GRANTED. Docket No. 25. The motion for summary judgment is deemed to have been timely filed. The motion has a different procedural problem, however.

The order of service stated that any motion for summary judgment “must be accompanied by a *Rand* notice.” Docket No. 10 at 4 (citing *Rand v. Rowland*, 154 F.3d 934, 939 (9th Cir. 2012), and *Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012)). Defendants’ motion for summary judgment was not accompanied by a proper *Rand* notice. Although a paragraph in the motion includes the information required by *Rand* (see Docket No. 22 at 6), that does not fully satisfy *Rand* because *Rand* also requires that the notice “be in a *separate form* that the plaintiff will recognize as given pursuant to the court’s requirement. It may not be provided within the summary judgment motion or in the papers ordinarily filed in support of the motion.” *Rand*, 154 F.3d at 960 (emphasis added). Meticulous compliance with the *Rand* notice requirement is necessary. The failure to comply with the *Rand* and *Woods* notice requirement continues to be a quick route to reversal if a motion for summary judgment is granted. See, e.g., *Nelson v. Peck*,

1 2016 WL 6892509 (9th Cir. Nov. 23, 2016) (provision of *Rand* notice at outset of case but not
2 concurrently with the motion for summary judgment was reversible error). To avoid the
3 possibility of such a reversal, defendants' motion for summary judgment (Docket No. 22) is
4 DENIED for failure to provide the *Rand* notice in a separate document. The denial of the motion
5 for summary judgment is without prejudice to defendants filing a new motion for summary
6 judgment that is accompanied by a *Rand* notice.

7 The court now sets the following briefing schedule for the new motion for summary
8 judgment: Defendants must file and serve a new motion for summary judgment with a *Rand*
9 notice no later than **March 24, 2017**. Plaintiff must file and serve his opposition to the new
10 motion for summary judgment no later than **April 21, 2017**. Defendants must file and serve their
11 reply (if any) no later than **May 5, 2017**.

12 **IT IS SO ORDERED.**

13 Dated: March 9, 2017



SUSAN ILLSTON
United States District Judge