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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FRED FULFORD,  
Plaintiff,  
v.  
DON M. GRIFFITH,  
Defendant.

Case No. [16-cv-00770-MEJ](#)

**ORDER DENYING PLAINTIFF'S  
MOTION TO DISMISS DEFENDANTS'  
AMENDED SUMMARY JUDGMENT  
MOTION**

Re: Dkt. No. 46

Plaintiff, a California prisoner, filed this *pro se* civil rights action under 42 U.S.C. § 1983. Now pending before the Court is Plaintiff's motion requesting that the Court issue an order stating that Plaintiff's opposition to the amended summary judgment motion is correctly docketed at Docket Nos. 35, 36, 37, 38, and 45; stating that Defendant's reply in support of his amended summary judgment motion was due June 5, 2017; stating that Defendant failed to comply with the *Rand* requirement; denying Defendant's amended summary judgment motion; and scheduling a settlement conference. Dkt No. 46. Plaintiff's motion is GRANTED IN PART and DENIED IN PART.

The motion is GRANTED in that the Court will consider Plaintiff's pleadings docketed at Docket Nos. 35, 36, 37, 38, and 45 as the opposition to the amended summary judgment motion; and in that the Court has already referred the case to settlement proceedings, Dkt. No. 44.

The motion is DENIED in that the Court declines to deny Defendant's summary judgment motion. Plaintiff is incorrect that Defendant's amended summary judgment motion failed to comply with the Ninth Circuit's *Rand* requirement. The amended summary judgment motion provided Plaintiff with the required *Rand* notice, Dkt. No. 34 at 4, the text of which can be found

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at *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998).<sup>1</sup> In addition, Defendant’s confusion about whether a reply brief was warranted was understandable, and Defendant properly sought guidance from the Court regarding when to file the reply brief. The Court declined to set a deadline for the reply brief and instead referred the case to settlement proceedings. Because this case is stayed pending settlement proceedings, there is also no need to currently address Defendant’s amended summary judgment motion.

This order terminates Dkt. No. 46.

**IT IS SO ORDERED.**

Dated: July 11, 2017



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MARIA-ELENA JAMES  
United States Magistrate Judge

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<sup>1</sup> Plaintiff argues that the *Rand* notice is approximately one-and-a-half pages and provides a copy of a *Rand* notice provided in an unrelated case. Dkt. No. 45. The *Rand* notice that Plaintiff provides is from a case in the Eastern District of California and appears to contain additional language required by the Eastern District of California, which is not required in the Northern District of California.