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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MOSES CLARK,  
CDCR #F-99760,

Plaintiff,

vs.

LARRY SMALL, Warden;  
R. MADDEN, Correctional Captain,

Defendants.

Civil Case No. 09-1484 L (JMA)

**ORDER PROVIDING NOTICE  
TO PRO SE PRISONER OF  
REQUIREMENTS FOR  
OPPOSING SUMMARY  
JUDGMENT PURSUANT  
TO *KLINGELE* / *RAND*  
AND SETTING BRIEFING  
SCHEDULE**

**This notice is required<sup>1</sup> to be given to Plaintiff pursuant to *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) (en banc) and *KlingeLe v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988):<sup>2</sup>**

Defendants have filed a Motion for Summary Judgment pursuant to FED.R.CIV.P. 56 [Doc. No. 49], by which they seek 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.

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<sup>1</sup> Because Plaintiff is no longer incarcerated, he may not be entitled to a *KlingeLe* / *Rand* warning. *See Jacobsen v. Filler*, 790 F.2d 1362, 1364-67 (9th Cir. 1986) (holding that *KlingeLe* notice is not required for pro se litigants who are not incarcerated); Pl.’s Notice of Change of Address [Doc. No. 42]. However, because Plaintiff was incarcerated when he initiated this action, is still proceeding without counsel, and the allegations in his Amended Complaint challenge the conditions of confinement at Calipatria State Prison, the Court will issue this Order in an abundance of caution in order to ensure that Plaintiff is aware of his obligations under FED.R.CIV.P. 56.

<sup>2</sup> *KlingeLe* and *Rand* together require the district court “as a bare minimum,” to ensure that a pro se prisoner has “fair notice of the requirements of the summary judgment rule.” *KlingeLe*, 849 F.2d at 411 (quotations omitted); *Rand*, 154 F.3d at 962.

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

13 **Conclusion and Order**

14 Accordingly, **IT IS ORDERED** that Defendants’ Motion for Summary Judgment has  
15 been calendared for hearing on **Monday, December 20, 2010**, at 10:30 a.m., in Courtroom 14.  
16 Your Opposition (including any supporting documents) must be filed with the Court and served  
17 on all parties by **Monday, December 6, 2010**. If you do not wish to oppose Defendants’  
18 Motion, you should file and serve a “Notice of Non-Opposition” by that same date to let both  
19 the Court and Defendants know that the Motion is unopposed. If you do file and serve an  
20 Opposition, Defendants must file and serve their Reply to that Opposition by **Monday,**  
21 **December 13, 2010.**

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1 At the time appointed for hearing, the Court will, in its discretion, consider Defendants'  
2 Motion for Summary Judgment pursuant to FED.R.CIV.P. 56 as submitted on the papers, and will  
3 issue its written opinion soon thereafter. See S. D. CAL. CIVLR 7.1(d)(1). Thus, unless  
4 otherwise ordered, no appearances are required and no oral argument will be heard.

5 **IT IS SO ORDERED.**

6 DATED: October 18, 2010

7   
8 M. James Lorenz  
United States District Court Judge

9 COPY TO:

10 HON. JAN M. ADLER  
11 UNITED STATES MAGISTRATE JUDGE

12 ALL PARTIES/COUNSEL

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