FINDINGS AND RECOMMENDATIONS

Plaintiff is a former state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Earlier in this action, the court granted in part defendants' motion for summary judgment. Dckt. No. 47. In light of the recent decision of Woods v. Carey, 684 F.3d 934 (9th Cir. 2012), the court directed plaintiff to inform the court whether he wished to proceed to trial or instead re-open the summary judgment motion that was partially resolved in defendants' favor. Dckt. No. 70. In response, plaintiff requested that defendants' summary judgment motion be denied or that he be permitted to file a new opposition to the summary judgment motion. Dckt. No. 71. Defendants also requested an order directing them to re-serve their previously filed summary judgment motion, and setting a date for plaintiff to file a new opposition. Dckt. No. 72. ////

Accordingly, the undersigned will recommend that the March 28, 2008 order granting defendants' April 30, 2007 motion for summary judgment be vacated and that the motion be denied without prejudice instead.

The court notes that in defendant Thomas's pretrial statement, Thomas argued that the court should "summarily dispose" of plaintiff's remaining claims to "relieve defendant of the costs and burden of trial." Dckt. No. 69 at 16. In order to narrow the issues so that only those properly warranting trial proceed to trial, the court recommends that defendants be permitted to either re-file the April 30, 2007 motion, or to file an amended and comprehensive motion for summary judgment, along with the notice to plaintiff required by Woods.

Accordingly, IT IS HEREBY RECOMMENDED that: 1. The March 28, 2008 order granting defendants' motion for summary judgment (Dckt. No. 47) be vacated.

2. Defendants April 30, 2007 motion for summary judgment (Dckt. No. 35) be denied without prejudice.

3. Within thirty days of any order adopting these findings and recommendations, defendants be allowed to file and serve a single motion for summary judgment that includes the notice to plaintiff required by Woods, and that thereafter, plaintiff be directed to file and serve an opposition within twenty-one days, and defendants allowed to file a reply, if any, within fourteen days.

These findings and recommendations are submitted to the United States District Judge assigned to

the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).