

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAHN G. THOMPSON,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

1:07-cv-01299-LJO-GSA-PC

ORDER STRIKING PLAINTIFF'S
SUPPLEMENTAL OPPOSITION
(Doc. 72.)

ORDER OF CLARIFICATION, PERMITTING
PLAINTIFF OPPORTUNITY TO WITHDRAW
OPPOSITION AND FILE AMENDED
OPPOSITION IN LIGHT OF SEPARATELY
ISSUED NOTICE
(Doc. 61.)

THIRTY-DAY DEADLINE

ORDER VACATING MOTION TO DISMISS
FROM COURT'S CALENDAR TO ALLOW
TIME FOR AMENDMENT OF OPPOSITION
AND REPLY
(Doc. 52.)

I. BACKGROUND

Plaintiff Rahn G. Thompson ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on September 5, 2007. (Doc. 1.) This action now proceeds with the Second Amended Complaint filed on November 10, 2009, against defendant Tucker for subjecting Plaintiff to adverse conditions of confinement; against defendants Tucker, Green, Lee, Rincon, Hernandez, Deathridge, and Huckabay for failing to protect Plaintiff; against defendants Tucker, Green, and

1 Huckabay for retaliating against Plaintiff; and against defendants Tucker, Thompson, and Melendez
2 for using excessive force against Plaintiff. (Doc. 25.)

3 On September 27, 2011, Defendants filed a motion to dismiss this action for failure to
4 exhaust administrative remedies and for failure to state a claim for retaliation. (Doc. 52.) Plaintiff
5 filed an opposition on November 21, 2011. (Doc. 61.) On December 6, 2011, Defendants filed (1)
6 a reply to the opposition and (2) objections to Plaintiff's evidence submitted in support of his
7 opposition. (Docs. 66, 67.) On February 1, 2012, Plaintiff filed (1) a response to Defendants'
8 objections and (2) a supplemental opposition to the motion to dismiss. (Docs. 71, 72.)

9 On July 10, 2012, the Court directed the Clerk to re-serve the Second Informational Order
10 upon Plaintiff. (Doc. 75.) On July 27, 2012, Plaintiff responded to the re-served Second
11 Informational Order, requesting clarification from the Court. (Doc. 76.)

12 **II. PLAINTIFF'S SUPPLEMENTAL OPPOSITION**

13 Plaintiff has submitted an opposition and a supplemental opposition to Defendants' motion
14 to dismiss. The Court will not consider multiple oppositions. Therefore, Plaintiff's supplemental
15 opposition shall be stricken as an unauthorized pleading. Plaintiff shall be granted an opportunity
16 to file an amended opposition, if he so wishes.

17 **III. ORDER OF CLARIFICATION**

18 Plaintiff requests clarification of the Court's decision to re-serve the Second Informational
19 Order. Plaintiff explains that he sent the Court his opposition to Defendants' motion to dismiss and
20 is now uncertain whether he is expected to file other documents.

21 The Court re-served the Second Informational Order upon Plaintiff in light of the recent
22 decision in Woods v. Carey, 684 F.3d 934, 940 (9th Cir. 2012). In Woods, the Ninth Circuit held
23 that Plaintiff must be provided with "fair notice" of the requirements for opposing a motion to
24 dismiss for failure to exhaust remedies at the time the motion is brought. The notice given in this
25 case more than a year ago does not suffice.

26 Plaintiff is not required to file other documents in opposition to the motion to dismiss.
27 However, in light of Woods, Plaintiff shall be permitted the opportunity to file an amended
28 opposition, if he so wishes.

1 By separate order entitled “Amended Second Informational Order - Notice and Warning of
2 Requirements for Opposing Defendants’ Motion to Dismiss,” issued concurrently with this order,
3 the Court has again provided the requisite notice. **The Court will not consider multiple**
4 **oppositions.** however, and Plaintiff has two options upon receipt of the notice and this order.
5 Plaintiff may either (1) stand on his previously-filed opposition filed on November 21, 2011 or (2)
6 withdraw it and file an amended opposition.¹

7 **IV. CONCLUSION**

8 Based on the foregoing, it is HEREBY ORDERED that:

- 9 1. Plaintiff’s supplemental opposition filed on February 1, 2012, is STRICKEN from
10 the record as an unauthorized pleading;
- 11 2. Plaintiff may, within **thirty (30) days** from the date of service of this order, withdraw
12 his opposition to Defendants’ motion to dismiss and file an amended opposition;
- 13 3. If Plaintiff does not file an amended opposition in response to this order, his existing
14 opposition, filed on November 21, 2011, will be considered in resolving Defendants’
15 motion to dismiss;
- 16 4. If Plaintiff elects to file an amended opposition, Defendants’ existing reply, filed on
17 December 6, 2011, will not be considered and they may file an amended reply
18 pursuant to Local Rule 230(l); and
- 19 5. In light of 28 U.S.C. § 476(a)(1), the Civil Justice Reform Act, Defendants’ motion
20 to dismiss is HEREBY DEEMED VACATED from the Court’s calendar to allow
21 time for the filing of an amended opposition and amended reply.

22
23 IT IS SO ORDERED.

24 **Dated: August 23, 2012**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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26
27 ¹ The Court notes the comprehensive nature of Plaintiff’s existing opposition, but its adequacy is apparently
28 irrelevant. Plaintiff is entitled to an opportunity to file an amended opposition following “fair notice” to him of the
requirements for opposing a motion to dismiss for failure to exhaust administrative remedies. Woods, 684 F.3d at
940.