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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK JONES,
Plaintiff,
v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,
Defendants.

CASE NO. 1:08-cv-00069-LJO-GBC (PC)
ORDER PROVIDING PLAINTIFF OPTION TO
(1) STAND ON EXISTING OPPOSITION TO
MOTION TO DISMISS OR (2) FILE
AMENDED OPPOSITION PER AMENDED
SECOND INFORMATIONAL ORDER
Docs. 56, 58
TWENTY-ONE DAY DEADLINE

I. Procedural History

On January 14, 2008, Plaintiff Mark Jones (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action jointly with his wife, Christine Jones, pursuant to 42 U.S.C. § 1983. Doc. 1. On January 31, 2011, the Court severed the case and ordered Plaintiff’s wife, Christine Jones, to file a separate action. Doc. 38.¹ In Plaintiff’s fifth amended complaint, Plaintiff states that Defendant Couch searched and detained his wife and threatened her that Plaintiff would be sent back to the Security Housing Unit if she told Plaintiff about the harassment and he filed an inmate grievance. Pl. 5th Am. Compl. at 9, Doc. 39. On May 13, 2011, the Court adopted findings and recommendations and ordered the case to proceed on a cognizable First Amendment retaliation

¹ On April 22, 2011, the Court dismissed the separate action filed by Plaintiff’s wife, for failure to state a claim. *Jones v. California Department of Corrections*, No. 1:08-cv-01383-LJO-GBC, *aff’d*, No. 11-16245 (9th Cir. May 25, 2012).

1 claim against Defendant Couch. Doc. 44. On June 6, 2011, the Court issued a second informational
2 order, advising Plaintiff that Defendant may file an unenumerated 12(b) motion to dismiss for failure
3 to exhaust administrative remedies and how Plaintiff must oppose the motion in order to avoid
4 dismissal, pursuant to *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003) (citing *Ritza v. Int'l*
5 *Longshoremen's & Warehousemen's Union*, 837 F.2d 365, 368 (9th Cir. 1998) (per curiam)). Doc.
6 47. On December 16, 2011, Defendant filed a motion to dismiss for failure to exhaust administrative
7 remedies. Doc. 56. On January 10, 2012, Plaintiff filed an opposition to Defendant's motion to
8 dismiss. Doc. 58. On January 18, 2012, Defendant filed a reply to Plaintiff's opposition. Doc. 59.
9 On July 12, 2012, the Court issued Findings and Recommendations, recommending granting the
10 Defendant's motion to dismiss, for failure to exhaust administrative remedies. Doc. 69.

11 **II. *Woods v. Carey* and Contemporaneous Notice**

12 On July 6, 2012, the Ninth Circuit found that the notice and warning of requirements for
13 opposing a defendant's motion to dismiss should be issued contemporaneously when a defendant
14 files a motion to dismiss, as opposed to a year or more in advance. *Woods v. Carey*, 2012 WL
15 2626912, at * 4 (9th Cir. Jul. 6, 2012). On June 6, 2011, this Court issued a second informational
16 order, containing the notice and warning of requirements for opposing a defendant's motion to
17 dismiss to Plaintiff. Doc. 47. On December 16, 2011, Defendant filed a motion to dismiss. Doc. 56.
18 In order to address the time delay between providing notice and the filing of Defendant's motion,
19 the Court issued an amended second informational order to Plaintiff, in accordance with *Woods*.

20 **III. Order Providing Plaintiff Option to (1) Stand on Existing Opposition to Motion to** 21 **Dismiss or (2) File Amended Opposition Per Amended Second Informational Order**

22 In light of the separately-issued amended second informational order and notice pursuant to
23 *Woods*, the Court will provide Plaintiff with two options upon receipt of the notice and this order.
24 Plaintiff may either (1) stand on his previously-filed opposition or (2) withdraw the existing
25 opposition and file an amended opposition.

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1 Accordingly, it is HEREBY ORDERED that:

- 2 1. Within **twenty-one (21) days** from the date of service of this order, Plaintiff may
3 elect to:
- 4 a. Stand on his existing opposition already submitted to the Court; or
 - 5 b. Withdraw his opposition and file an amended opposition;
- 6 2. If Plaintiff does not elect to file an amended opposition in response to this order
7 within **twenty-one (21) days**, the Court will consider his existing opposition in
8 resolving Defendant's motion to dismiss;
- 9 3. If Plaintiff elects to file an amended opposition, the Court will not consider
10 Defendant's existing reply; and
- 11 4. Defendant may file an amended reply pursuant to Local Rule 230(1).

12
13 IT IS SO ORDERED.

14 Dated: July 18, 2012

15 
16 UNITED STATES MAGISTRATE JUDGE