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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

KELLY MORGAN,

Plaintiff,

vs.

TILTON, et al.,

Defendants.

1:08-cv-00233-LJO-GSA (PC)

ORDER OF CLARIFICATION  
(Resolves Doc. 64.)

ORDER PERMITTING PLAINTIFF  
OPPORTUNITY TO WITHDRAW  
OPPOSITION AND FILE AMENDED  
OPPOSITION WITHIN THIRTY DAYS,  
IF HE SO WISHES

\_\_\_\_\_ /

Kelly Morgan (“Plaintiff”) is a prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. On July 10, 2012, the Court issued an order directing the Clerk to re-serve a copy of the Court’s Second Informational Order upon Plaintiff. (Doc. 62.) On July 18, 2012, Plaintiff filed a request for clarification of the Court’s July 10, 2012 order. (Doc. 64.)

Plaintiff expresses concern that the Court’s order was sent to him because the Court did not receive Plaintiff’s opposition to Defendant Hernandez’ motion to dismiss of December 22, 2011. Plaintiff indicates that he has “already submitted the required motion to stop the dismissal of Plaintiff[’s] petition” and “can not do this again.” (Doc. 64 at 4.)

Plaintiff is advised that the Court received and filed his opposition to Defendant Hernandez’ motion to dismiss on April 18, 2012. (Docs. 60, 61.) The Court’s July 10, 2012 order was not meant to raise doubts about whether Plaintiff’s opposition had been received and filed by the Court.

1 The Court re-served the Second Informational Order upon Plaintiff on July 10, 2012 in light  
2 of the recent decision in Woods v. Carey, Nos. 09-15548, 09-16113, 2012 WL 2626912, at \*5 (9th  
3 Cir. Jul. 6, 2012), which requires Plaintiff to be provided with “fair notice” of the requirements for  
4 opposing a motion to dismiss for failure to exhaust administrative remedies at the time the motion  
5 is brought, and the notice given in this case some three months prior does not suffice.<sup>1</sup>

6 Plaintiff is not required to file a further opposition to Defendant Hernandez’ motion to  
7 dismiss. However, in the event that Plaintiff wishes to file an amended opposition, he shall be  
8 granted thirty days in which to do so. The Court will not consider multiple oppositions, however,  
9 and Plaintiff has two options upon receipt of this order. Plaintiff may either (1) stand on his  
10 previously-filed opposition or (2) withdraw it and file an amended opposition.

11 Accordingly, it is HEREBY ORDERED that:

- 12 1. By this order, Plaintiff’s request for clarification, filed on July 18, 2012, is  
13 GRANTED;
- 14 2. Plaintiff may, within **thirty (30) days** from the date of service of this order,  
15 withdraw his opposition and file an amended opposition;
- 16 3. If Plaintiff does not file an amended opposition in response to this order, his  
17 existing opposition will be considered in resolving Defendant’s motion to dismiss;  
18 and
- 19 4. If Plaintiff elects to file an amended opposition, Defendant may file a reply pursuant  
20 to Local Rule 230(1).

21  
22 IT IS SO ORDERED.

23 **Dated: July 26, 2012**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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27 <sup>1</sup>The Second Informational Order was previously served upon Plaintiff on October 4, 2011. (Doc. 51-1.)