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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

BARRY LOUIS LAMON,

1:09-cv-00205-LJO-SMS (PC)

Plaintiff,

ORDER PERMITTING PLAINTIFF  
OPPORTUNITY TO WITHDRAW OPPOSITION  
AND FILE AMENDED OPPOSITION IN LIGHT  
OF SEPARATELY-ISSUED SUMMARY  
JUDGMENT NOTICE

vs.

ADAMS, et al,

Defendant(s).

(Doc. 175 )

/ THIRTY DAY DEADLINE

Plaintiff is a state prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. Section 1983. This action is proceeding on Plaintiff’s Complaint, filed February 2, 2009, against Defendants Baer, Valdez, Buenos, Lee, Ponce, and Purvis for excessive use of force and deliberate indifference to a threat to Plaintiff’s safety in violation of the Eighth Amendment and for retaliation in violation of the First Amendment. (Docs. 116, 117, 118, 121.) The Second Informational Order was filed and served on the parties on August 11, 2009. (Doc 12.)

On September 7, 2012, Defendants filed a motion for summary judgment. (Doc. 175.) Plaintiff filed a number of documents in opposition to which Defendants replied. (Docs. 176, 182-186.) The motion was submitted under Local Rule 230(1).

However, in light of the recent decision in Woods v. Carey, 684 F.3d 934 (9th Cir. 2012), Plaintiff must be provided with “fair notice” of the requirements for opposing a motion for summary judgment at the time the motion is brought and the notice given in this case some

1 three years prior does not suffice.<sup>1</sup> The requisite notice is provided by separate concurrently  
2 issued order.

3 It is noteworthy that, despite having filed a motion to compel further responses to  
4 discovery, Plaintiff filed what appears to be a full opposition to Defendants' motion for summary  
5 judgment – including a memorandum of points and authorities, objections to Defendants'  
6 evidence, a supportive declaration, and a statement disputing facts asserted by Defendants as  
7 undisputed. It is also noteworthy that, while Plaintiff requested an extension of time to file his  
8 opposition, that request was not based on an inability to oppose due to continuing discovery  
9 disputes; rather it was based on Plaintiff's inability to access his legal documents due to various  
10 cell transfers, searches, and the like. Plaintiff did not, either in his opposition or in his request  
11 for an extension of time to file it, specify any reasons preventing him from presenting facts  
12 essential to justify his opposition. Fed.R.Civ.P. 56(d). In fact, while Plaintiff mentions his  
13 motion to compel in his opposition, his argument for its consideration is that he needs the further  
14 responses to be able to file his own motion for summary judgment – though the time for filing  
15 dispositive motions lapsed and Plaintiff did not request an extension. Thus, it appears that  
16 Plaintiff submitted what he believes to be an adequate opposition to Defendants' motion and that  
17 the further responses sought in his motion to compel were/are not essential to his opposition of  
18 Defendants' motion for summary judgment.

19 However, in order to comply with the Woods v. Carey requirements, Plaintiff has three  
20 options upon receipt of the notice and this order. Plaintiff may: (1) stand on his previously-filed  
21 opposition; (2) withdraw it and file an amended opposition after the parties meet and confer and  
22 discovery disputes are resolved;<sup>2</sup> or (3) withdraw it and file an amended opposition without  
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24 <sup>1</sup> The Court notes the comprehensive nature of Plaintiff's existing opposition, but its adequacy is apparently  
25 irrelevant. Plaintiff is entitled to an opportunity to file an amended opposition following "fair notice" to him of the  
26 requirements for opposing a summary judgment motion. Woods, 684 F.3d 934.

<sup>2</sup> If Plaintiff chooses this option, a filing deadline will be set subsequent to resolution of any discovery disputes  
that are not resolved informally when the parties meet and confer.

1 waiting for resolution of the discovery disputes among the parties.

2 Accordingly, it is HEREBY ORDERED that:

- 3 1. If Plaintiff chooses to withdraw his previously-filed opposition to Defendants’  
4 motion for summary judgment and to file an amended opposition without waiting  
5 for resolution of discovery disputes, he must do so within **thirty (30) days** from  
6 the date of service of this order;
- 7 2. If Plaintiff chooses to withdraw his previously-filed opposition to Defendants’  
8 motion for summary judgment and to file an amended opposition subsequent to  
9 resolution of discovery disputes, he must file a statement indicating as much  
10 within **thirty (30) days** from the date of service of this order and a new deadline  
11 for the filing of his amended opposition will be set subsequent to resolution of  
12 discovery disputes;
- 13 3. If Plaintiff does not either file an amended opposition, or a statement indicating  
14 his desire to do so after resolution of discovery disputes in response to this order,  
15 his existing opposition will be considered in resolving Defendants’ motion for  
16 summary judgment; and
- 17 4. If Plaintiff elects either of the options to file an amended opposition, Defendants’  
18 existing reply will not be considered and they may file an amended reply pursuant  
19 to Local Rule 230(l).

20  
21 IT IS SO ORDERED.

22 **Dated: November 12, 2012**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

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