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

ESS'NN AUBERT,

Plaintiff,

vs.

HECTOR ROBLES,

Defendant.

1:10-cv-00565-LJO-GSA (PC)

ORDER GRANTING DEFENDANT'S  
MOTION  
(Doc. 34.)

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

THIRTY DAY DEADLINE

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Ess'nn Aubert ("Plaintiff") is a prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. This action now proceeds with Plaintiff's original Complaint filed on April 1, 2010, against defendant Hector Robles ("Defendant") for use of excessive force in violation of the Eighth Amendment. (Doc. 1.) On February 9, 2012, Defendant filed a motion for summary judgment, which is now pending. (Doc. 26.) On March 2, 2012, Plaintiff filed an opposition, and on March 9, 2012, Defendant filed a reply. (Docs. 27, 31.)

On July 25, 2012, Defendant provided Plaintiff with a Rand Warning and requested that Plaintiff be permitted to file a supplemental opposition to the motion for summary judgment. (Doc. 34.) Defendant's motion is now before the Court.

1 **I. DEFENDANT’S MOTION**

2 Defendant has served a Rand Warning upon Plaintiff, which informs Plaintiff of his rights  
3 and responsibilities in opposing a motion for summary judgment. Defendant also requests that in  
4 light of the Ninth Circuit’s decision in Woods v. Carey, Nos. 09-15548, 09-16113, 2012 WL  
5 2626912, \*1 (9th Cir. July 6, 2012), Plaintiff be permitted to file a supplemental briefing in  
6 opposition to the pending motion for summary judgment in this action.

7 **II. DISCUSSION**

8 In Woods, the Ninth Circuit required that a prisoner proceeding pro se with a civil rights  
9 action, such as Plaintiff, be provided with “fair notice” of the requirements for opposing a motion  
10 for summary judgment at the time the motion is brought. Woods, 2012 WL 2626912 at \*5. Thus,  
11 the notice given by the Court in this case more than a year ago does not suffice.<sup>1</sup> On July 10, 2012,  
12 the Court re-served the Second Informational Order upon Plaintiff. (Doc. 33.)

13 The Court finds good cause at this juncture to open a thirty-day time period for Plaintiff to  
14 file further opposition to the pending motion for summary judgment, if he so wishes. Therefore,  
15 Defendant’s motion shall be granted. The Court will not consider multiple oppositions, however,  
16 and Plaintiff has two options upon receipt of this order. Plaintiff may either (1) stand on his  
17 previously-filed opposition or (2) withdraw it and file an Amended Opposition. The Amended  
18 Opposition, if any, must be complete in itself and must not refer back to any of the opposition  
19 documents Plaintiff filed on March 2, 2012. L.R. 220.<sup>2</sup>

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23 <sup>1</sup>The Court first served the Second Informational Order, providing “fair notice” of the requirements, upon  
24 Plaintiff on November 18, 2010. (Doc. 12-1.)

25 <sup>2</sup>Local Rule 220 provides, in part: “Unless prior approval to the contrary is obtained from the Court, every  
26 pleading to which an amendment or supplement is permitted as a matter of right or has been allowed by court order  
27 shall be retyped and filed so that it is complete in itself without reference to the prior or superseded pleading. No  
28 pleading shall be deemed amended or supplemented until this Rule has been complied with. All changed pleadings  
shall contain copies of all exhibits referred to in the changed pleading.”

1 **III. CONCLUSION**

2 Accordingly, it is HEREBY ORDERED that:

- 3 1. Defendant’s motion to allow further briefing by Plaintiff is GRANTED;
- 4 2. Plaintiff may, within **thirty (30) days** from the date of service of this order,  
5 withdraw his opposition and file an Amended Opposition to Defendant’s motion  
6 for summary judgment of February 9, 2012;
- 7 3. If Plaintiff does not file an Amended Opposition in response to this order, his  
8 existing opposition will be considered in resolving Defendant’s motion for  
9 summary judgment; and
- 10 4. If Plaintiff elects to file an Amended Opposition, Defendant may file a reply  
11 pursuant to Local Rule 230(1).

12  
13 IT IS SO ORDERED.

14 **Dated: July 26, 2012**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE