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6 **UNITED STATES DISTRICT COURT**

7
8 EASTERN DISTRICT OF CALIFORNIA

9 LUIS ROBERTO MARTINEZ,

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11 Plaintiff,

12 v.

13 KINGS COUNTY, et al.,

14 Defendants.

CASE NO. 1:10-cv-01569-AWI-DLB PC

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

THIRTY DAY DEADLINE

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17 Plaintiff Luis Roberto Martinez is a state prisoner proceeding pro se and in forma
18 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding
19 against Defendants Tami Arden, P. Pascua, R. Martinez, V. Ignacio, P. Linihan, and K. Englert.

20 On February 13, 2012, Defendants filed a motion to dismiss in part for failure to exhaust
21 administrative remedies. Plaintiff filed an opposition on March 6, 2012, Defendants filed a reply
22 on March 13, 2012, and the motion was submitted under Local Rule 230(l).

23 However, in light of the recent decision in *Woods v. Carey*, Nos. 09-15548, 09-16113,
24 2012 WL 2626912, at *5 (9th Cir. Jul. 6, 2012), Plaintiff must be provided with “fair notice” of
25 the requirements for opposing a motion to dismiss for failure to exhaust administrative remedies
26 at the time the motion is brought and the notice given in this case some months prior does not
27 suffice.

28 By separate order issued concurrently with this order, the Court provided the requisite

1 notice. The Court will not consider two oppositions, however, and Plaintiff has two options
2 upon receipt of the notice and this order. Plaintiff may either (1) stand on his previously-filed
3 opposition or (2) withdraw it and file an amended opposition.¹

4 Accordingly, it is HEREBY ORDERED that:

5 1. Plaintiff may, within **thirty (30) days** from the date of service of this order,
6 withdraw his opposition and file an amended opposition;

7 2. If Plaintiff does not file an amended opposition in response to this order, his
8 existing opposition will be considered in resolving Defendants’ motion to dismiss for failure to
9 exhaust administrative remedies; and

10 3. If Plaintiff elects to file an amended opposition, Defendants’ existing reply will
11 not be considered and they may file an amended reply pursuant to Local Rule 230(1).

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13 IT IS SO ORDERED.

14 Dated: July 18, 2012

/s/ Dennis L. Beck
15 UNITED STATES MAGISTRATE JUDGE

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26 ¹ The Court notes the comprehensive nature of Plaintiff’s existing opposition, but its adequacy is
27 apparently irrelevant. Plaintiff is entitled to an opportunity to file an amended opposition following “fair
28 notice” to him of the requirements for opposing a motion to dismiss for failure to exhaust administrative
remedies. *Woods*, 2012 WL 2626912, at *5.