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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

KEVIN FIELDS,

Plaintiff,

v.

JOSE MASIEL, et al.,

Defendants.

CASE NO. 1:10-cv-01699-AWI-BAM PC

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

(ECF No. 26)

THIRTY-DAY DEADLINE

Plaintiff Kevin Fields is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Masiel, Aguirre, and Hernandez for retaliation in violation of the First Amendment. On May 16, 2012, Defendants filed a motion to dismiss for failure to exhaust administrative remedies. Plaintiff filed an opposition on June 4, 2012, and Defendants filed a reply on June 11, 2012. The motion was submitted under Local Rule 230(1).

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

By separate order issued concurrently with this order, the Court provided the requisite notice. The Court will not consider multiple oppositions, however, and Plaintiff has two options upon receipt of the notice and this order. Plaintiff may either (1) stand on his previously-filed opposition

1 or (2) withdraw it and file an amended opposition.

2 Accordingly, it is HEREBY ORDERED that:

- 3 1. Plaintiff may, within **thirty (30) days** from the date of service of this order, withdraw  
4 his opposition and file an amended opposition;
- 5 2. If Plaintiff does not file an amended opposition in response to this order, his existing  
6 opposition will be considered in resolving Defendants' motion for summary  
7 judgment; and
- 8 3. If Plaintiff elects to file an amended opposition, Defendants' existing reply will not  
9 be considered and they may file an amended reply pursuant to Local Rule 230(1).

10  
11 IT IS SO ORDERED.

12 **Dated: July 12, 2012**

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE