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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT GLEN MISTRIEL,
Plaintiff,

v.

KERN COUNTY, et al.,
Defendants.

CASE NO. 1:03-cv-06922-AWI-SKO

**ORDER GRANTING PLAINTIFF'S
MOTION FOR AN EXTENSION OF
TIME TO FILE AN OPPOSITION
BRIEF**

(Docket No. 70)

On September 20, 2011, Defendant Catholic Charities of the Diocese of Fresno ("Catholic Charities") filed a motion to dismiss the claims against it alleged in Plaintiff's Third Amended Complaint. (Doc. 63.) On October 20, 2011, Plaintiff filed a motion requesting a 45-day extension of time to file a brief in opposition to Catholic Charities' motion to dismiss. (Doc. 64.)

On July 19, 2011, the Court issued a Second Information Order informing all the parties that any opposition to a motion must be filed in compliance with Local Rule 230(l) and, therefore, must be filed not more than 21 days after the date of service of the motion. (Doc. 54, ¶ 2; *see also* Local Rule 230(l).) While Plaintiff's request for additional time to file an opposition is untimely as it was filed after the time had passed to file a brief in opposition to the pending motion to dismiss, the Court granted Plaintiff an extension of time to file a brief in opposition, and ordered that Plaintiff file a brief in opposition on or before December 5, 2011. (Doc. 65.) Plaintiff was informed that

1 extension requests filed out of time would not be viewed with favor in the future.

2 On December 12, 2011, Plaintiff filed a request for another 30-day extension of time to file
3 a brief in opposition to Catholic Charities' motion to dismiss. (Doc. 70.) Plaintiff asserts that
4 "adverse prison conditions" have impeded his ability to complete his brief in opposition. (Doc. 70.)
5 Catholic Charities oppose this request. (Doc. 69.)

6 Plaintiff's request for an extension is dated December 1, 2011, but was not received and filed
7 with the Court until December 12, 2011. Catholic Charities notes that, although the request is dated
8 December 1, 2011, and there is a proof of service indicating the request was mailed on December
9 1, 2011, the envelope containing the request nonetheless indicates it was not submitted to the U.S.
10 Postal Service until December 9, 2011. (Doc. 69-1, Declaration of James D. Weakley, ¶ 2.)

11 The envelope in which the request was mailed indicates that it is "State Prison Generated
12 Mail." Although the letter was sworn to be deposited into the U.S. Mail on December 1, 2011, it
13 appears that it was submitted to prison officials for mailing, which took additional time to process
14 and forward. In light of the sworn proof of service accompanying the request, the Court will grant
15 Plaintiff an additional extension of time. However, Plaintiff is informed that any further request for
16 an extension of time, whether timely or not, will be denied absent a statement of truly good cause.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's request for an extension of time to file a brief in opposition to Defendant
19 Catholic Charities of the Diocese of Fresno's motion to dismiss is GRANTED; and
- 20 2. Plaintiff's opposition shall be filed on or before January 9, 2012.

21
22 IT IS SO ORDERED.

23 **Dated: December 20, 2011**

24 **/s/ Sheila K. Oberto**
25 **UNITED STATES MAGISTRATE JUDGE**