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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMISI JERMAINE CALLOWAY,
Plaintiff,
vs.
DR. WANG, et al.,
Defendants.

1:08-cv-01896-LJO-GSA-PC

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S REQUEST FOR EXTENSION OF TIME (Doc. 100)

ORDER DENYING REQUEST FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL, WITHOUT PREJUDICE

ORDER DENYING AS MOOT REQUEST FOR EXTENSION OF TIME TO FILE OBJECTIONS TO DEFENDANTS' RESPONSE (Doc. 95)

ORDER GRANTING REQUEST FOR EXTENSION OF TIME TO FILE MOTION FOR RECONSIDERATION OF COURT'S ORDER OF AUGUST 5, 2013 (Doc. 97)

THIRTY DAY DEADLINE TO FILE MOTION FOR RECONSIDERATION

I. BACKGROUND

Jamisi Jermaine Calloway ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on December 10, 2008. (Doc. 1.) This action now proceeds on the Third Amended

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1 Complaint, filed by Plaintiff on October 5, 2009, against defendants Correctional Officers
2 (C/O) Oaks and Hayward (“Defendants”), for use of excessive force.¹ (Doc. 20.)

3 On August 15, 2013, Plaintiff filed a request for a forty-five-day extension of time.
4 (Doc. 100.)

5 **II. PLAINTIFF’S REQUEST**

6 Plaintiff requests a forty-five-day extension of time to file (1) a notice of appeal, (2)
7 objections to Defendants’ response (Doc. 95) to Plaintiff’s motion for a settlement conference
8 and trial schedule, and (3) objections to the court’s order (Doc. 99) denying Plaintiff’s motion
9 for a settlement conference and trial schedule. (Doc. 100.) Plaintiff seeks the extension of time
10 because of a delay at the prison in providing him with copywork needed to file the notice of
11 appeal and objections. Plaintiff asserts that he submitted documents for copywork on July 25,
12 2013 and August 1, 2013, but he has not received the copies.

13 **(1) Extension of time to file Notice of Appeal – Fed. R. App. P. 4**

14 Under Rule 4(a) of the Federal Rules of Appellate Procedure, a notice of appeal must be
15 filed with the district clerk within thirty days after entry of the judgment or order appealed
16 from. Fed. R. App. P. 4(a)(1)(A). However, the district court may extend time to file a notice
17 of appeal if a party so moves no later than thirty days after the time for filing the notice of
18 appeal expires, and the party shows excusable neglect or good cause. Fed. R. App. P.
19 4(a)(5)(A).

20 Plaintiff requests an extension of time to file a notice of appeal. However, Plaintiff has
21 not specified which of the court’s orders he intends to appeal. Without this information, the
22 court cannot consider Plaintiff’s request for extension of time, because Rule 4(a)(5)(A) places
23 time constraints on the district court’s authority to grant an extension of time, depending on the
24 date the order being appealed was entered. Therefore, Plaintiff’s request must be denied,
25 without prejudice to renewal of the request providing the information required by the court.

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27 ¹ On March 17, 2011, the court dismissed all of the defendants from this action except defendants Dr.
28 Wang, C/O Oaks, and C/O Hayward, based on violation of Rule 18(a) and Plaintiff’s failure to state a claim.
(Doc. 24.) On April 22, 2013, summary judgment was entered in favor of defendant Dr. Wang. (Doc. 85.)

1 **(2) Extension of time to file Objections to Defendants' Response (Doc. 95.)**

2 Plaintiff requests an extension of time to file objections to Defendants' response (Doc.
3 95) to Plaintiff's motion for a settlement conference and trial schedule. The court has already
4 ruled on this request; on August 9, 2013, the court denied this same request for extension of
5 time. (Doc. 99.) Thus, this request is moot and shall be denied as such.

6 **(3) Extension of time to file Objections to Court's Order (Doc. 97)**

7 Plaintiff requests an extension of time to file objections to the court's order of August 5,
8 2013 (Doc. 97), which denied his motion for a settlement conference and trial schedule. The
9 court construes this request as a request for extension of time to file a motion for
10 reconsideration of the court's order. Good cause appearing, the extension of time shall be
11 granted. Plaintiff shall be granted thirty days from the date of service of this order to file a
12 motion for reconsideration of the court's order of August 5, 2013 (Doc. 97), which denied
13 Plaintiff's motion for a settlement conference and trial schedule.

14 **III. CONCLUSION**

15 Based on the foregoing, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff's request for extension of time, filed on August 15, 2013, is
17 GRANTED in part and DENIED in part;
- 18 2. Plaintiff's request for an extension of time to file a notice of appeal is DENIED,
19 without prejudice to renewal of the request;
- 20 3. Plaintiff's request for an extension of time to file objections to Defendants'
21 response (Doc. 95) is DENIED as moot; and
- 22 4. Good cause appearing, Plaintiff is GRANTED thirty days from the date of
23 service of this order in which to file a motion for reconsideration of the court's
24 order of August 5, 2013 (Doc. 97).

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28 IT IS SO ORDERED.

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Dated: August 20, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE