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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DONALD GLASS,

Plaintiff,

v.

R. FIELDS, et al.,

Defendants.

CASE NO. 1:09-cv-00098-AWI-BAM PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT

(ECF Nos. 55, 100, 107)

Plaintiff Donald Glass ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 23, 2012, the Magistrate Judge filed a findings and recommendations herein which was served on the parties and which contained notice to the parties that any objections to the findings and recommendations were to be filed within thirty days. Plaintiff filed an objection on August 9, 2012. (ECF No. 107.)

Plaintiff objects to the findings and recommendations on the grounds that his cross motion for summary judgment was found by the Magistrate Judge to be untimely, and therefore was not addressed as a motion for summary judgment, but was addressed as an objection. Plaintiff argues that the Magistrate Judge abused her discretion in denying his motion to amend the scheduling order. Plaintiff claims that since he had no way of knowing that the Magistrate Judge would deny his motion, he was prevented from filing a motion for summary judgment, and therefore his motion should be considered timely.

1 To the extent that Plaintiff seeks reconsideration of the order denying his motion to amend
2 the scheduling order, which was issued on September 1, 2011, Plaintiff did not file a motion for
3 reconsideration, and the motion may not be raised in the objection to the findings and
4 recommendations. The Court has previously considered Plaintiff's motion for reconsideration of the
5 Magistrate Judge's denial of his motion to continue the motion for summary judgment.

6 The deadline in this action for filing dispositive motions was July 25, 2011. (ECF No. 34.)
7 Although Plaintiff argues that his motion for summary judgment should be considered timely
8 because the Magistrate Judge did not decide his motion to amend the scheduling order until after the
9 dispositive deadline had passed, Plaintiff did not file a motion to amend the dispositive motion
10 deadline or seek leave to file a late motion for summary judgment. The motions brought by Plaintiff
11 were to extend the amended pleading date and the discovery deadline.

12 Plaintiff filed several motions for an extension of time to file an objection to Defendants'
13 motion for summary judgment, however he did not file a motion for leave file a late motion for
14 summary judgment. Plaintiff's cross motion for summary judgment, filed February 23,
15 2012, approximately seven months after the dispositive motion deadline, was untimely.

16 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
17 de novo review of this case. Having carefully reviewed the entire file, the Court finds the findings
18 and recommendations to be supported by the record and by proper analysis.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The findings and recommendations, filed May 23, 2012, is adopted in full;
- 21 2. Defendants' motion for summary judgment, filed July 25, 2011, is denied; and
- 22 3. This action is referred back to the Magistrate Judge for further proceedings.

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25 IT IS SO ORDERED.

26 Dated: August 13, 2012

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28 CHIEF UNITED STATES DISTRICT JUDGE