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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRIAN ELLIS PORTER,
Plaintiff,
v.
CHERYLEE WEGMAN,
Defendant.

Case No. 1:10-cv-01500-BAM (PC)
ORDER DENYING PLAINTIFF’S MOTION
FOR EXTENSION OF TIME OR EXCUSE
FOR LATE FILING AS MOOT
(ECF No. 183)

Plaintiff Brian Ellis Porter (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. All parties have consented to magistrate judge jurisdiction. (ECF Nos. 5, 150.) This matter is set for trial on August 29, 2017.

Currently before the Court is Plaintiff’s motion for extension of time or excuse for late filing. (ECF No. 183.) Plaintiff essentially seeks an extension of time, nunc pro tunc, for the late filing of his motion in limine, witness information update, and the submission of his trial exhibits to Defendant.

The Court notes that Plaintiff’s motions in limine, if any, and the information concerning the location of witness Rabbi Paul Shleffar were both due on July 17, 2017. (See ECF Nos. 167, 169, 179.) Although Plaintiff’s motion in limine and update of witness information were not docketed until July 24, 2017, both documents include proofs of service by mail dated July 17, 2017. Pursuant to the prison mailbox rule, a pleading filed by a pro se prisoner is deemed to be

1 filed as of the date the prisoner delivered it to the prison authorities for mailing to the court clerk.
2 See Houston v. Lack, 487 U.S. 266, 270 (1988); Douglas v. Noelle, 567 F.3d 1103, 1108–09 (9th
3 Cir. 2009) (mailbox rule articulated in Houston applies to civil rights actions). Thus, contrary to
4 Plaintiff’s assertions, Plaintiff’s motion in limine and update of witness information were timely
5 filed, and the motion for extension of time is now moot.

6 With respect to the submission of Plaintiff’s trial exhibits to Defendant, this issue was
7 discussed with the parties on the record at the status conference of July 27, 2017.

8 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s motion for extension of time or
9 excuse for late filing (ECF No. 183) is DENIED as moot.

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11 IT IS SO ORDERED.

12 Dated: August 4, 2017

/s/ Barbara A. McAuliffe
13 UNITED STATES MAGISTRATE JUDGE

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