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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

HENRY WILLIAM TELLES, JR.,

Plaintiff,

v.

STANISLAUS COUNTY SHERIFF'S
DEPARTMENT, et al.,

Defendants.

) Case No.: 1:10-cv-01911 AWI JLT
)
) ORDER DISCHARGING THE ORDER TO
) SHOW CAUSE
)
) (Doc. 14)
)
) ORDER WITHDRAWING THE FINDINGS
) AND RECOMMENDATIONS DISMISSING
) THE ACTION WITH PREJUDICE
)
) (Doc. 15)
)
) ORDER GRANTING PLAINTIFF'S MOTION
) FOR EXTENSION OF TIME
)
) (Doc. 16)

) ORDER DIRECTING THE CLERK TO RE-
) SERVE DOCUMENT 13 TO PLAINTIFF

Henry William Telles, Jr. ("Plaintiff"), proceeding *pro se* and *in forma pauperis*, commenced this action on October 13, 2010, by filing a civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1). Plaintiff asserts this action against Stanislaus County, the Sheriff's Department of Stanislaus County, the Sheriff of Stanislaus County, and Does 1-250. (Doc. 6).

I. Procedural History

The Court screened Plaintiff's Complaint on November 24, 2010, and determined Plaintiff failed to state a cause of action. (Doc. 5). Plaintiff filed his Amended Complaint on

1 December 20, 2010. (Doc. 6). The Court screened Plaintiff's Amended Complaint and
2 found that Plaintiff failed again to state a claim upon which relief could be granted. (Doc. 7).
3 Following the Court's order to show cause, Plaintiff filed his Second Amended Complaint on
4 January 31, 2011 (Doc. 11), and his Third Amended Complaint was filed on February 8, 2011 (Doc.
5 12).

6 On February 17, 2011, the Court dismissed the Second Amended Complaint because it was
7 superceded by the Third Amended Complaint, and the Third Amended Complaint was dismissed for
8 a failure to state a claim. (Doc. 13). Plaintiff was ordered to file a fourth amended complaint,
9 addressing the deficiencies identified by the Court within 21 days of service, or by March 10,
10 2011. *Id.* at 16. Plaintiff failed to file his amended pleadings, addressing the deficiencies identified
11 by the Court or to otherwise responded to the Court's order.

12 On March 21, 2011, because Plaintiff failed to comply with the order dismissing his Third
13 Amended Complaint, the Court issued an order to show cause why the action should not be
14 dismissed for Plaintiff's failure to prosecute the action and based upon his failure to comply with the
15 Court's order. (Doc. 14). In the alternative, the Court directed Plaintiff to file his fourth amended
16 complaint. *Id.* at 2. Plaintiff failed to comply with the Court's order, and the Court issued its
17 Findings and Recommendations to dismiss the action on March 30, 2011. (Doc. 15).

18 On March 31, 2011, Plaintiff filed a response to the Court's order to show cause and asserted
19 that he did not receive the Court's order dismissing the Third Amended Complaint. (Doc. 13).
20 Further, Plaintiff moved for an extension of time to file a Fourth Amended Complaint. (*Id.*)

21 **II. Response to the Order to Show Cause and the Motion for Extension of Time**

22 In the response filed on March 31, 2011, Plaintiff asserts he did not receive the Court's order
23 dismissing his Third Amended Complaint. (Doc. 16 at 2). Plaintiff explains that he received the
24 order to show cause (Doc. 14), which directed him to either respond to the Court or file a Fourth
25 Amended Complaint, but was unable to do so because he could not address the deficiencies in his
26 Third Amended Complaint without the order dismissing it. (Doc. 16 at 2). Therefore, Plaintiff seeks
27 leave of the Court to file a Fourth Amended Complaint, after he receives a copy of the order. *Id.*

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1 Plaintiff argues he should receive 21 days to file an amended complaint as was originally
2 granted by the Court rather than the 14 days allotted under the order to show cause. However,
3 Plaintiff does not explain his delay in responding to the order to show cause. Plaintiff states he
4 received the order on March 17, 2011, but Plaintiff failed to notify the Court that he had not received
5 the document referenced therein until March 31, 2011. Notably, the order to show cause directed
6 Plaintiff to show cause as to why the action should not be dismissed “*or in the alternative*” to file his
7 amended complaint. (Doc. 14 at 2) (emphasis added). However, Plaintiff failed to respond to or
8 otherwise comply with the Order until after the filing deadline.

9 **III. Conclusion and Order**

10 Based upon the foregoing, the Court **HEREBY ORDERS:**

- 11 1. The Order to Show Cause dated March 14, 2011 (Doc. 14) is **DISCHARGED**;
- 12 2. The Findings and Recommendations dated March 30, 2011 (Doc. 15) is
13 **WITHDRAWN**;
- 14 3. The Clerk of Court **IS DIRECTED** to re-serve Plaintiff with the Order dated
15 February 17, 2011 (Doc. 13);
- 16 4 Plaintiff’s motion for an extension of time (Doc. 16) is **GRANTED**;
- 17 5. Within 14 days of the date of service of this order, Plaintiff must file an amended
18 complaint curing the deficiencies identified by the Court in the Order Dismissing the
19 Third Amended Complaint (Doc. 13); and
- 20 6. Plaintiff is firmly caution that his failure to comply with this order will result in a
21 recommendation that the matter be dismissed for failure to obey a court order.

22
23 IT IS SO ORDERED.

24 Dated: April 5, 2011

25 /s/ Jennifer L. Thurston
26 UNITED STATES MAGISTRATE JUDGE
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