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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 **EUGENE E. FORTE,**

9 **Plaintiff**

10 **v.**

11 **COUNTY OF MERCED, et al.,**

12 **Defendants.**

CASE NO. 1:11-cv-0318 AWI BAM

**ORDER DENYING EX PARTE
APPLICATION FOR EXTENSION OF
TIME TO FILE SUPPLEMENTAL
OBJECTIONS and RESPONSE TO
APPLICATION AT DOCUMENT # 330**

Doc. #'s 327 and 330

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15 Currently before the court is Plaintiff's *ex-parte* "Application for Extension of Time for
16 Plaintiff to Supplement Plaintiff's Objections (Doc. # 322) to Magistrate Judge Barbara
17 McAuliffe's Findings and Recommendations Recommending Dismissal for Bad Faith Conduct
18 (Doc. #300)" (hereinafter, Plaintiff's "Application"). Plaintiff submitted his original opposition
19 to the Magistrate Judges Findings and Recommendations ("F&R's") on April 16, 2015. Plaintiff
20 contends, inter alia, that he was denied the opportunity to respond to the Magistrate Judge's
21 admonishment contained in an order dated April 9, 2015, Doc. # 319, which pertained to a filing
22 by Plaintiff at Docket Number 318. The Magistrate Judge's order of April 9, ordered Plaintiff's
23 filing at Doc. # 318 stricken for improper argument on the Docket Report (the "April 9 Order").

24 Docket Number 318 was captioned:

25 **REQUEST for JUDGE ISHII TO OBTAIN PROOF FROM COURT REPORTER**
26 **GAIL THOMAS THAT PLAINTIFF GAVE THOMAS A "BAD CHECK" FOR**
27 **COURT TRANSCRIPTS AS STATED BY THOMAS IN HER EMAIL OF**
28 **4/07/2015 AND PROVIDE SUCH EVIDENCE TO PLAINTIFF**
IMMEDIATELY. IF PROOF CANNOT BE PROVIDED, PLAINTIFF
REQUESTS THAT THE COURT ACKNOWLEDGE THAT THOMAS HAS
MADE AN INTENTIONAL MATERIAL FALSE STATEMENT TO MALIGN
PLAINTIFF SO THAT PLAINTIFF MAY ARGUE SUCH IN HIS OBJECTIONS

1 TO MAGISTRATE MCAULIFFE'S F & R (DOC. #300) RECOMMENDING
2 DISMISSAL OF THE COMPLAINT DUE IN PART TO PLAINTIFF'S
3 ALLEGED BAD TREATMENT OF COURT STAFF (WHICH PLAINTIFF HAS
4 NEVER DONE, JUST AS HE HAS NEVER ISSUED A BAD CHECK TO
5 THOMAS). PLAINTIFF REQUESTS THE INFORMATION FROM THE
6 COURT TO ESTABLISH THAT THE E.D. CLERKS AND COURT STAFF ARE
7 PREJUDICED AGAINST PLAINTIFFS INTERESTS TO THE POINT OF
8 FALSELY ACCUSING HIM OF CRIMINAL CONDUCT (VIOLATION OF
9 PENAL CODE 476 (a) WHICH IS A WOBBLER FELONY OR
10 MISDEMEANOR) WHEN THERE WAS NONE, TO TAUNT, PROVOKE AND
11 HUMILIATE PLAINTIFF WITH THE KNOWLEDGE AND/OR DIRECTION,
12 AND/OR RATIFICATION OF JUDGE ISHII AND MAGISTRATE
13 MCAULIFFE.

8 The Magistrate Judge's April 9 order opined that Plaintiff's choice of title language was
9 "argument, improper and abusive." Doc. # 319 at 1:21. Plaintiff's filing was stricken. Plaintiff
10 was given leave to amend and advised that any future filings by Plaintiff "must be filed in motion
11 format." Doc. # 319 at 2:6-7.

12 So far as the court can discern, Plaintiff's Application requests a continuance of time to
13 allow plaintiff to argue two "new" issues. First, Plaintiff seeks to argue the "baseless" nature of
14 The Magistrate Judge's admonition and to counter what Plaintiff anticipates will be the court's use
15 of the April 9 Order against him. Second, Plaintiff seeks to elaborate on his theory that the
16 transcriptionist's communication with Plaintiff requiring a cashier's check in payment for a
17 request for transcripts because a prior check had been returned for insufficient funds evinces the
18 biased attitude and conspiratorial aims of the court and its personnel against him. Plaintiff also
19 requests that Defendants be ordered to delay their responses to Plaintiff's opposition in order to
20 comment on the added material Plaintiff seeks to append to his opposition. Beyond that,
21 Plaintiff's Application restates some of the major themes already presented in his opposition to the
22 F&R's.

23 To some extent, events have overtaken Plaintiff's Application insofar as Defendants filed
24 their responses to Plaintiff's opposition (a filing which Plaintiff's Application sought to delay until
25 after his supplement was filed) two days after Plaintiff's Application was filed. Further, Plaintiff
26 filed his "reply" to Defendants' responses to his opposition on May 4, 2015, thereby completing
27 the usually-accepted briefing regarding most motions. Plaintiff's Application, if granted, would
28 result in a substantial delay in proceedings. For the reasons that follow, the court finds further

1 delay is neither warranted nor necessary.

2 On March 16, 2015, the court granted Plaintiff's second request for extension of time to
3 file an opposition. That order extended the date for submission of Plaintiff's opposition to April
4 16, 2015, and of Defendants' response to April 30, 2015. The Docket Report indicates both
5 documents were filed by the dates set by the court. Plaintiff has made his position perfectly clear
6 with regard to the April 9 Order and with regard to his perceptions regarding the court's biases in
7 his Application. While Plaintiff may be of the opinion that the themes he raises in his Application
8 require further elaboration, they do not. The court finds that it is sufficient for Plaintiff's purpose
9 that the court deem Plaintiff's Application to be the supplemental memorandum in support of his
10 opposition to the F&R's that he seeks to file. The court will so consider it. In accepting Plaintiff's
11 Application as the supplement and in denying leave to further amend or supplement his
12 opposition, the court reaches no conclusions regarding the merits of Plaintiff's contentions.
13 Plaintiff's contentions expressed in his Application and the facts alleged in support thereof are
14 now before the court and, to the extent Plaintiff may later wish to challenge the court's future
15 ruling on the Magistrate Judge's F&R's, the issues are adequately preserved for appeal.

16 At Document # 330, Plaintiff questioned the caption that appeared on the response of
17 Defendants Hill, et al., which indicated a hearing date of June 8, 2014. Plaintiff's Document
18 Number 330 requests that the court disclose what proceeding is scheduled in this case on June 8,
19 2015, at 1:30 p.m. The answer is nothing pertaining to this action is scheduled. Defendants Hill,
20 et al. explained in a document filed at Docket Number 331 that they had placed a hearing date on
21 their response to Plaintiff's opposition in error. The court has no reason to doubt Defendant's
22 explanation.

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24 THEREFORE, for the reasons discussed above, Plaintiff's Application, Docket Number
25 327, is hereby DEEMED by the court to be Plaintiff's Supplement to his Objections to the
26 Magistrate Judge's F&R's. Plaintiff's Application is otherwise DENIED in its entirety. The court
27 further ORDERS that the matters presented by the Magistrate Judge's F&R's, Document Number
28 300 have been thoroughly briefed by the Parties and the matter is hereby TAKEN UNDER

1 SUBMISSION as of the date of service of this order. The court hereby EXTENDS the STAY of
2 proceedings in this case until such time as it will issue its orders on the Magistrate Judge's F&R's.

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4 IT IS SO ORDERED.

5 Dated: May 7, 2015


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SENIOR DISTRICT JUDGE