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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PHILIP ROSATI,
 Plaintiff,

 v.

IGBINOSO, et al.,
 Defendants.

Case No. 1:12-cv-01213-AWI-DLB PC

**ORDER DENYING PLAINTIFF’S
MOTION REGARDING TOLLING AS
UNNECESSARY (ECF No. 3)**

**ORDER DENYING PLAINTIFF’S
MOTION REGARDING RELIEF FROM
DEFAULT AS UNNECESSARY (ECF No. 8)**

Plaintiff Philip Rosati (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation. Plaintiff is proceeding pro se in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed his action on July 17, 2012, in the Southern District of California. The action was transferred to this Court. Pending before the Court is: 1) Plaintiff’s motion requesting equitable tolling regarding the filing of his action and 2) Plaintiff’s motion requesting relief from default. ECF Nos. 3, 8.

Plaintiff contends that any untimeliness in the filing of his action be tolled because of circumstances resulting in Plaintiff not being able to access his legal materials. ECF No. 3. The issue of equitable tolling is not an issue that the Court need consider at this time, as it is a matter concerning the statute of limitations, an affirmative defense. Thus, Plaintiff’s motion is denied as unnecessary.

Plaintiff also moves for the Court to not impose sanctions for failing to timely file the Court’s order regarding consenting or declining a magistrate judge’s jurisdiction. ECF No. 8. Plaintiff

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contends that it was error regarding mailing that caused the delay. Plaintiff is correct. A clerical error regarding Plaintiff's mail occurred, causing the delay. Thus, Plaintiff's motion is denied as unnecessary.

IT IS SO ORDERED.

Dated: March 19, 2013

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE