

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BRANDON EARL McCORMICK,  
Plaintiff,  
v.  
DR. ATKIN, et al.,  
Defendants.

) Case No.: 1:12-cv-02022-SAB (PC)  
)  
)  
) ORDER DISCHARGING ORDER TO SHOW  
) CAUSE, DENYING PLAINTIFF'S MOTION FOR  
) CONTINUANCE OF FOUR TO SIX MONTHS,  
) AND GRANTING PLAINTIFF THIRTY DAYS TO  
) FILE AN OPPOSITION TO DEFENDANTS'  
) MOTION FOR SUMMARY JUDGMENT  
)  
) [ECF No. 25]

Plaintiff Brandon Earl McCormick is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On September 8, 2014, Defendants filed a motion for summary judgment, and the motion was noticed for oral argument on November 5, 2014, at 10:00 a.m. before the undersigned. As stated in the Court's July 29, 2014, order, because Plaintiff has been released from prison and is no longer a state prisoner, Local Rule 230(l) no longer governs this action and all other non-prisoner provisions in the Local Rules shall apply. Plaintiff did not file an opposition to Defendants' motion.

Accordingly, on October 24, 2014, the Court vacated the hearing date of November 5, 2014, and directed Plaintiff to show cause why the action should not be dismissed for failure to prosecute.

On October 31, 2014, Plaintiff filed a response to the Court's order to show cause. Plaintiff indicates that he did not receive Defendants' motion for summary judgment because he was in jail,

1 then hospitalized, and is now again in prison. Plaintiff requests a four to six month continuance due to  
2 his placement in prison and lack of legal resources.

3 As an initial matter, Plaintiff is advised that pursuant to Local Rule 183, “[a] party appearing in  
4 propria persona shall keep the Court and opposing parties advised as to his or her current address. If  
5 mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if  
6 such plaintiff fails to notify the Court and opposing parties within sixty-three (63) days thereafter of a  
7 current address, the Court may dismiss the action without prejudice for failure to prosecute.” Local  
8 Rule 183(b). To date, Plaintiff has not filed a notice of change of address. Thus, to the extent  
9 Plaintiff’s address has changed and he requests mail to be directed to a different address, Plaintiff must  
10 comply with Local Rule 183 by filing an appropriate notice of change of address. Otherwise, service  
11 at the address of record is effective. See Local Rule 182(f) (each party, even pro se litigants, are under  
12 continuing duty to notify the Clerk and other parties of change of address. Absent such notice, service  
13 of documents at the prior address of party is fully effective.)

14 As to Plaintiff’s request for a continuance of four to six months, his request must be DENIED.  
15 Although Plaintiff’s incarceration status is unfortunate, such status does not provide a basis to justify a  
16 continuance of four to six months in order for Plaintiff to file an opposition to Defendants’ motion for  
17 summary judgment that was filed on September 8, 2014. In the interest of justice, the Court will grant  
18 Plaintiff thirty (30) days from the date of service of this order to file an opposition to Defendants’  
19 motion for summary judgment. No further extension of time will be granted absent a showing of  
20 extraordinary circumstances, not present here. Failure to file an opposition within the allotted thirty  
21 day time frame will result in the matter be dismissed for failure to comply with a court order.

22 Based on the foregoing,

23 IT IS HEREBY ORDERED that:

24 1. The Court’s Order to Show Cause issued October 24, 2014, is DISCHARGED;  
25 2. Plaintiff’s request for a continuance of four to six months is DENIED;  
26 3. Plaintiff is granted thirty (30) days from the date of service of this order to file an  
27 opposition to Defendants’ motion for summary judgment; and

1           4. Failure to comply with this order will result in dismissal of the action for failure to  
2           comply with a court order.

3  
4 IT IS SO ORDERED.

5 Dated: November 12, 2014

  
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7           UNITED STATES MAGISTRATE JUDGE  
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