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| 4 | UNITED ST | ATES DISTRICT COURT |
| 5 | EASTERN DISTRICT OF CALIFORNIA | |
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| 7 | KING MWASI, | Case No. 1:13-cv-00695-DAD-JLT (PC) |
| 8 | Plaintiff, | ORDER WITHDRAWING FINDINGS AND |
| 9 | V. | RECOMMENDATION TO GRANT DEFENDANTS' MOTION FOR SUMMARY |
| 10 | CORCORAN STATE PRISON, et al | JUDGMENT and GRANTING EXTENSION OF TIME TO FILE OPPOSITION <i>NUNC PRO TUNC</i> |
| 11 | Defendants. | (Docs. 87, 88, 93) |
| 12 | | 60-DAY DEADLINE |
| 13 | | 00-DAY DEADLINE |
| 14 | On May 30, 2017, Defendants filed a motion for summary judgment contending that | |
| 15 | Plaintiff violated 42 U.S.C. § 1997e(a) because he failed to exhaust the available administrative | |
| 16 | remedies prior to filing this suit. (Doc. 83.) Despite lapse of more than a month beyond the | |
| 17 | allowed time, Plaintiff filed neither an opposition, nor a statement of opposition to Defendants' | |
| 18 | motion. Thus, on August 17, 2017, the Court issued Findings and Recommendations to grant | |
| 19 | Defendants' motion. (Doc. 87.) | |
| 20 | On August 28, 2017, Plaintiff filed a motion seeking a 60-day extension of time to file an | |
| 21 | opposition to Defendants' motion. (Doc. 88.) On September 11, 2017, Plaintiff filed a motion to | |
| 22 | appoint counsel as well as a motion to rescind the F&R or stay the action as well as a motion to | |
| 23 | allow him to file an opposition to Defendants' motion. (Docs. 90, 91.) In both his motion for an | |
| 24 | extension of time and to rescind the F&R, Plaintiff asserted that he gave Defendants' motion and | |
| 25 | exhibit A to another inmate who was going to help Plaintiff prepare an opposition. (Docs. 88, | |
| 26 | 91.) However, the other inmates' folder, which contained Plaintiff's copy of the motion and | |
| 27 | exhibit A, was stolen. Plaintiff had attempted to gain access to his 3 boxes of legal materials to | |
| 28 | no avail and had difficulties with mailing correspondence out of CSP. The Court found good | |
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| 1 | cause to vacate the F&R and granted Plaintiff a 60-day extension of time to file an opposition or | | |
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| 2 | statement of non-opposition. (Doc. 92.) When Plaintiff did not file either within the time | | |
| 3 | allowed, the F&R was reinstated. (Doc. 94.) However, Plaintiff recently filed a motion | | |
| 4 | requesting a 60-day extension of time because a major lockdown occurred at his facility in | | |
| 5 | October and all inmates' property has been confiscated and is being searched. (Doc. 93.) Though | | |
| 6 | Plaintiff has requested his legal property, he has not yet received it back and correctional staff are | | |
| 7 | only able to tell him that he will receive his property back after it has been searched and that "it | | |
| 8 | may take awhile." (Id., p. 4.) Accordingly, the Court ORDERS: | | |
| 9 | 1. The Findings and Recommendations to grant Defendants' motion for summary | | |
| 10 | judgment, issued on August 17, 2017 (Doc. 87), are once again VACATED; | | |
| 11 | 2. Plaintiff's motion for an extension of time to file an opposition or statement of | | |
| 12 | non-opposition to Defendants' motion for summary judgment, filed December 1, | | |
| 13 | 2017 (Doc. 93), is GRANTED nunc pro tunc and he shall do so within 60 days of | | |
| 14 | the date of service of this order, failure to comply will result in reinstatement of | | |
| 15 | the August 17, 2017 Findings and Recommendations; and | | |
| 16 | 3. The Clerk's Office is directed to forward copies of Defendants' motion for | | |
| 17 | summary judgment (Doc. 83), points and authorities (Doc. 83-1), statement of | | |
| 18 | undisputed facts (Doc. 83-2), and the declaration of Goree (Doc. 83-4) as well as | | |
| 19 | another copy of the Second Informational Order that issued on June 1, 2017 (Doc. | | |
| 20 | 85) to Plaintiff along with service of this order. | | |
| 21 | Plaintiff is advised that no further extensions of time will be granted. He must oppose the | | |
| 22 | motion or file a statement of non-opposition within 60 days or the Court will presume that | | |
| 23 | he does not wish to be heard on the matter. | | |
| 24 | | | |
| 25 | IT IS SO ORDERED. | | |
| 26 | Dated: December 7, 2017 /s/ Jennifer L. Thurston | | |
| 27 | UNITED STATES MAGISTRATE JUDGE | | |
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