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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KING MWASI,
Plaintiff,
v.
CORCORAN STATE PRISON, et al
Defendants.

Case No. 1:13-cv-00695-DAD-JLT (PC)
**ORDER REINSTATING AUGUST 17, 2017
FINDINGS AND RECOMMENDATIONS TO
GRANT DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**
(Docs. 83, 87, 92, 94, 95)
21-DAY OBJECTION DEADLINE

On May 30, 2017, Defendants filed a motion for summary judgment contending that Plaintiff violated 42 U.S.C. § 1997e(a) because he failed to exhaust the available administrative remedies prior to filing this action. (Doc. 83.) Despite lapse of more than a month beyond the allowed time, Plaintiff filed neither an opposition nor a statement of opposition to Defendants' motion. Thus, on August 17, 2017, the Court issued Findings and Recommendations to grant Defendants' motion. (Doc. 87.)

On August 28, 2017, Plaintiff filed a motion seeking a 60-day extension of time to file an opposition to Defendants' motion. (Doc. 88.) On September 11, 2017, Plaintiff filed a motion to appoint counsel as well as a motion to rescind the F&R or stay the action and a motion to allow him to file an opposition to Defendants' motion. (Docs. 90, 91.) In both his motion for an extension of time and to rescind the F&R, Plaintiff asserted that he gave Defendants' motion and exhibit A to another inmate who was going to help Plaintiff prepare an opposition. (Docs. 88,

1 91.) However, the other inmates' folder, which contained Plaintiff's copy of the motion and
2 exhibit A, was stolen. Plaintiff attempted to gain access to his three boxes of legal materials to no
3 avail and had difficulties with mailing correspondence out of CSP. The Court found good cause
4 to vacate the F&R and granted Plaintiff a 60-day extension of time to file an opposition or
5 statement of non-opposition. (Doc. 92.) When Plaintiff did not file either within the time
6 allowed, the F&R was reinstated. (Doc. 94.) However, Plaintiff again filed a motion requesting a
7 60-day extension of time because a major lockdown occurred at his facility in October and all
8 inmates' property had been confiscated and was being searched. (Doc. 93.) Though Plaintiff
9 requested his legal property, he had not yet received it and correctional staff was only able to tell
10 him that he would receive his property after it has been searched and that "it may take awhile."
11 (*Id.*, p. 4.)

12 Thus, on December 7, 2017, the Court vacated the Findings and Recommendations to
13 grant Defendants' motion for summary judgment and granted Plaintiff's motion for an extension
14 of time to file an opposition or statement of non-opposition. The Court warned Plaintiff that "**no**
15 **further extensions of time will be granted. He must oppose the motion or file a statement of**
16 **non-opposition within 60 days or the Court will presume that he does not wish to be heard**
17 **on the matter.**" (Doc. 95 (emphasis in original).) More than 60 days from the date of service of
18 that order have lapsed without Plaintiff filing an opposition or statement of non-opposition to
19 Defendants' motion for summary judgment.

20 Accordingly, the Findings and Recommendations to grant Defendants' motion for
21 summary judgment which issued on August 17, 2017, (Doc. 87), are **REINSTATED**.

22 The August 17, 2017 Findings and Recommendations will be submitted to the United
23 States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. §
24 636(b)(1). **Within 21 days** after being served with these Findings and Recommendations, the
25 parties may file written objections with the Court. Local Rule 304(b). The document should be
26 captioned "Objections to Magistrate Judge's Findings and Recommendations."

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The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson*, 772 F.3d at 838-39 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: February 21, 2018

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE