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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

CHARLES W. WINDHAM,  
Plaintiff,  
v.  
RUBIO, et al.,  
Defendants.

1:15-cv-01224-DAD-JLT (PC)

**ORDER DISCHARGING ORDER TO  
SHOW CAUSE; WITHDRAWING  
FINDINGS AND RECOMMENDATION TO  
DISMISS; and PARTIALLY GRANTING  
EXTENSION OF TIME FOR PLAINTIFF  
TO FILE A FIRST AMENDED  
COMPLAINT**

(Docs. 7, 9, 12)

**45-DAY DEADLINE**

On October 23, 2015, the Court issued an order finding that Plaintiff failed to state any cognizable claims, dismissing the Complaint, and granting leave for Plaintiff to file a first amended complaint within 30 days. (Doc. 7.) More than 30 days passed and Plaintiff failed to file an amended complaint or otherwise respond to the Court's Order. Thus, on December 8, 2015, the Court ordered Plaintiff to show cause why this action should not be dismissed both for his failure to state a claim and to comply with the court's order. Plaintiff did not file a response to the order to show cause.<sup>1</sup> The Court warned Plaintiff that his failure to comply with the order

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<sup>1</sup> The Court noted that mail to Plaintiff has been returned to this Court as undeliverable. (See entries for December 9, 2015 and January 4, 2016.) Plaintiff was notified in the First Informational Order that he must keep the court informed of his current address and that a failure to do so within 63 days of receipt of returned mail by the Court will result in dismissal for failure to prosecute per Local Rule 183(b). (See Doc. 3.) This same order informed Plaintiff that documents served on an old address of record are deemed received where a plaintiff has failed to update his address in an action with this Court. Though Plaintiff filed a notice of change of address on February 4, 2016, he has filed neither a response to the order to show cause; nor a first amended complaint.

1 would result in dismissal of this action. (*Id.*) Thus, on February 17, 2016, the Court issued a  
2 Findings and Recommendation that the action be dismissed for Plaintiff's failure to obey a court  
3 order and to prosecute this action. (Doc. 12.) The very next day, the Court received Plaintiff's  
4 response to the earlier order. (Doc. 14.)

5 Plaintiff explains that he is "lacking" pens and paper and that prison staff have withheld  
6 them from him. Plaintiff also indicates that he mailed a letter to the Chief Judge on January 31,  
7 2016 explaining all of this and his current condition. However, as noted in the First Informational  
8 Order in this action, the Court does not accept correspondence for filing. Plaintiff further asserts  
9 that he was moved to CHCF Stockton on October 1, 2015 and that all of his  
10 files/documents/briefs/etc., on his legal case are being held in storage until he is released from  
11 that facility -- which will be in approximately nine months. Plaintiff requests an extension of nine  
12 months on the deadlines in this action so that he may be relieved from any further obligations in  
13 this action until he is discharged from CHCF Stockton to a non-medical facility.

14 Nine months is an excessive amount of time for this action to languish. However, it is  
15 obvious that Plaintiff has been hampered in responding to this Court's orders and that some  
16 extension of time for him to file an amended complaint is in order. Thus, the Court will order that  
17 copies of Plaintiff's original pleading and the screening order be sent to Plaintiff with this order  
18 such that Plaintiff will have both his original allegations and the standards for the claims it  
19 appears he intended to state in this action and he will be granted forty-five days to file an  
20 amended complaint. Accordingly, the Court **ORDERS**:

21 1. The Order to Show Cause issued on December 8, 2015, is **DISCHARGED**;

22 2. The Findings and Recommendation to dismiss this action (Doc. 12), is

23 **WITHDRAWN**;

24 3. Plaintiff is **GRANTED** 45 days from the date of service of this order to file a first  
25 amended complaint or a notice of voluntary dismissal; and

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4. The Clerk's Office is **DIRECTED** to forward copies of Plaintiff's Complaint (Doc. 1) and the screening order (Doc. 7) to Plaintiff.

IT IS SO ORDERED.

Dated: February 19, 2016

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE