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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CASEY WATKINS,
Plaintiff,
v.
CHAD GREENWOOD, et al.,
Defendants.

Case No. 1:16-cv-00850-LJO-SAB
ORDER DENYING PLAINTIFF’S MOTION
FOR AN EXTENSION OF TIME TO FILE
OPPOSITION TO MOTION TO DISMISS
(ECF No. 31)
ORDER STRIKING PLAINTIFF’S
OPPOSITION TO DEFENDANTS’ MOTION
TO DISMISS
(ECF No. 43)

Plaintiff Casey Watkins is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On May 18, 2017, Defendant Chad Greenwood filed a motion to dismiss in this action. (ECF No. 23.) On May 19, 2017, Defendant Lukious Sims filed a notice of joinder in the motion to dismiss. (ECF No. 24.) On June 19, 2017, Defendant Greenwood’s counsel filed a declaration stating that Plaintiff had not served an opposition to the motion to dismiss. (ECF No. 26.) On June 22, 2017, Plaintiff filed a notice of change of address. (ECF No. 27.) On June 26, 2017, Defendant Greenwood was ordered to serve a copy of the declaration on Plaintiff at his current address. (ECF No. 28.) On June 26, 2017, Defendant Greenwood re-served the declaration in lieu of reply at Plaintiff’s new address. (ECF No. 30.)

On July 5, 2017, Plaintiff filed a motion for a thirty day extension of time until July 17, 2017, to respond to the motion to dismiss and a notice to the court. (ECF Nos. 31, 32.)

1 Defendant Greenwood's counsel informed the Court that Defendant Greenwood intended to
2 oppose the motion for an extension of time. On July 11, 2017, the Court ordered Defendants to
3 file an opposition or statement of non-opposition to Plaintiff's motion for an extension of time.
4 (ECF No. 35.)

5 On July 13, 2017, Defendant Greenwood filed an opposition to Plaintiff's motion for an
6 extension of time and attached the declarations of E. Olson and S. Hom in support of the
7 opposition. (ECF No. 36.) On July 13, 2017, Defendant Sims filed an opposition to Plaintiff's
8 motion for an extension of time and a request for judicial notice.¹ (ECF No. 37.) On July 17,
9 2017, the Court ordered Plaintiff to file a reply to Defendants' oppositions to Plaintiff's motion
10 for an extension of time within twenty-one days of the date of service of the order. (ECF No.
11 41.) The order was served on Plaintiff on July 17, 2017.

12 The deadline has passed and Plaintiff has not filed a reply to Defendants' oppositions to
13 Plaintiff's motion for an extension of time. Therefore, as Plaintiff has not refuted what is in
14 Defendants' oppositions, the Court considers Defendants' oppositions unopposed.

15 The Court notes that Plaintiff's motion for an extension of time was untimely, as it was
16 filed after the deadline for Plaintiff to file his opposition.² Plaintiff indicates in his notice to the
17 court that between May 27, 2017, and June 15, 2017, he was in transition between prisons and he
18 was not allowed access to the law library, copy machine, typewriters, or his property. (ECF No.
19 32.) He states that he would have opposed the motion to dismiss, but he did not have access to
20 his materials to write to the Court. (ECF No. 32.)

21 Defendants argue that Plaintiff has not shown good cause for an extension of time.
22 Defendants argue that Plaintiff was transferred from California City Correctional Facility on

24 ¹ Defendant Sims requests that the Court take judicial notice of the Kern County Superior Court criminal docket for
25 case no. BF153580A, which is the criminal case for which Plaintiff is incarcerated. While it appears that Defendant
26 Sims requests judicial notice to provide background information for the Court, the information that Defendant Sims
27 requests the Court take judicial notice of is not relevant to Plaintiff's motion for an extension of time. Therefore, the
28 Court does not take judicial notice of Exhibit A, the Kern County Superior Court criminal docket for case no.
BF153580A.

² Even when the Court considers that the motion for an extension of time is considered filed on June 28, 2017,
because it was mailed on June 28, 2017, it is still untimely. Plaintiff's deadline to file his opposition was June 12,
2017.

1 June 14, 2017, and received at California Men's Colony on June 15, 2017. (ECF No. 30.)
2 Defendants present evidence that Plaintiff had appointments to access the law library on June 2,
3 2017, June 6, 2017, and June 9, 2017, and actually attended those appointments. (ECF No. 36-
4 2.) Defendants also present evidence that Plaintiff's property was not inventoried for transfer
5 until June 10, 2017. (ECF No. 36-1.)

6 Therefore, Plaintiff had access to the law library and his property during the time that
7 Plaintiff alleged he did not. Plaintiff had the opportunity to timely oppose the motion to dismiss
8 or make a timely request for an extension of time, but he did not do so. The Court finds that
9 Plaintiff has not shown good cause for an extension of time to file his opposition to Defendants'
10 motion to dismiss and the motion for an extension of time shall be denied. Further, Plaintiff's
11 opposition to the motion to dismiss, which was untimely filed, shall be stricken from the record.

12 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for an extension of time
13 to file his opposition to the motion to dismiss (ECF No. 31) is DENIED and Plaintiff's
14 opposition to the motion to dismiss (ECF No. 43) is STRICKEN FROM THE RECORD.

15 IT IS SO ORDERED.

16 Dated: August 21, 2017

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19 UNITED STATES MAGISTRATE JUDGE
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