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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL HANDY,
Plaintiff,
v.
DAVID CASTILLO,
Defendant.

Case No.: 1:22-cv-01160-ADA-SKO (PC)

**ORDER VACATING FINDINGS AND
RECOMMENDATIONS TO DISMISS
ACTION FOR FAILURE TO OBEY
ORDERS AND FAILURE TO PROSECUTE**

(Doc. 11)

**ORDER PARTIALLY GRANTING
MOTION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE FIRST
AMENDED COMPLAINT**

(Doc. 12)

Plaintiff Michael Handy is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C § 1983.

I. RELEVANT BACKGROUND

On June 8, 2023, this Court issued its First Screening Order. (Doc. 9.) The Court found Plaintiff’s complaint failed to state a claim upon which relief could be granted. (*Id.* at 3-5.) Plaintiff was granted leave to file an amended complaint curing the deficiencies identified in the Court’s order. (*Id.* at 5.) Plaintiff was ordered to either file a first amended complaint or a notice of voluntary dismissal within 21 days of the date of service of the order. (*Id.* at 5-6.)

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1 When Plaintiff failed to file either a first amended complaint or a notice of voluntary
2 dismissal, the Court issued its Findings and Recommendations To Dismiss Action For Failure To
3 Obey Court Orders And Failure To Prosecute on July 11, 2023. (Doc. 11.) Any objections were to
4 be filed within 14 days of the date of service. (*Id.* at 4.)

5 On July 21, 2023, Plaintiff filed a document titled “Notice to the Court; And Notice of and
6 Motion for Time Extension Under Necessity and in the Interest of Justice.”¹ (Doc. 12.) Plaintiff
7 states he “indeed mailed this Court a First Amended Complaint ... over two (2) weeks ago.” (*Id.*)
8 Plaintiff contends he “has been having continued problems with his out going legal mail” and that
9 “the court(s) would never receive the documents.” (*Id.*) He seeks a 30-day extension of time
10 within which to “re-prepare and submit his (second) First Amended Complaint.” (*Id.*)

11 **II. DISCUSSION**

12 Plaintiff’s motion indicates an intent to pursue this action. He contends he mailed a first
13 amended complaint more than two weeks prior to his request dated July 14, 2023. Although the
14 Court has not received a first amended complaint, it will accept Plaintiff’s statement as true. The
15 Court finds Plaintiff did not ignore the Court’s screening order, and will therefore vacate its
16 previously issued Findings and Recommendations.

17 Concerning Plaintiff’s request for an extension of time, the Court will grant the request in
18 part. As Plaintiff explains in his request, he will have “re-prepare” and submit his first amended
19 complaint. Plaintiff will be afforded 21 days within which to file a first amended complaint
20 instead of the 30 days requested. Assuming Plaintiff has previously prepared a first amended
21 complaint within the previously ordered 21-day time period, a 30-day extension of time should
22 not be necessary.

23 **III. CONCLUSION AND ORDER**

24 For the reasons stated above, the Court **HEREBY ORDERS** that:

- 25 1. The Findings and Recommendations to Dismiss Action For Failure To Obey Court
26 Orders And Failure To Prosecute issued July 11, 2023 (Doc. 11) are **VACATED**;

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¹ Plaintiff’s filing was signed and dated July 14, 2023.

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2. Plaintiff's request for an extension of time is **GRANTED IN PART**. Plaintiff **SHALL** file his first amended complaint within 21 days of the date of service of this order; and
3. **No further extensions of time will be entertained. Plaintiff is cautioned that a failure to obey this order will result in the Court reissuing findings and recommendations to dismiss this action for a failure to obey court orders.**

IT IS SO ORDERED.

Dated: July 28, 2023

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE