

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

A. DAVIES,

Plaintiff,

No. CIV S-03-0014 LKK JFM P

vs.

Dr. K. LOW,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On August 28, 2006, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. On September 11, 2006, plaintiff was granted until September 25, 2006 in which to file objections to the findings and recommendations. No objections were filed by September 25, 2006, and this court issued an order adopting the findings and recommendations on September 28, 2006.

////

1 However, on October 5, 2006, plaintiff filed a motion for relief from judgment.
2 Fed. R. Civ. P. 60(b). Plaintiff noted he had filed objections to the findings and
3 recommendations, which were signed on September 22, 2006, and filed with the court on
4 September 27, 2006. Good cause appearing, the September 28, 2006 judgment will be vacated
5 and the court will consider plaintiff's timely-filed objections.¹

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-
7 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire
8 file, the court finds the findings and recommendations to be supported by the record and by
9 proper analysis.

10 In addition, on September 27, 2006, plaintiff filed a motion for reconsideration of
11 this court's September 11, 2006 order denying plaintiff's request for temporary restraining order.
12 However, as noted in this court's September 28, 2006 order, plaintiff's request for temporary
13 restraining order is futile in light of the grant of summary judgment in this action. When seeking
14 injunctive relief, plaintiff must show a "fair chance of success on the merits" of his claim. Sports
15 Form, Inc. v. United Press International, Inc., 686 F.2d 750, 754 (9th Cir. 1982), quoting Benda
16 v. Grand Lodge of International Association of Machinists and Aerospace Workers, 584 F.2d
17 308, 315 (9th Cir. 1979). Plaintiff cannot make such a showing.

18 Accordingly, IT IS HEREBY ORDERED that:


- 19 1. Plaintiff's October 5, 2006 request for relief from judgment is granted;
20 2. The September 28, 2006 judgment is vacated;
21 3. The findings and recommendations filed August 28, 2006, are adopted in full;
22 4. Defendant's November 18, 2005 motion for summary judgment is granted; and

23 ////

24
25 ¹ The Supreme Court has held that the situation of pro se prisoners seeking to meet court
26 deadlines is unique and that therefore a document may be "filed" on the date that it is given by an
inmate to prison authorities for mailing. Houston v. Lack, 487 U.S. 266, 270-72, 275 (1988).

1 5. Plaintiff's September 27, 2006 motion for reconsideration is granted; upon
2 reconsideration, the court affirms its September 12, 2006 order denying plaintiff's request for
3 temporary restraining order.

4 DATED: December 20, 2006.

5
6 
7 LAWRENCE K. KARLTON
8 SENIOR JUDGE
9 UNITED STATES DISTRICT COURT
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26