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

THOMAS CLINTON,  
Plaintiff,

No. CIV S-05-1600-LKK-CMK-P

vs.

ORDER

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,  
Defendants.

\_\_\_\_\_ /

Plaintiff, a former state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is a motion for reconsideration (Doc. 434) of the magistrate judge’s November 4, 2010, order. In that order, the magistrate judge denied defendant’s motion for a four-day extension of time to file a motion for summary judgment (ECF No. 419), and struck the defendant’s motion for summary judgment (ECF No. 422). Plaintiff has filed a response to the motion for reconsideration, ECF No. 439.

Pursuant to Eastern District of California Local Rule 303(f), a magistrate judge’s order shall be upheld unless “clearly erroneous or contrary to law.” Upon review of the entire file, the court finds that the magistrate judge’s ruling was contrary to law, and is therefore REVERSED.

1 This § 1983 action stems from an alleged prison rape of petitioner. Plaintiff alleges that  
2 he was denied medical care after the alleged assault, and that he was retaliated against for  
3 reporting the assault. On July 30, 2010, the magistrate judge issued an order setting October 22,  
4 2010 as the deadline for filing dispositive motions. ECF No. 402. The order stated “requests to  
5 further continue the deadline is discouraged, and will only be granted upon a showing of good  
6 cause.” Id. 2:11. Nonetheless, on October 22, 2010 defendant requested a six-day extension of  
7 time to file a motion for summary judgment. ECF. No. 419. In that motion, defendant’s counsel  
8 explained that additional time was needed for internal review of the summary judgment motion  
9 by a supervisor, as required by a policy in the Attorney General’s office. Decl. J. Steele, ECF No.  
10 419. Mr. Steele also stated that he had been on medical leave from August 25 through September  
11 8, 2010. On October 28, 2010, the defendant filed a motion for summary judgment, ECF No.  
12 422.

13 Fed. R. Civ. P. 6(b)(1) allows a court to extend deadlines for filing for good cause. In this  
14 case, the motion for an extension of time was filed on October 22, 2010, before the expiration of  
15 the time to file dispositive motions. Because the Federal Rules are to be “liberally construed to  
16 effectuate the general purpose of seeing that cases are tried on the merits...requests for extensions  
17 of time made before the applicable deadline has passed should normally . . . be granted in the  
18 absence of bad faith or prejudice to the adverse party.” Ahanchian v. Xenon Pictures, Inc., 2010  
19 U.S. App. Lexis 22910 (9th Cir. 2010) (internal citations omitted.). Although the court recognizes  
20 that “requests for court-approved extensions brought on the required filing date are looked upon  
21 with disfavor,” Local Rule 144(d), in this instance the court finds that there is good cause for the  
22 short extension requested by the defendant. The court finds that defendant’s counsel’s medical  
23 leave in the time leading up to the deadline constitutes good cause for requesting a six-day  
24 extension of time to file his dispositive motion. The court also finds that petitioner will not be  
25 prejudiced by the short extension of time. The November 4, 2010, order (Doc. 428) is, therefore,  
26 reversed.


1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The motion for reconsideration, ECF No. 434, is GRANTED;
- 3 2. The Magistrate Judge's November 4, 2010, order, ECF No. 428, is
- 4 REVERSED;
- 5 3. Defendant's motion for an extension of time, ECF No. 419, is GRANTED.
- 6 4. Defendant's motion for summary judgment, ECF No. 422, is considered
- 7 timely filed.
- 8 5. The plaintiff SHALL file an opposition or statement of non-opposition
- 9 within twenty-one (21) days of the issuance of this order, pursuant to
- 10 Local Rule 230(l).

11 IT IS SO ORDERED.

12 DATED: December 10, 2010.

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15 LAWRENCE K. KARLTON

16 SENIOR JUDGE

17 UNITED STATES DISTRICT COURT

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