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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 plaintiff’s request for sanctions against defendants for failure to file a timely motion for summary judgment (Doc. 426). Also pending is defendants’ motion for additional time to respond to plaintiff’s motion (Doc. 427). Defendants then filed the opposition shortly thereafter (Doc. 433).

The undersigned had originally denied defense counsel’s request for additional time to file a motion for summary judgment. This decision was not supported by the district judge, who found the request for additional time to be supported by good cause. As the district judge found good cause to allow the late filed motion for summary judgment, there remains no basis in which to sanction defendants for filing a late motion. In addition, plaintiff provides no

1 support for such sanctions. If the motion was deemed late, this case would simply have moved
2 forward to trial. There is no requirement that a motion for summary judgment be filed in any
3 particular case. That decision rests with the parties, and it is not for the court to require any party
4 to file such a motion. As there is no basis for granting plaintiff's request for sanctions, no
5 response was necessary. Defendants' request for additional time to file the opposition is
6 therefore denied, and the response is disregarded.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff's request for sanctions (Doc. 426) is denied; and
- 9 2. Defendant's request for an extension of time to file an opposition (Doc.
10 427) is denied.

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12 DATED: December 29, 2010

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14 **CRAIG M. KELLISON**
15 UNITED STATES MAGISTRATE JUDGE
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