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

MICHAEL AARON JAYNE,

Plaintiff,

No. 2:07-cv- 2522 LKK KJN P

vs.

SPRINT PCS, INC., et. al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel with an action pursuant to 42 U.S.C. § 1983.

On March 17, 2010, the undersigned issued findings and recommendations (Dkt. No. 114) that this action be dismissed without prejudice for plaintiff’s failure to file an opposition to defendants’ motion for summary judgment, despite repeated extensions. On March 19, 2010 (Dkt. No. 116), plaintiff filed a motion to voluntarily dismiss his action without prejudice and with leave to amend his complaint at a future date. On April 1, 2010, defendants filed objections to the findings and recommendations, contending that the action should be dismissed with prejudice and defendants filed an opposition to plaintiff’s motion to dismiss.

The undersigned will vacate the findings and recommendations issued on March 17, 2010. Plaintiff’s motion to dismiss with leave to amend is denied. The time to amend the


1 complaint has long since passed as this action has been proceeding since November 2007. In his
2 motion, plaintiff indicated that he was unable to file an opposition to summary judgment as he
3 was moved to a different jail on March 5, 2010, and did not have access to his legal materials.
4 However, plaintiff has not set forth any facts that describe why he was unable to file an
5 opposition despite the previous extensions he received as the motion for summary judgment was
6 filed on October 14, 2009.¹

7 Plaintiff will be granted 14 days from the date of service of this order to file an
8 opposition to the motion for summary judgment. Plaintiff must also explain what factors
9 prevented him from filing the opposition in a timely manner. Failure to file an opposition will
10 result in a recommendation that this action be dismissed with prejudice.

11 Accordingly, IT IS HEREBY ORDERED, that:

- 12 1. The March 17, 2010 findings and recommendations (Dkt. No. 114) are
13 vacated.
- 14 2. Plaintiff's March 19, 2010 motion to dismiss (Dkt. No. 116) is denied.
- 15 3. Plaintiff is granted 14 days from the date of service of this order to file an
16 opposition to defendants' motion for summary judgment. Failure to file an opposition will result
17 in a recommendation that this action be dismissed with prejudice.

18 DATED: April 7, 2010

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21 
22 KENDALL J. NEWMAN
23 UNITED STATES MAGISTRATE JUDGE

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25 _____
26 ¹ Plaintiff was granted extensions on November 13, 2009 (Dkt. No. 109) and on February 3, 2010 (Dkt. No. 112).