

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

STEVE MARTINEZ,

Plaintiff,

No. CIV S-08-674 LKK CMK P

vs.

JOHN ZIOMEK, et al.,

Defendants.

ORDER

_____ /

This case concerns a claim under 42 U.S.C. section 1983 brought by a prisoner proceeding in pro se. Various defendants moved to dismiss, and on March 4, 2010, the magistrate judge assigned to this case issued findings and recommendations recommending that this motion be granted. (Dkt. No. 35). These findings and recommendations stated that any objections were to be filed within twenty days.

On March 23, 2010, plaintiff timely moved for a thirty-day extension of time in which to file objections. This motion was based on the difficulty of objecting without access to a computer and also on the modified schedule adopted by the institution at which plaintiff is incarcerated. The magistrate judge denied this request for an extension on March 26, 2010. This court adopted the findings and recommendations in full on March 31, 2010.

////

1 Plaintiff now moves for reconsideration of this court's order. Plaintiff cites Local Rule
2 303(b), which provides that "Rulings by Magistrate Judges pursuant to this Rule shall be final if
3 no reconsideration thereof is sought from the Court within fourteen (14) days calculated from the
4 date of service of the ruling on the parties, unless a different time is prescribed by the Magistrate
5 Judge or the Judge."¹ Plaintiff argues that on March 31, 2010, the magistrate judge's order
6 denying the motion for an extension of time was not final, and plaintiff asserts that he was in the
7 process of preparing a motion for reconsideration. Plaintiff argues that the order adopting the
8 findings and recommendations was therefore premature. Plaintiff further notes that his ability to
9 file objections is necessary to preserve his right to appeal, independent of this court's evaluation
10 of his claim.

11 Having considered the matter, the court GRANTS plaintiff's request for reconsideration
12 (Dkt. No. 42), and WITHDRAWS the order adopting the magistrate judge's findings and
13 recommendations, entered on March 31, 2010 (Dkt. No. 38). Plaintiff is GRANTED forty-five
14 (45) days to file objections to the findings and recommendations. Plaintiff is cautioned, however,
15 that requests for further extension of time are unlikely to be granted.

16 IT IS SO ORDERED.

17 DATED: April 27, 2010.

18
19
20 
21 LAWRENCE K. KARLTON
22 SENIOR JUDGE
23 UNITED STATES DISTRICT COURT
24

25 ¹ This rule was previously numbered Local Rule 72-303, and provided for a period of ten,
26 rather than fourteen, days. The rule was amended effective December 1, 2009, to accord with
changes to the Fed. R. Civ. P., and renumbered at that time. See Fed. R. Civ. P. 6(a).