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

MICHAEL J. MITCHELL

Plaintiff,

No. 2:08-cv-1658 JAM DAD P

vs.

SNOWDEN, et al.

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 Rule 302.

On October 30, 2012, the undersigned issued findings and recommendations recommending that this action be dismissed due to plaintiff's failure to file an opposition to the defendants' pending motion for summary judgment. Those findings and recommendations were served on all parties and contained notice that any objections to the findings and recommendations were to be filed within fourteen days.

Plaintiff has now filed objections to the court's findings and recommendations. Therein plaintiff represents to the court that he in fact submitted his opposition to defendants' motion for summary judgment on October 11, 2012, to the appropriate prison official for delivery

1 but that it never left in the prison's outgoing mail. Plaintiff has also filed with this court a
2 written acknowledgment by Correctional Officer Soriano that Soriano indeed received plaintiff's
3 legal mail and placed it "in the mail bag to be mailed." (Objections (Docket No. 100), at 7.)
4 With his objections plaintiff has also submitted a log showing that some of his other legal mail to
5 this court left the prison in the weeks before and after October 11, 2012, but that no mail
6 addressed by him to this court left the prison reasonably near October 11, 2012. (See
7 Documentation in Support of Objections (Docket No. 102), at 4-5.) The defendants have not
8 responded to plaintiff's explanation set forth in his objections.

9 The court finds that plaintiff has made a credible showing that he attempted to file
10 a timely opposition to the pending motion for summary judgment on October 11, 2012.
11 Accordingly, the October 30, 2012 findings and recommendations recommending that this action
12 be dismissed will be vacated. Given the circumstances as represented by plaintiff, plaintiff
13 should have a copy of his opposition to the summary judgment on hand that he can forward to the
14 court,. Therefore, this final extension of time to file his opposition – the last of many granted
15 plaintiff in this case – need not be long. Plaintiff will be granted fourteen days from his receipt
16 of this order in which to file his opposition to the defendants' pending motion for summary
17 judgment. The court will not grant another extension of time for this purpose absent yet another
18 showing of extraordinary circumstances.

19 IT IS THEREFORE ORDERED that:

- 20 1. The October 30, 2012 findings and recommendations are vacated.
21 2. Plaintiff is hereby granted fourteen days from his receipt of this order in which
22 to file his opposition to the defendants' motion for summary judgment.

23 DATED: January 18, 2013.

24
25 hm
26 mitch1658.vacate



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE