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

MICHAEL J. MITCHELL,

Plaintiff,

No. CIV S-08-1658 DAD P

vs.

SNOWDEN, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding pro se with this civil rights action. Plaintiff filed his complaint in this action on July 18, 2008. On November 25, 2008, this action was reassigned from the undersigned to Senior District Judge Howard D. McKibben. On January 25, 2011, Judge McKibben recused himself and the matter was reassigned back to the undersigned. Pending before the court is plaintiff's motion for reconsideration of Judge McKibben's December 8, 2010 order.

By way of background, Judge McKibben screened plaintiff's complaint and determined it appeared to state a cognizable claim under the Eighth Amendment against defendants Snowden, Seaton, Larios, Vance, and Compton. Defendants Snowden, Seaton, Larios, and Vance have answered the complaint. Defendant Compton has filed a motion to

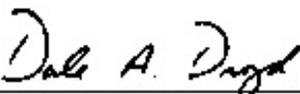
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1 dismiss, arguing that plaintiff failed to exhaust available administrative remedies prior to filing  
2 this suit as required.

3 Defendant Compton filed his motion to dismiss on June 1, 2010. Plaintiff has  
4 since sought, and Judge McKibben granted, seven requests for extensions of time to file an  
5 opposition to defendant Compton's motion to dismiss. Most recently, on December 28, 2010,  
6 Judge McKibben granted plaintiff an extension of time up to and including February 21, 2011, to  
7 file his opposition to the motion. Plaintiff had not received the order when he filed the pending  
8 motion for reconsideration of Judge McKibben's December 8, 2010 order warning plaintiff that  
9 no further extensions would be granted for that purpose. In his motion for reconsideration,  
10 plaintiff asserts that he needs one more extension of time to file an opposition to defendant  
11 Compton's motion. As noted above, on December 28, 2010, Judge McKibben granted plaintiff  
12 the requested final extension of time up to and including February 21, 2011 to file his opposition  
13 to the motion to dismiss. Accordingly, this court will deny plaintiff's motion for reconsideration  
14 as having been rendered moot by the December 28, 2010 order. In addition, this court will  
15 expect plaintiff's opposition to defendant Compton's motion to dismiss to be filed by February  
16 21, 2011. If plaintiff does not timely file his opposition, the undersigned will issue findings and  
17 recommendations in response to that pending motion to dismiss without plaintiff's opposition.

18 Accordingly, IT IS HEREBY ORDERED that plaintiff's January 20, 2011 motion  
19 for reconsideration (Doc. No. 42) is denied as moot.

20 DATED: February 10, 2011.

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24 DALE A. DROZD  
25 UNITED STATES MAGISTRATE JUDGE  
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