

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

BERLAN LYNELL DICEY,

Plaintiff,

No. 2:08-cv-2608 JAM JFM (PC)

vs.

W.R. HARRISON, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On September 1, 2009, defendants filed a motion to dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff did not timely file an opposition to the motion to dismiss and by order filed October 9, 2009 he was directed to file within thirty days either an opposition to the motion or a statement of non-opposition. On October 13, 2009, plaintiff filed a motion for an extension of time to file an opposition, which was granted by order filed October 30, 2009. On December 11, 2009, a document filed by plaintiff was docketed as an opposition to the motion to dismiss. On December 17, 2009, defendants filed a declaration of counsel in which counsel avers that defendants have never received an opposition to their motion. On January 19, 2010, plaintiff filed a document in which he seeks direction from the court as to whether he should refile an opposition that he represents he submitted to prison

1 officials for mailing on November 18, 2009. Review of the document filed by plaintiff on
2 December 11, 2009 demonstrates that it is not an opposition to the motion to dismiss but an
3 inquiry as to whether plaintiff's opposition was received. Good cause appearing, plaintiff will be
4 given one additional period of thirty days in which to file and serve his opposition to defendants'
5 motion to dismiss. Defendants' reply, if any, shall be filed and served not later than seven days
6 thereafter.

7 In accordance with the above, IT IS HEREBY ORDERED that:

8 1. The Clerk of the Court is directed to edit docket entry # 30 to reflect that it is
9 an inquiry from plaintiff whether his opposition was received;

10 2. Plaintiff is granted thirty days from the date of this order to file and serve an
11 opposition to defendants' September 1, 2009 motion to dismiss; and

12 3. Defendants' reply, if any, shall be filed and served not later than seven days
13 thereafter.

14 DATED: March 4, 2010.

15
16 
17 UNITED STATES MAGISTRATE JUDGE

18 ¹²
19 dice2608.o2