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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY WATTS,
Plaintiff,
v.
M. RUGGIERO, et al.,
Defendants.

No. 2:13-cv-1749 TLN AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, filed a complaint pursuant to 42 U.S.C. § 1983. By order filed October 30, 2013, certain parties and claims were dismissed from plaintiff’s complaint. Plaintiff was informed of the deficiencies of the complaint, and was granted leave to amend within thirty days. Plaintiff was instructed that if he chose not to amend, electing instead to proceed on the claims that survived screening, he must within thirty days return materials for service on process on the defendants against whom he had stated cognizable claims. Plaintiff was provided with the requisite service forms. Plaintiff was cautioned that failure to comply would result in a recommendation of dismissal of this action. When plaintiff failed to respond to the court’s order, the undersigned recommended dismissal of this action without prejudice. See ECF No. 12 (Findings and Recommendations filed on March 24, 2014).

On April 11, 2014, plaintiff filed a motion for an extension of time to submit objections to the pending Findings and Recommendations. ECF No. 13. In his motion, plaintiff avers that he

1 was “completely satisfied” with the order of October 30, 2013 and that he obtained the copies of
2 the complaint required to serve each defendant and mailed them to the court in November of
3 2013, along with the USM 285 forms and the summons. Plaintiff seeks the extension of time in
4 order to access his legal and personal property following his transfer from CSP-Corcoran to CSP-
5 Sacramento on March 25, 2014. Plaintiff contends that he has records that would demonstrate,
6 inter alia, the date upon which he returned the documents for service. Plaintiff includes the
7 declaration of another inmate declaring that both he and plaintiff obtained copies for their
8 respective documents in mid-November 2013 and that both mailed them to court on the same day.
9 Plaintiff has submitted his motion under penalty of perjury. The court, on this occasion, will not
10 require further proof that plaintiff submitted the requisite documents for service timely. Instead,
11 the undersigned will vacate the pending Findings and Recommendations and provide plaintiff
12 with a further opportunity to provide the requisite documents for service of his complaint. The
13 motion for an extension of time is therefore moot.

14 Accordingly, IT IS HEREBY ORDERED that:

15 1. The Findings and Recommendations (ECF No. 12) filed on March 24, 2014 are hereby
16 VACATED.

17 2. Plaintiff’s motion for an extension of time (ECF No. 13) to file objections to the now-
18 vacated March 24, 2014 Findings and Recommendations is denied as moot.

19 3. The Clerk of the Court shall provide to plaintiff a blank summons, **a copy of pages 1**
20 **through 30¹** of the complaint filed August 22, 2013, five USM-285 forms and instructions for
21 service of process on defendants Ruggiero, Campbell, Audette, Marquez and Harrison.

22 4. Plaintiff has thirty days to return the attached Notice of Submission of Documents
23 with the completed summons, the completed USM-285 forms, and **six copies of the August 22,**
24 **2013 complaint (pages 1 – 30).**

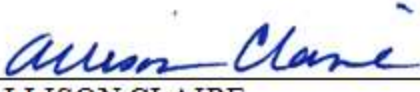
25 5. Plaintiff’s election to proceed without amending his complaint is construed as consent
26 to dismissal without prejudice of plaintiff’s defective claims against defendants Chau and Perez

27 _____
28 ¹ Pages 1-30 encompass the allegations, or body, of the 129-page complaint with the remainder
being exhibits.

1 as well as of his claims for equal protection and injunctive relief.

2 6. Failure to comply with this order will result in a recommendation that this action be
3 dismissed.

4 DATED: April 21, 2014

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE
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