

1 recommendations in which he recommends granting defendants' motion. ECF No. 67. The findings
2 and recommendations were served on the parties, with a notice that any objections to the findings
3 and recommendations must be filed within fourteen days. On September 19, 2016, plaintiff filed
4 timely objections, which brought the matter before this court. In accordance with 28 U.S.C.
5 § 636(b)(1)(C) and Local Rule 304, this court conducted a *de novo* review of the case. For the reasons
6 discussed below, the court declines to adopt the findings and recommendations and refers the matter
7 back to the magistrate judge for further analysis.

8 I. BACKGROUND

9 A. Service of Defendants' Motion for Summary Judgment

10 In plaintiff's objections to the magistrate judge's findings and recommendations,
11 plaintiff contends he was not properly served with defendants' motion for summary judgment.
12 Defendants' motion is accompanied by a certificate of service attesting plaintiff was served with the
13 motion on December 18, 2015 at P.O. Box 686, Shasta, California, which plaintiff acknowledges was
14 his address of record at the time. The findings and recommendations correctly conclude defendants
15 properly served the motion on plaintiff's address of record, though the findings and recommendations
16 themselves recite an incorrect address. *See* ECF No. 1 at 2. Thus, contrary to plaintiff's assertion and
17 despite the error in the findings and recommendations, defendants' motion was properly served. The
18 court thus turns to the magistrate judge's findings and recommendations on the substance of
19 defendants' motion.

20 B. Relevant Factual Background

21 The facts the magistrate judge's findings and recommendations rely on are
22 incomplete. The court here reviews in summary fashion the key facts it has gleaned from the
23 plaintiff's complaint, interrogatory responses in the record, defendants' motion for summary
24 judgment and attached exhibits, and plaintiff's objections to the findings and recommendations.

25 On December, 23, 2012, plaintiff's car was stuck in snow on the highway so he called
26 the Shasta Sherriff's Department for help. Deputy Edwards and Sgt. Jackson responded and found
27 plaintiff walking down the highway with a shotgun. According to Deputy Edwards' report, plaintiff
28 seemed mentally unstable and angry. After dropping plaintiff off at a Motel 6 (as plaintiff requested),

1 Deputy Edwards took plaintiff's shotgun for safekeeping, over plaintiff's objection. Deputy Edwards
2 later ran plaintiff's criminal background using the standardized database known as CLETS and saw
3 the database reflected plaintiff had a prior felony conviction, which meant plaintiff had been a felon
4 in possession of a weapon; a violation of California law.

5 Deputy Edwards filed a report with the District Attorney, who then filed criminal
6 charges against plaintiff for being a felon in possession of a weapon, and a warrant was issued for his
7 arrest. Within days of the seizure of his gun, plaintiff informed Sgt. Jackson and employees at the
8 District Attorney's office that plaintiff did not have a felony on his record; the conviction at issue was
9 a "wobbler" that had been reduced to a misdemeanor. Plaintiff claims he faxed over documents that
10 prove his conviction was a misdemeanor, but Sgt. Jackson contends the documents were unclear.

11 More than three months later, on March 8, 2013, Fish and Game Wardens Boyd and
12 Little executed the Shasta County warrant at plaintiff's home and arrested him. Little and Boyd
13 initially sought to contact plaintiff about a complaint that he was involved in "illegal streambed
14 alteration," but then discovered the warrant for his arrest and chose to execute it. After his arrest,
15 plaintiff spent three days in jail and then posted bail. The felon in possession charge was dropped at
16 arraignment. Plaintiff now alleges Sgt. Jackson, Deputy Edwards, Wardens Boyd and Little, and the
17 Shasta County Sheriff's Department violated his constitutional rights.

18 II. REVIEW OF THE FINDINGS AND RECOMMENDATIONS

19 This court conducted a *de novo* review of the case, as required under 28 U.S.C.
20 § 636(b)(1)(C) and Local Rule 304. Having carefully reviewed the entire file, the court finds the
21 magistrate judge's findings and recommendations do not provide sufficient analysis for this court to
22 conclude they survive the required review.

23 Plaintiff did not file an opposition to the motion for summary judgment. The findings
24 and recommendations are therefore based on portions of plaintiff's verified complaint and evidence
25 defendants provided.² In framing plaintiff's claims, the findings and recommendations do not

26 ² Plaintiff's complaint is signed under penalty of perjury. ECF No. 1 at 2. Therefore, the
27 complaint "may be used as an opposing affidavit" on this summary judgment motion to the extent it
28 is "based on personal knowledge and set[s] forth specific facts admissible in evidence." *Schroeder v.*
McDonald, 55 F.3d 454, 460 (9th Cir. 1995).

1 adequately incorporate relevant allegations from plaintiff's complaint, and consequently provide an
2 incomplete analysis. The findings and recommendations summarily conclude plaintiff's claims are
3 based on an unlawful arrest and search of his home, and then go on to conclude the arrest was proper
4 because it was done in reliance on a "facially valid warrant." However, the findings and
5 recommendations omit relevant parts of plaintiff's complaint that cast doubt on the facial validity of
6 the warrant and the reasonableness of defendants' reliance on it. On page four of the complaint,
7 plaintiff asserts he was charged with being a felon in possession of a gun, even though he was not a
8 felon when he possessed the gun. This invalid charge then led to the issuance of an arrest warrant for
9 a crime plaintiff did not commit. Plaintiff outlines his efforts to communicate the error to both the
10 Shasta Sheriff's Department and the District Attorney's office. The record also demonstrates there
11 was a three month lapse between the issuance of this arrest warrant and its execution, during which
12 the invalid basis for the warrant was never addressed, despite plaintiff's efforts. Lastly, the record
13 shows plaintiff's "felon in possession" charge was dropped at arraignment.

14 Based on these facts, the court finds there may be a triable issue over the validity of
15 plaintiff's arrest warrant and the reasonableness of plaintiff's arrest. At a minimum, the question
16 requires further analysis to properly resolve defendant's motion. Additionally, Warden Boyd and
17 Warden Little's claim of additional reasons for entering plaintiff's property, independent of the arrest
18 warrant, does not merit short-circuiting the analysis. Accordingly, the court refers the matter back to
19 the magistrate judge for further analysis and explanation.

20 Furthermore, despite plaintiff's failure to timely oppose defendants' motion for
21 summary judgment, the court exercises its discretion to grant plaintiff additional time to do so. *See*
22 Fed. R. Civ. P. 56(e) ("if a party fails to properly support an assertion of fact or fails to properly
23 address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an
24 opportunity to properly support or address the fact . . .; or (4) issue any other appropriate order.") In
25 this circuit, courts extend leniency towards pro se litigants that violate technical or procedural rules.
26 *See e.g., Blaisdell v. Frappiea*, 729 F.3d 1237, 1241 (9th Cir. 2013); *Draper v. Coombs*, 792 F.2d 915, 924
27 (9th Cir.1986). Thus, in the interest of justice, and considering plaintiff's pro se status, the court
28 grants plaintiff an additional thirty (30) days to file an opposition to defendants' motion, and to

1 include relevant evidence. Defendants will then have seven (7) days to file a reply to plaintiff's
2 opposition.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The findings and recommendations filed September 9, 2016, are not adopted; and
- 5 2. The matter is referred back to the magistrate judge for further proceedings consistent with
6 this Order.
- 7 3. This Order resolves ECF No. 67.

8 DATED: September 30, 2016.

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UNITED STATES DISTRICT JUDGE