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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES DAVENPORT,
Plaintiff,
v.
SGT. GOMEZ, et al.,
Defendants.

No. 2:16-cv-1739 JAM KJN P

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 January 6, 2017, the undersigned recommended that this action be dismissed based on plaintiff's failure to timely file an amended complaint. On January 27, 2017, plaintiff filed objections. Plaintiff claims that he e-filed his amended complaint on December 21, 2016, within the thirty day deadline. Plaintiff provides a document titled "Kern Valley State Prison Library Legal Documents Receipt," reflecting that a 17 page document was submitted on December 20, 2016, and was returned on December 22, 2016. (ECF No. 11 at 2.) The staff signatures are illegible. In addition, although plaintiff wrote "E-filing" in the comments section, the receipt does not acknowledge or confirm that the document was e-filed. The comments line on the return portion of the form is blank. (Id.) Plaintiff did not provide the 17 page amended complaint.


1 The docket does not reflect the filing of plaintiff's amended complaint. The Clerk's
2 Office confirms that plaintiff's amended complaint was not received by the court in December of
3 2016, and the e-filing program at Kern Valley State Prison is only for new cases. In other words,
4 the prison does not e-mail amended complaints or subsequent filings pursuant to the e-filing
5 policy. Thus, plaintiff is required to mail his amended complaint to the court by U.S. Postal
6 Service.

7 Because the e-filing process is fairly new, the findings and recommendations are vacated,
8 and plaintiff is granted an extension of time in which to mail his amended complaint to the court.
9 However, in the future, plaintiff is cautioned that as a pro se litigant, he is required to become
10 familiar with the e-filing policies, as well as the court's Local Rules and the Federal Rules of
11 Civil Procedure.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The findings and recommendations filed January 6, 2017, are vacated; and
- 14 2. Plaintiff is granted twenty-one days from the date of this order in which to file an
15 amended complaint that complies with the November 22, 2016 order. Failure to comply with this
16 order will result in an order dismissing this action.

17 Dated: February 6, 2017

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19 _____
KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

20 dave1739.vac