UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

WARREN CLEVELAND GREEN,

Petitioner,

Respondents.

No. 2:17-cv-0461 JAM AC P

v.

ORDER

CDCR, et al.,

16

17

18

19

20

21

22

23

24

25

26

27

Petitioner has filed objections to the court's findings and recommendations filed April 25, 2017. See ECF No. 6, 7. The undersigned had recommended dismissal of this case for failure to prosecute. Id. The case had been opened upon the filing of a request for extension of time, which was construed as a request for extended time to file a petition for writ of habeas corpus. See ECF No. 1. The court then directed petitioner to file his petition for writ of habeas corpus within thirty days. ECF No. 3. When no petition was filed, the undersigned recommended that this action be dismissed without prejudice. ECF No. 6.

In his objections, petitioner avers that he never intended to commence a new case, and that the originally filed request for extension of time was intended for another case, Green v. Martel et al., Case No. 2:17-cv-0429 JAM EFB P, which is a civil rights action plaintiff previously filed under 42 U.S.C. § 1983.

28 ////

Accordingly, IT IS HEREBY ORDERED that: 1. The findings and recommendations filed April 25, 2017, ECF No. 6, are vacated. 2. The Clerk of Court is directed to file the opening document in this case, ECF No. 1, in Green v. Martel et al., Case No. 2:17-cv-0429 JAM EFB P, with a notation that it was originally filed on February 17, 2017, by application of the mailbox rule, and mistakenly designated as the commencement of the instant case. 3. The instant action is dismissed without prejudice. The Clerk of Court is directed to close this case. DATED: May 5, 2017 auson Clane UNITED STATES MAGISTRATE JUDGE

¹ Pursuant to the prison mailbox rule, a document is deemed served or filed on the date a prisoner signs the document (or signs the proof of service, if later) and gives it to prison officials for mailing. See Houston v. Lack, 487 U.S. 266 (1988) (establishing prison mailbox rule); Campbell v. Henry, 614 F.3d 1056, 1059 (9th Cir. 2010) (applying the mailbox rule to both state and federal filings by prisoners).