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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CHARLES HOLMES,

Plaintiff,

v.

ESTOCK, et al.,

Defendants.

Case No. 3:16-cv-02458-MMA-BLM

**ORDER RE: PLAINTIFF’S EX
PARTE MOTION FOR EXTENSION
OF TIME**

[Doc. No. 111]

Plaintiff Charles Holmes, a California inmate, brings this civil rights action pursuant to 42 U.S.C. § 1983 alleging violations of his Eighth Amendment right to adequate medical care. Plaintiff, proceeding through counsel, has filed a Third Amended Complaint (“TAC”) against Defendants. *See* Doc. No. 81. Defendants move for summary judgment as to all claims. *See* Doc. No. 96. To date, for reasons set forth in an order issued by the Court on January 29, 2020, *see* Doc. No. 110, Plaintiff has not filed a response in opposition to Defendants’ motion for summary judgment despite being granted multiple extensions of time in which to do so. *See* Doc. Nos. 100, 102, 110.

Plaintiff now moves for an additional extension of time in which to file a response in opposition to Defendants’ motion. *See* Doc. No. 111. Plaintiff’s counsel has submitted a declaration in support of the ex parte motion. *See id.* Plaintiff’s counsel sets forth several grounds in his declaration regarding the failure to file a response brief, and states that he intends to withdraw as counsel of record. As such, Plaintiff’s counsel

1 requests that the Court grant Plaintiff an additional sixty (60) days in which to file a
2 response brief, either proceeding through new counsel or *pro se*.

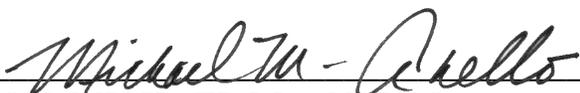
3 As the Court has previously explained, “a summary judgment motion must be
4 decided on the merits, and it ‘must be denied on no other grounds than that the movant
5 has failed to meet its burden of demonstrating the absence of triable issues.’” Doc. No.
6 110 at 2 (citing *Henry v. Gill Industries, Inc.*, 983 F.2d 943, 950 (9th Cir. 1993)). The
7 Court prefers not to proceed in this matter unless absolutely necessary without a
8 substantive response to Defendants’ motion for summary judgment.

9 Accordingly, the Court **GRANTS** Plaintiff’s *ex parte* motion. Plaintiff, proceeding
10 through counsel or *pro se*, must file a response in opposition to Defendants’ motion for
11 summary judgment on or before **April 17, 2020**. If Plaintiff files a timely response,
12 Defendants may file a reply in support of their motion on or before **April 30, 2020**.

13 In addition, if Plaintiff retains new counsel to represent him in this action, he must
14 file a Notice of Substitution of Counsel as soon thereafter as practicable. If Plaintiff does
15 not retain new counsel and wishes to proceed *pro se*, Plaintiff must file a Notice
16 substituting himself as counsel of record. If Plaintiff does not retain new counsel and
17 does not wish to proceed *pro se*, Plaintiff’s current counsel of record must file a Motion
18 to Withdraw as Counsel. The appropriate Notice of Substitution or Motion to Withdraw
19 must be filed on or before **April 3, 2020**.

20 **IT IS SO ORDERED.**

21 DATE: February 14, 2020

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23 HON. MICHAEL M. ANELLO
24 United States District Judge
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