

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 21, 2017

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DONALD WHITE, JR.,

Plaintiff,

v.

BRIAN EWERT,

Defendants.

NO: 4:16-CV-5122-SMJ

**ORDER GRANTING MOTION FOR
EXTENSION OF TIME TO AMEND
OR VOLUNTARILY DISMISS AND
REJECTING REPORT AND
RECOMMENDATION**

On March 1, 2017, Magistrate Judge Dimke recommended this action be dismissed, ECF No. 11. Mr. White had not complied with the prior Order to Amend or Voluntarily Dismiss, ECF No. 7, and he had not sought a further extension of time to do so.

Plaintiff had commenced this action while housed at the Washington State Penitentiary. ECF No. 1 at 1. He is now incarcerated at the Stafford Creek Corrections Center. ECF No. 13 at 1. By letter received on March 17, 2017, Plaintiff advised that he has been in the hospital of three correctional facilities

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1 since September 2016, and was transferred to a facility in the Western District of
2 Washington on February 20, 2017. *Id.* He indicates that he did not receive the
3 Report and Recommendation issued on March 1, 2017, until March 10, 2017, and
4 he attaches it to this letter. Plaintiff should refrain from sending to the Court
5 documents which are already part of the court record.

6 Because Plaintiff is proceeding *pro se* and *in forma pauperis*, the Court will
7 liberally construe his letter as Motion for Extension of Time to comply with the
8 Order to Amend or Voluntarily Dismiss. ECF No. 13. Plaintiff asserts that when
9 he was close to amending his case at the Airway Heights Corrections Center, his
10 legal paper work was taken away. He complains that he is currently not allowed a
11 pen and it appears that an officer may have drafted the letter received on March 17,
12 2017. ECF No. 13 at 1.


13 The decision to grant an extension of time is discretionary with the Court.
14 Fed. R. Civ. P. 6(b). For good cause shown, **IT IS ORDERED** the Motion, ECF
15 No. 13, is **GRANTED**, and the Report and Recommendation to dismiss, ECF No.
16 11, is **REJECTED** so that Plaintiff may have the opportunity to amend or
17 voluntarily dismiss.

18 Plaintiff shall comply with the Order to Amend or Voluntarily Dismiss, ECF
19 No. 7, within **thirty (30) days** of the Date of this Order. Failure to do so will be
20 construed as his consent to dismissal as set forth in that Order.

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1 **IT IS SO ORDERED.** The Clerk of Court shall: (1) enter this Order; (2)
2 forward a copy of this Order to Plaintiff, re-note the deadline to comply with the
3 Order to Amend or Voluntarily Dismiss to within thirty (30) days of the date this
4 Order is entered; and (3) provide Plaintiff a copy of the Order to Amend or
5 Voluntarily Dismiss, ECF No. 7, along with a form Motion to Voluntarily Dismiss
6 and a Civil Rights Complaint form.

7 **DATED** this 21st day of March 2017.

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 SALVADOR MENDOCZA, JR.
 United States District Judge