

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORIO C. FUNTANILLA, JR.,

1:02-cv-06001-OWW-GSA-PC

Plaintiff,

ORDER DENYING PLAINTIFF’S REQUEST
FOR A COURT ORDER
(Doc. 236.)

v.

DAVID TRISTAN, et al.,

ORDER REQUIRING PLAINTIFF TO
COMPLY WITH COURT’S ORDER OF
JANUARY 20, 2010
(Doc. 233.)

Defendants.

DEADLINE: March 12, 2010

_____ /

Gregorio C. Funtanilla, Jr. (“plaintiff”) is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on August 16, 2002. (Doc. 1.) Plaintiff paid the filing fee in full for this action on August 1, 2005.

On July 27, 2009, defendants filed a motion to dismiss this action. (Doc. 221.) On January 20, 2010, the court issued an order requiring plaintiff to file an opposition or a statement of non-opposition to the motion to dismiss, within thirty days. (Doc. 233.) On February 18, 2010, plaintiff filed a declaration in response to the court’s order. (Doc. 236.) Plaintiff claims that he cannot file an adequate opposition to the motion to dismiss because he is not being allowed adequate access to his legal materials at the prison. Plaintiff requests a court order requiring defendant Vella and the prison staff to cease retaliation against him by denying him access to his legal materials.

The court does not have jurisdiction to issue the order plaintiff requests. Moreover, the court has fully addressed the issue of plaintiff’s access to legal materials in prior court orders. (Docs. 205,

1 209, 215, 227.) The court has previously informed plaintiff that the court does not have jurisdiction
2 to order prison officials to allow plaintiff to possess his legal material in his cell. (Doc. 209 at 2:23-
3 24.) Plaintiff has also been informed that the court lacks jurisdiction to issue an order remedying
4 plaintiff's property issues because such an order will not correct the alleged violation of plaintiff's
5 federal rights at issue in this action. (Doc. 209 at 3:7-12.; Doc. 215 at 3:13-15.) In a prior order, the
6 court also found that plaintiff had not demonstrated that he cannot litigate his case, or that his
7 constitutional rights to access to the courts were violated, because he was not been given once-a-
8 week access to his stored legal materials. (Doc. 215 at 3:17-21; Doc. 227.) Therefore, plaintiff's
9 request for a court order shall be denied.

10 Under Local Rule 78-230(m), plaintiff was required to file an opposition to defendants'
11 motion to dismiss within eighteen days. It has been more than five months since defendants filed
12 the motion, which plaintiff has yet to oppose. Plaintiff has had ample time to prepare a response.
13 Therefore, plaintiff is required to comply with the court's order of January 20, 2010. Plaintiff shall
14 be granted until March 12, 2010 in which to file an opposition or non-opposition to the motion to
15 dismiss.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff's request for a court order directing prison officials to allow him greater
18 access to his legal materials is DENIED;
- 19 2. Plaintiff is required to comply with the court's order of January 20, 2010;
- 20 3. On or before March 12, 2010, plaintiff must file an opposition or a statement of non-
21 opposition to defendants' motion to dismiss of July 27, 2009;
- 22 4. No additional requests for extension of time shall be entertained by the court unless
23 accompanied by a showing of good cause; and
- 24 5. If plaintiff fails to comply with this order, this action will be dismissed, with
25 prejudice, for failure to obey the Court's order and failure to prosecute.

26
27 IT IS SO ORDERED.

28 **Dated: February 22, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE