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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JAMES L. DAVIS,

Plaintiff,

v.

RAMEN, et al.,

Defendants.

CASE NO. 1:06-cv-01216-AWI-SMS PC

ORDER DENYING PLAINTIFF’S MOTION FOR  
A WRIT OF MANDATE AND MOTION FOR  
RECUSAL

(ECF Nos. 98, 106)

ORDER ADDRESSING PLAINTIFF’S  
OPPOSITION TO DEFENDANTS’ MOTION  
FOR AN EXTENSION OF TIME

\_\_\_\_\_/ (ECF No. 104)

Plaintiff James L. Davis (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the third amended complaint, filed August 21, 2008, against Defendants Ramen, Rangel, Solis, and Johnson for deliberate indifference to serious medical needs in violation of the Eighth Amendment rights. Plaintiff filed an emergency petition for a writ of mandate on January 19, 2011. (ECF No. 98.) On February 18, 2011, the Court granted Defendants’ motion for an extension of time to file a reply in support of their motion for summary judgment. (ECF No. 101.) Plaintiff filed an opposition to Defendants’ motion for an extension of time on February 25, 2011. (ECF No. 105.) On March 14, 2011, Plaintiff filed a motion for recusal. (ECF No. 106.) On March 23, 2011, this case was reassigned to the undersigned. (ECF No. 108.)

Plaintiff’s motions filed February 18, 2011, and March 14, 2011, both object to the Honorable Sheila Oberto hearing this action. Based upon the reassignment of this action to the

1 undersigned on March 23, 2011, Plaintiff's motions shall be denied as moot.

2 On February 16, 2011, Defendants filed a motion for a fifteen day extension of time to file  
3 a reply to Plaintiff's opposition to the motion for summary judgment. Defendants requested the  
4 extension of time because the opposition that was received in the mail was not the document that  
5 Plaintiff filed with the Court. Defendants received a 72 page document entitled opposition to  
6 summary judgment. The proof of service was dated January 25, 2011,<sup>1</sup> but the envelope was  
7 postmarked February 2, 2011. The document was placed in defense counsel's mailbox on or around  
8 February 7, 2011, however she was out of the office until February 14, 2011. Additionally, the  
9 document filed with the court is not the opposition served upon Defendants. Plaintiff filed a 208  
10 page document entitled traverse on February 4, 2011. Because of these issues Defendants requested  
11 an additional fifteen days to file their reply to Plaintiff's opposition. The Court found good cause  
12 and granted the motion.

13 Plaintiff objects to the "excessive use of extention [sic] of time." (Opp. 1, ECF No. 104.)  
14 Plaintiff states that he placed his opposition to the motion for summary judgment in envelopes and  
15 mailed them on January 25, 2011. (Id. at 2.) Defense counsel did not leave the planet and she could  
16 have been reached by a cell phone or pager by her office assistant. Plaintiff contends that defense  
17 counsel's excuse is improper, and states that defense counsel is lying when she claims that she did  
18 not receive the same motion that was filed with the Court. (Id. at 3.)

19 Initially, Plaintiff is advised that his unsupported allegations against defense counsel are  
20 inappropriate. The Court will not tolerate personal attacks upon opposing counsel and further similar  
21 conduct may result in the imposition of sanctions. Chambers v. NASCO, Inc., 401 U.S. 32, 43  
22 (1991). The Court found good cause based upon the delay in receipt of the documents and defense  
23 counsel's representation that she did not receive the same document that was filed with the Court.  
24 The Court notes that defense counsel only requested a brief, fifteen day continuance, which is not  
25 an excessive amount of time in the circumstances.

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27 <sup>1</sup>Defendants' motion states that the proof of service was dated January 25, 2010, and the envelope was  
28 postmarked eight days later on February 2, 2011. Therefore, the Court assumes the date in the motion is an error and  
that the proof of service was dated January 25, 2011.

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Accordingly, it is HEREBY ORDERED that:

1. Plaintiff's emergency petition for writ of mandate, file January 19, 2011, is DENIED as moot; and
2. Plaintiff's motion for recusal, filed March 14, 2011, is DENIED as moot.

IT IS SO ORDERED.

Dated: June 1, 2011

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE