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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THOMAS D. BRALEY,

Plaintiff,

v.

WASCO STATE PRISON, et al.,

Defendants.

CASE NO. 1:07-cv-01423-OWW-SKO

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF’S MOTION
FOR A COURT ORDER BE DENIED

(ECF No. 38)

OBJECTIONS DUE WITHIN THIRTY DAYS

Plaintiff Thomas D. Braley (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Concurrent with this findings and recommendations the Court is issuing an order dismissing the first amended complaint, filed on April 22, 2011, for failure to state a claim. On March 28, 2011, Plaintiff filed a motion for a court order directing Kern Valley State Prison and Salinas Valley State Prison to release his legal documents. (ECF No. 38.)

Any award of equitable relief is governed by the Prison Litigation Reform Act, which provides in relevant part, “[p]rospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.” 18 U.S.C. § 3626(a)(1)(A).

Plaintiff filed this action on September 28, 2007, alleging conspiracy and deliberate

1 indifference to his safety in violation of the Eighth Amendment while housed at Wasco State Prison.

2 On August 6, 2009, an order was issued dismissing the complaint with leave to amend for failure
3 to state a claim. Plaintiff's first amended complaint alleges incidents that occurred at Wasco State
4 Prison, California Substance Abuse and Treatment Facility, Kern Valley State Prison, and Salinas
5 Valley State Prison. On October 13, 2009, Plaintiff was transferred to Kern Valley State Prison and
6 he has been incarcerated at Salinas Valley State Prison since March 21, 2011. Since Plaintiff
7 originally filed this action on September 28, 2007, any incidents that he is alleging during his
8 incarceration at Kern Valley State Prison and Salinas Valley State Prison cannot proceed in this
9 action as they would be precluded by 42 U.S.C. § 1997e(a).

10 Plaintiff is requesting a court order requiring Kern Valley State Prison and Salinas Valley
11 State Prison to release all legal documents. Since Plaintiff was not housed at Kern Valley State
12 Prison or Salinas Valley State Prison until more than two years after this action was filed, officials
13 at these institutions are not properly joined in this action. Additionally, an order granting Plaintiff
14 access to his legal mail would not remedy the claims upon which this action may proceed.

15 Based on the foregoing, it is **HEREBY RECOMMENDED** that Plaintiff's motion for a court
16 order be **DENIED**.

17 These findings and recommendations will be submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
19 days after being served with these findings and recommendations, Plaintiff may file written
20 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
21 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
22 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
23 1153 (9th Cir. 1991).

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26 IT IS SO ORDERED.

27 **Dated: May 9, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE