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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-SMS

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
PLAINTIFF’S MOTION FOR A COURT
ORDER

(ECF Nos. 38, 46, 52)

ORDER DENYING PLAINTIFF’S MOTION
FOR AN ORDER TO SHOW CAUSE AND A
TEMPORARY RESTRAINING ORDER

/ (ECF No. 48)

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. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Plaintiff filed a [motion](#) seeking a court order mandating the return of his legal property on March 28, 2011. (ECF No. 38.) On May 10, 2011, the Magistrate Judge filed [findings and recommendations](#) herein which was served on the parties and which contained notice to the parties that any objections to the findings and recommendations were to be filed within thirty days. (ECF No. 46.) Plaintiff filed [objections](#) to findings and recommendations on June 13, 2011. (ECF No. 52.) The Court has read and considered Plaintiff’s objections.

On May 19, 2011, Plaintiff filed a [motion for an order to show cause and a temporary restraining order](#) mandating the return of his legal material which has been withheld from him since March 21, 2011. (ECF No. 48.) As explained in the findings and recommendations issued May 10,

1 2011, any award of equitable relief is governed by the Prison Litigation Reform Act, which provides
2 in relevant part, “[p]rospective relief in any civil action with respect to prison conditions shall extend
3 no further than necessary to correct the violation of the Federal right of a particular plaintiff or
4 plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such
5 relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal
6 right, and is the least intrusive means necessary to correct the violation of the Federal right.” 18
7 U.S.C. § 3626(a)(1)(A).

8 Plaintiff filed this action on September 28, 2007, alleging conspiracy and deliberate
9 indifference to his safety in violation of the Eighth Amendment while housed at Wasco State Prison.
10 On August 6, 2009, an order was issued dismissing the complaint with leave to amend for failure
11 to state a claim. On October 13, 2009, Plaintiff was transferred to Kern Valley State Prison and he
12 has been incarcerated at Salinas Valley State Prison since March 21, 2011. Since Plaintiff originally
13 filed this action on September 28, 2007, any incidents that he is alleging during his incarceration at
14 Kern Valley State Prison and Salinas Valley State Prison cannot proceed in this action as they would
15 be precluded by 42 U.S.C. § 1997e(a).

16 Plaintiff is requesting a court order requiring Kern Valley State Prison and Salinas Valley
17 State Prison to release all legal documents. Since Plaintiff was not housed at Kern Valley State
18 Prison or Salinas Valley State Prison until more than two years after this action was filed, officials
19 at these institutions are not properly joined in this action. Additionally, an order granting Plaintiff
20 access to his legal mail would not remedy the claims upon which this action may proceed and the
21 Court lacks jurisdiction to issue the order sought by Plaintiff.

22 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
23 de novo review of this case. Having carefully reviewed the entire file, the Court finds the findings
24 and recommendations to be supported by the record and by proper analysis.

25 Accordingly, IT IS HEREBY ORDERED that:

- 26 1. The findings and recommendations, filed May 10, 2011, is adopted in full;
- 27 2. Plaintiff’s motion for a court order, filed March 28, 2011, is DENIED; and
- 28 3. Plaintiff’s motion for an order to show cause and a temporary restraining order filed

1 May 19, 2011, is DENIED.

2 IT IS SO ORDERED.

3 Dated: June 15, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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