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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 PATRICK KUNKEL,

12 Plaintiff,

13 v.

14 N. DILL, et al.,

15 Defendants.
16

No. 1:09-cv-0686 BAM P

ORDER

17 Plaintiff is a state prisoner proceeding without counsel. The court has now received the
18 transcript of the settlement agreement placed on the record on May 6, 2013 (ECF No. 197).

19 In plaintiff's June 10, 2013 motion to cancel the settlement agreement, plaintiff's primary
20 reason for seeking to set aside the settlement was the delay in receiving the payment.

21 On July 15, 2013, plaintiff filed a second motion seeking a ruling on the settlement, in which
22 plaintiff claims that his understanding of the settlement agreement was that the agreed payment
23 was to be in addition to the payment of plaintiff's restitution balance.

24 However, the court has reviewed the transcript of the settlement agreement, which makes
25 clear that the agreed settlement was the total amount to be paid (Tr. at 2:1-2), and that the funds
26 would first be applied to plaintiff's outstanding restitution balance, and the rest would be paid to
27 plaintiff's inmate trust account (Tr. at 3:4-7). Moreover, the undersigned expressly informed the
28 parties, on the record, that payment could take up to six months, but hopefully would be


1 something less than six months. (Tr. at 2:13-16.) The court informed defense counsel that the
2 court wanted payment and the filing of dispositional document to happen sooner than six months
3 if humanly possible. (Tr. at 6:25-7:1-3.) Ironically, plaintiff's payment cannot be processed until
4 he signs and returns the paperwork forwarded to him by defense counsel. Therefore, any delay in
5 the receipt of payment is due solely to plaintiff's own making. Finally, the parties were informed
6 that a party could not refuse to sign the agreement based solely on a change of heart as to the
7 settlement amount following the settlement agreement. (Tr. at 5:3-13.)

8 Therefore, plaintiff is directed to file, within 21 days, a statement as to whether he still
9 wishes to contest the settlement and, if so, on what grounds. In the alternative, plaintiff may
10 simply sign the paperwork provided by defense counsel so that efforts can be made to expedite
11 payment of the settlement amount pursuant to the court's record.

12 In light of the above, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff is directed to file, within 21 days, a statement as to whether he still wishes to
14 contest the settlement and, if so, on what grounds; and
- 15 2. The Clerk of the Court is directed to send plaintiff a copy of the May 6, 2013
16 settlement transcript (ECF No. 197).

17 Dated: August 23, 2013

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19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE

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