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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PERRY C. BLAIR,
Plaintiff,
v.
CDCR, et al.,
Defendants.

No.: 1:14-cv-01156-NONE-SAB (PC)
ORDER GRANTING REQUEST FOR
EXTENSION OF TIME, REQUIRING
DEFENDANTS TO SERVE A COPY OF THE
PENDING MOTION FOR SUMMARY
JUDGMENT (DOC. NO. 130) AND JANUARY 29,
2020, FINDINGS AND RECOMMENDATIONS
(DOC. NO. 133) ON PLAINTIFF, AND DENYING
AS MOOT MOTION FOR PRELIMINARY
INJUNCTION
FORTY-FIVE DAY DEADLINE
(DOC. NO. 149, 150)

Plaintiff Perry C. Blair is appearing *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Following the court’s screening of the second amended complaint and dismissal of claims that were not exhausted through the administrative remedy process, the case proceeded on plaintiff’s claims against Defendants Franco and O’Daniels for deliberate indifference (failure to protect); against Defendants Santos, Esqueda, and Ybarra for a due process violation; and against Defendant Johnson for retaliation. (*See* Doc. No. 133 at 1.)

On October 14, 2019, defendants filed a motion for summary judgment as to those remaining claims. (Doc. No. 130.) Plaintiff did not timely file any opposition. On January 29, 2020, the assigned magistrate judge issued findings and recommendations recommending that defendants’

1 motion for summary judgment be granted. (Doc. No. 133.) Those findings and recommendations
2 were served on the parties and contained notice that objections thereto were to be filed within twenty-
3 one (21) days. (*Id.*)

4 After receiving several extensions of time, plaintiff filed his objections on April 29, 2020.
5 (Doc. No. 143.) In those objections, plaintiff asserted that it would be unfair for the court to grant
6 defendants' motion because plaintiff has not had sufficient access to his legal materials or to the law
7 library. (Doc. No. 143.) From the timeline plaintiff described in his objections, he was allegedly
8 transferred to different prisons several times from late 2018 through early 2020. (*See generally id.*)
9 Plaintiff's assertions regarding lack of access to his legal materials span much of 2019 and early 2020,
10 up through his transfer to his present institution of confinement in March 2020. (*Id.* at 2.) Plaintiff
11 specifically asserted in his objections that as of late April 2020, he had yet to receive his legal
12 materials. (*Id.*) In light of those objections, the court issued a minute order requiring defendants to
13 file a statement "indicating whether they contend plaintiff has been provided with his legal materials
14 and, if so, when." (Doc. No. 145.)

15 In response, defendants explained that as of May 29, 2020, plaintiff had been issued three
16 boxes of legal materials (the maximum number of boxes he is permitted to possess in his cell), with
17 two additional boxes stored elsewhere at the prison where plaintiff is currently incarcerated. (Doc.
18 No. 146.) According to defendants, plaintiff is permitted to exchange "one-for-one" the boxes of legal
19 materials he has in his cell with those in storage. (*Id.*) With regard to law library access, defendants
20 indicated plaintiff had made no request for such access. (*Id.*) Because defendants' response to the
21 court's order did not address whether plaintiff was provided access to his legal materials at the time
22 his objections to the pending findings and recommendations were due, plaintiff was permitted thirty
23 (30) days from July 10, 2020, to file his objections. (Doc. No. 147 at 2.) The court warned plaintiff
24 that "[f]urther extensions of time . . . will not be granted absent a compelling showing of truly
25 exceptional circumstances." (*Id.*)

26 By way of a document dated July 16, 2020, and received by the court August 12, 2020,
27 plaintiff requested an additional thirty (30) days to respond to defendants' motion for summary
28

1 judgment. (Doc. No. 149.) Construing his filing liberally, plaintiff again describes the history of his
2 alleged problems accessing his legal materials due to his numerous transfers and specifically indicates
3 that two boxes of his personal property “including his legal documents” were “disposed of” along the
4 way. (*Id.* at 2.) In particular, he suggests that he has not had (and implies that he still does not have)
5 access to a copy of defendants’ motion for summary judgment. (*Id.* at 3.)

6 Plaintiff has also filed a document styled as a motion for preliminary injunction that requests:
7 (1) another copy of the motion for summary judgment; and (2) access to the two boxes of legal
8 material in storage at his current place of incarceration. (Doc. No. 150.)

9 The court can find nothing in the record that definitively refutes plaintiffs’ assertion that he no
10 longer has a copy of defendants’ pending motion for summary judgment. Therefore, in an abundance
11 of caution, the court will order defendants to re-serve the entire motion and all its attachments (Doc.
12 Nos. 130–130-8), along with a copy of the January 29, 2020, findings and recommendations (Doc. No.
13 133), on plaintiff.

14 Defendants have already explained the “one-for-one” exchange procedure plaintiff must use to
15 gain access to the two boxes of his legal materials that are in storage. Plaintiff does not suggest that he
16 has attempted to utilize this option or that any such attempt was unsuccessful. Accordingly, the court
17 will deny plaintiffs’ request for a court order requiring defendants to provide him with the two boxes
18 of his legal material that remain in storage.

19
20 **CONCLUSION AND ORDER**

21 For the reasons set forth above:

- 22 1. Defendants shall re-serve on plaintiff a copy of the entire pending motion for summary
23 judgment and all of its attachments (Doc. Nos. 130–130-8), along with a copy of the
24 January 29, 2020, findings and recommendations (Doc. No. 133);
- 25 2. Defendants shall thereafter file proof of service with the court;

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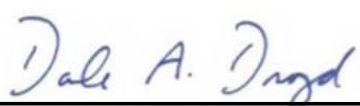
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3. Plaintiff's request for an extension of time (Doc. No. 149) is GRANTED; his objections to the January 29, 2020, findings and recommendations (Doc. 133) shall be due *forty-five (45) days*¹ from the date on which the above-mentioned copies are served upon him; and
4. Plaintiff's additional request for an order requiring defendants to provide him with access to the two additional boxes of legal materials in storage at his current place of incarceration (Doc. No. 150) is denied.

IT IS SO ORDERED.

Dated: September 4, 2020



UNITED STATES DISTRICT JUDGE

¹ The court is affording plaintiff more time to respond than he requested to account for possible delays in mail service due to the current public health crisis. Plaintiff is forewarned, however, that no further requests for the extension of time will be entertained absent truly extraordinary and *new* circumstances. In short, this is plaintiff's final opportunity to file his objections, if any, to the pending findings and recommendation which recommend that defendants' motion for summary judgment in their favor be granted.