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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK WAYNE SPRINKLE,
Plaintiff,
v.
LEON ROBINSON ,
Defendant.

No. 2:02-cv-1563-LKK-EFB P

ORDER

Plaintiff is a state prisoner without counsel in an action brought under 42 U.S.C § 1983. The court has granted plaintiff summary judgment as to liability. ECF No. 74. The matter remains pending for adjudication of damages. *Id.* The court finds that essential information is missing from the record, as described below.

Plaintiff initiated this action by filing a verified complaint on July 23, 2002. ECF No. 1. The complaint alleges that in November and December of 1999, defendants violated his First Amendment right of access to the courts by denying him photocopies of documents he sought to attach as exhibits to a habeas petition he filed in a California superior court. *Id.*

The parties filed cross-motions for summary judgment. ECF Nos. 55, 64. On August 20, 2007, the undersigned issued findings and recommendations recommending that defendants' motion for summary judgment be denied, and that plaintiff's motion for summary judgment be granted as to liability, thereby leaving damages as the only outstanding issue. ECF No. 71. The

1 district judge adopted the recommendations in an order issued on September 26, 2007. ECF No.
2 74.

3 After a trial confirmation hearing, the district judge remanded the case to the
4 undersigned to set a schedule for briefing as to damages, including whether the inclusion
5 of plaintiff's exhibits with his state habeas petition would have altered the result of that
6 petition, and how that issue impacts plaintiff's claim for damages. ECF Nos. 119, 120.
7 The parties have submitted their damages briefs. ECF Nos. 129, 133, 143.

8 Having reviewed the record in this action, including the exhibits filed by the parties in
9 support of their damages briefs, the court cannot locate a copy of the petition underlying this
10 action – the petition filed in Mendocino County Superior Court which was denied on January 5,
11 2000. The parties have produced only a copy of plaintiff's habeas petition to the California Court
12 of Appeal for the First Appellate District, which plaintiff filed after the Mendocino County
13 Superior Court's denial of the petition that underlies this action. ECF No. 59-2 at 29; ECF No.
14 133-2 at 6.

15 The petition, presumably filed in 1999, in Mendocino County Superior Court is necessary
16 to the resolution of this case. Accordingly, within 21 days of the date of this order, the parties
17 shall either submit a copy of that petition to the court or stipulate that, with the exception of a
18 single page entitled "Answer to Superior Court's Denial Without Valid Opinion," the petition
19 filed in the California Court of Appeal is identical to the superior court petition that underlies this
20 action.

21 So ordered.

22 Dated: October 28, 2013.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE