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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOE SPAND,

Plaintiff,

No. CIV S-09-0552 EFB P

vs.

J. MARTEL, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a former inmate at Mule Creek State Prison proceeding without counsel in an action brought under 42 U.S.C. § 1983. On July 16, 2010, the court dismissed the complaint and provided plaintiff with 30 days to file an amended complaint. Dckt. No. 8. The court found that plaintiff could not proceed under § 1983 without showing that credit loss he sustained as a result of the disciplinary action he complains of had been reversed, expunged, or otherwise invalidated.

On October 27, 2010, plaintiff filed a letter requesting the status of his case and stating that “CDC is not cooperating” to provide him with the documents that show that the disciplinary action was “overturned.” Dckt. No. 13. By order dated November 2, 2010, the court granted plaintiff an additional 45 days from the date of that order to file an amended complaint, admonished plaintiff that failure to comply with court orders may result in dismissal of this action, and instructed plaintiff to provide the November 2, 2010 order to prison officials when

1 requesting the needed documents.


2 Instead of using the November 2, 2010 order to obtain the necessary documents as
3 instructed by the court, plaintiff submitted a response to the order stating that he requested the
4 documents “verbally” from Correctional Counselor A. Nanquil and by “written statement to [the]
5 records office” sixty days prior, well before the November 2 order issued, and received no
6 response. Dckt. No. 15. The court then informed plaintiff that he had one last opportunity to
7 comply with the court’s orders and instructed him to file on or before December 17, 2010 either
8 (1) an amended complaint or (2) a document providing the court with the name(s) of official(s)
9 who, *having been provided with or shown a copy of the court’s November 2, 2010 order*, refuse
10 to provide plaintiff with a copy of whatever documents that are in the possession of the
11 California Department of Corrections and Rehabilitation evidencing that the rules violation
12 report, CDC form 115 dated August 11, 2007, or the credit loss resulting therefrom, has been
13 reversed, expunged, or otherwise invalidated.

14 On December 8, 2010, plaintiff filed a brief document stating again that Correctional
15 Counselor A. Nanquil “is not cooperating to show the disciplinary actions were overturned.”
16 Dckt. No. 18. Plaintiff has not indicated whether or not he complied with the court’s order to
17 show the order of November 2, 2010 to Nanquil or other appropriate staff when seeking the
18 disciplinary records. Accordingly, the court will now order that plaintiff either file (1) the
19 amended complaint or (2) a declaration signed under penalty of perjury stating that plaintiff has
20 provided the November 2, 2010 order to the appropriate prison official in seeking the relevant
21 disciplinary records, the name of the official to whom plaintiff provided the November 2, 2010
22 order, and the response of the official to plaintiff’s request for the records.

23 Accordingly, IT IS HEREBY ORDERED that plaintiff shall have up to and including
24 February 18, 2011 to file either: (1) an amended complaint or (2) a declaration signed under
25 penalty of perjury stating that plaintiff has provided the November 2, 2010 order to the
26 appropriate prison official(s) in seeking whatever documents are in the possession of the

1 California Department of Corrections and Rehabilitation evidencing that the rules violation
2 report, CDC form 115 dated August 11, 2007, or the credit loss resulting therefrom, has been
3 reversed, expunged, or otherwise invalidated, the name(s) of the official(s) to whom plaintiff
4 provided the November 2, 2010 order, and the response of the official(s) to plaintiff's request for
5 the records. Failure to comply with this order will result in dismissal of this action.

6 DATED: February 1, 2011.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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