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

CLINTON WAGNER,

Plaintiff,

No. 2: 09-cv-3166 KJM KJN P

vs.

MOSS POSNER, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On June 20, 2010, plaintiff filed a motion for a 270 day extension of time to file an opposition to defendants’ summary judgment motion. Also pending is plaintiff’s June 20, 2011 motion to modify the scheduling order.

In both pending motions, plaintiff claims that when he was (apparently) recently placed in administrative segregation, correctional officers destroyed his complaint, exhibits and evidence related to this action. Plaintiff requests the 270 day extension of time so that he may recreate his legal files regarding this case.

On June 30, 2011, the undersigned ordered defendants to inform the court of the status of plaintiff’s access to his legal materials related to this action within twenty-one days. On July 20, 2011, defendants filed a response to the June 30, 2011 order. Attached to defendants’

1 response is the declaration of Correctional Officer Pina. (Dkt. No. 89-1.) Correctional Officer
2 Pina is the legal officer in the administrative segregation unit at California State Prison-
3 Sacramento, where plaintiff is incarcerated. He states that he is unaware of any complaints being
4 made by plaintiff that any of his property has been destroyed. He states that plaintiff has filed
5 inmate appeals in August 2010 relating to legal and property issues. These appeals were
6 screened out for failing to comply with departmental regulations and no copies of the screened
7 out appeals were retained.

8 On August 4, 2011, plaintiff filed what he claims are responses to his grievances
9 regarding the confiscation/destruction of his legal property. These responses indicate that his
10 grievances were returned to him for failing to comply with departmental regulations. For
11 example, one appeal was returned to plaintiff because he failed to sign and date section B of the
12 appeal. (Dkt. No. at 2.) Another appeal was returned to plaintiff because it was “obscured by
13 pointless verbiage and voluminous unrelated documents.” (Id. at 3.)

14 Also attached are appeals filed by plaintiff. In one, dated May 16, 2011, plaintiff
15 contends that his appeals regarding destroyed property have not been responded to. (Dkt. 90 at
16 4-5.) Plaintiff goes on to request that his appeals be processed. (Id. at 4.) Also attached are two
17 property inventories dated December 24, 2010 and January 27, 2011. (Id. at 10-11.) In both,
18 plaintiff appears to have marked out the section of the form listing his legal property. (Id.)


19 Despite further briefing from both parties, it is still unclear what happened to
20 plaintiff’s legal property. The undersigned could either grant plaintiff a lengthy extension of time
21 so that he may recreate his files or conduct an evidentiary hearing in order to determine the status
22 of his legal property. Neither of these options is attractive to either the undersigned or the
23 parties.

24 Accordingly, defendants are directed to file further briefing addressing the
25 following issue: where is plaintiff’s legal property? If plaintiff’s legal property cannot be
26 located, defendants shall address what happened to the legal property. Following receipt of this

1 briefing, the undersigned will issue further orders.

2 Accordingly, IT IS HEREBY ORDERED that within seven days of the date of
3 this order, defendants shall file the further briefing described above.

4 DATED: August 11, 2011

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6 
7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE

8 wag3166.ord

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