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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS REYNALDO JOHNSON,  
Plaintiff,  
v.  
D. CLAYS, et al.,  
Defendants.

No. 2:11-cv-2881 TLN DAD P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. Pending before the court are several of plaintiff's motions, which the court will address in turn.

**BACKGROUND**

Plaintiff is proceeding on a first amended complaint on a claim for retaliation in violation of the First Amendment against defendants Baker and Speer. Specifically, in his complaint plaintiff alleges that defendants Baker and Speer conducted a cell search and seized his legal papers and typewriter because plaintiff had previously filed an administrative grievance against defendants' fellow correctional officer and because plaintiff acts as a jailhouse lawyer and has assisted fellow inmates in filing lawsuits against prison staff. (Doc. Nos. 24 & 25) On May 22, 2014, the assigned district judge in this case denied defendants' motion to revoke plaintiff's IFP

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1 status and directed defendants to file a responsive pleading in this matter within thirty days.

2 (Doc. No. 81)

3 **PLAINTIFF’S MOTIONS**

4 First, plaintiff has filed a motion in which he contends that the Office of the Attorney  
5 General should not represent the defendants because of a potential conflict of interest.  
6 Specifically, plaintiff argues that the Office of the Attorney General has a duty to investigate and  
7 prosecute the defendants for the conduct he complains of in this action, namely, taking plaintiff’s  
8 property under false pretenses and as an act of retaliation.

9 Plaintiff is advised that the Attorney General has a duty to represent any state officer or  
10 agency. See, e.g., Cal. Gov’t Code § 12511 (“The Attorney General has charge, as attorney, of all  
11 legal matters in which the State is interested. . . .”); id. § 12512 (“The Attorney General shall . . .  
12 prosecute or defend all causes to which the State, or any State officer is a party in his or her  
13 official capacity.”); id. § 12511.5 (“The Attorney General may defend a public or private provider  
14 of health care . . . against any claim that the civil rights of a person in state custody were violated  
15 in the provision of health care services . . .”). The Attorney General also has a duty to represent  
16 the public interest. See D’Amico v. Board of Medical Examiners, 11 Cal.3d 1, 15 (1974). In  
17 D’Amico, the California Supreme Court explained:

18 In the course of discharging this duty [to defend all cases in which  
19 the state or one of its officers is a party] he is often called upon to  
20 make legal determinations both in his capacity as a representative  
21 of the public interest and as statutory counsel for the state or one of  
22 its agencies or officers. In the great majority of such cases no  
23 conflict will result because in representing the interest of his ‘client’  
24 the Attorney General will take a position consistent with what he  
25 deems to be in the public interest. In the exceptional case the  
26 Attorney General, recognizing that his paramount duty to represent  
27 the public interest cannot be discharged without conflict, may  
28 consent to the employment of special counsel by a state agency or  
officer. However, unless the Attorney General asserts the existence  
of such a conflict, it must be concluded that the actions and  
determinations of the Attorney General in such a lawsuit are made  
both as a representative of the public interest and as counsel for the  
state agency or officer.

27 Id.

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1 Here, the Attorney General has not indicated the existence of any conflict of interest. In  
2 addition, the court finds that this case does not present the “exceptional case” where the Attorney  
3 General faces a conflict of interest. See Neighbors v. Kemp, No. CIV S-06-1611 DFL EFB P,  
4 2006 WL 3500872 at \*1 (E.D. Cal. Dec. 5, 2006) (rejecting prisoner-plaintiff’s similar argument  
5 that state attorney’s general office had a conflict of interest because it had a duty to prosecute  
6 those who violated his constitutional rights). Accordingly, the court will deny plaintiff’s motion  
7 for relief from the Office of the Attorney General representing the defendants in this action.<sup>1</sup>

8 Also pending before the court is plaintiff’s motion for preliminary injunctive relief. In his  
9 motion, plaintiff contends that the defendants opened his mail from the court without him being  
10 present and delayed delivering him his mail for three days in violation of his constitutional rights.  
11 As an initial matter, plaintiff’s motion does not comply with Local Rule 231 which requires that a  
12 motion for preliminary injunctive relief be accompanied by: (1) a declaration signed under  
13 penalty of perjury on the question of irreparable injury; (2) a memorandum of points and  
14 authorities addressing all legal issues raised by the motion; and (3) evidence of notice to all  
15 persons who would be affected by the order sought.

16 Moreover, “[t]he proper legal standard for preliminary injunctive relief requires a party to  
17 demonstrate ‘that he is likely to succeed on the merits, that he is likely to suffer irreparable harm  
18 in the absence of preliminary relief, that the balance of equities tips in his favor, and that an  
19 injunction is in the public interest.’” Stormans v. Selecky, 571 F.3d 960, 978 (9th Cir. 2009)  
20 (quoting Winter v. Natural Res. Def. Council, 555 U.S. 7, 20 (2008)). Here, plaintiff’s  
21 allegations fall far short of making the showing required for the granting of preliminary injunctive

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22 <sup>1</sup> Plaintiff has also filed with the court several motions seeking relief against defendants based on  
23 defense counsel’s failure to oppose or respond to plaintiff’s motion concerning the Attorney’s  
24 General purported conflict of interest. Under this court’s April 17, 2013 order, the parties are  
25 required to brief all motions to dismiss, motions for summary judgment, motions concerning  
26 discovery, motions pursuant to Federal Rules of Civil Procedure 7, 11, 12, 15, 41, 55, 56, 59, and  
27 60, and Local Rule 110. Opposition to all other motions need be filed only as directed by the  
28 court. Defense counsel was not required to respond to plaintiff’s pending motion. Accordingly,  
the court will deny plaintiff’s motion to find defendants in default and motion for sanctions.  
Plaintiff has also filed a motion to stay these proceedings until the court rules on plaintiff’s  
motion concerning the Attorney General’s purported conflict of interest. In light of the court’s  
decision to deny plaintiff’s pending motion, the court will also deny plaintiff’s motion for a stay.

1 relief. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). It is well established that  
2 “[m]ail from the courts, as contrasted to mail from a prisoner’s lawyer, is not legal mail.” See  
3 Keenan v. Hall, 83 F.3d 1083, 1094 (9th Cir. 1986). In this regard, defendants did not violate  
4 plaintiff’s constitutional rights when they opened his mail from the court outside of his presence.  
5 See id. In addition, the three-day delay that plaintiff allegedly experienced in receiving his mail  
6 also does not rise to the level of a constitutional violation because he has not alleged that he  
7 suffered any “actual injury” from this minor delay. Lewis v. Casey, 518 U.S. 343, 351-52 (1996);  
8 Sands v. Lewis, 886 F.2d 1166, 1171 (9th Cir. 1989). Accordingly, the court will deny plaintiff’s  
9 motion for preliminary injunctive relief.

10 Finally, plaintiff has filed a motion in limine to prevent defense counsel from introducing  
11 plaintiff’s criminal history as well as a motion for a settlement. As to plaintiff’s motion in limine,  
12 as noted above, on May 22, 2014, the court ordered defendants to file their responsive pleading in  
13 this action within thirty days. At this juncture, therefore, plaintiff’s motion in limine is  
14 premature. If and when the court issues a pretrial order later in these proceedings, the court will  
15 set a schedule for when the parties are allowed to file motions in limine. As to plaintiff’s motion  
16 for a settlement, plaintiff should contact defense counsel with his settlement offers and should not  
17 file them with the court. Plaintiff is further advised that, insofar as he seeks a court-supervised  
18 settlement conference, the court will not order a mandatory settlement conference between the  
19 parties until after it has ruled on any forthcoming summary judgment motions. Accordingly, the  
20 court will deny plaintiff’s motion in limine and motion for a settlement.

21 In closing, the court observes that plaintiff has now filed an inordinate number of motions  
22 in this case. Plaintiff is cautioned that improper and superfluous filings impede the progress of a  
23 case, and the court may impose restrictions on plaintiff’s filings if he does not exercise  
24 appropriate restraint in the future. See De Long v. Jenness, 912 F.2d 1144, 1147 (9th Cir.  
25 1990) (“There is strong precedent establishing the inherent power of federal courts to regulate the  
26 activities of abusive litigants by imposing carefully tailored restrictions under the appropriate  
27 circumstances.”) (quoting Tripati v. Beaman, 878 F.2d 351, 352 (10th Cir. 1989)). Although  
28 plaintiff is proceeding pro se, he is required to comply with the Federal Rules of Civil Procedure

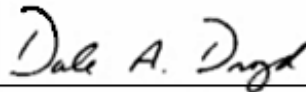
1 and the Local Rules of Court. Plaintiff's failure to obey court orders and the local and federal  
2 rules and meet his responsibilities in prosecuting this action may justify dismissal, including  
3 dismissal with prejudice. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262-63 (9th Cir. 1992).

4 **CONCLUSION**

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Plaintiff's motion for a temporary restraining order preventing the Attorney General  
7 from representing defendants in this action based on a conflict of interest (Doc. No. 62) is denied;  
8 2. Plaintiff's motion to find defendants in default for failing to oppose his motion for a  
9 temporary restraining order and motion for sanctions (Doc. Nos. 67 & 73) are denied;  
10 3. Plaintiff's motion for a stay (Doc. No. 83) is denied;  
11 4. Plaintiff's motion for preliminary injunctive relief (Doc. No. 80) is denied;  
12 5. Plaintiff's motion in limine is denied (Doc. No. 82) without prejudice to its renewal, as  
13 appropriate, at a later stage of these proceedings; and  
14 6. Plaintiff's motion for a settlement (Doc. No. 84) is denied.

15 Dated: June 3, 2014

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18 DALE A. DROZD  
19 UNITED STATES MAGISTRATE JUDGE

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21 john2881.mots