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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL JESUS ARZAGA,
Plaintiff,
v.
CRAIG LOVETT,
Defendant.

No. 2:11-cv-3303-JAM-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On November 18, 2014, defendant filed a motion to dismiss for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6). On January 9, 2015, plaintiff requested an extension of time to respond to the motion. ECF No. 41. The court deferred ruling on that request, and instead, ordered defense counsel to coordinate with counsel for the California Department of Corrections and Rehabilitation to determine plaintiff’s housing status, including: (1) where plaintiff is currently housed; (2) if plaintiff is not currently housed at his normal institution of incarceration, when plaintiff is expected to be returned to that institution; and (3) whether plaintiff currently has access to pens, paper, his legal materials, and a law library. ECF No. 43. In response, defense counsel submitted a declaration stating that plaintiff is confined to the California Health Care Facility in Stockton for an unknown duration, and that he has access to pens, paper, and a law library, but that he likely does not have access to his own legal materials. ECF No. 44.

1 Thereafter, plaintiff filed another request for an extension of time to oppose the motion to
2 dismiss, explaining that he still does not have access to his legal materials. ECF No. 45.
3 However, plaintiff then filed another motion, styled “motion for trial . . . in response and [with]
4 respect to the opposition,” which includes a request for trial and a response to the pending motion
5 to dismiss. ECF No. 46. Thus, it appears that plaintiff was provided access to a copy of
6 defendant’s motion to dismiss, and was able to prepare and file a response thereto.

7 Accordingly, it is hereby ORDERED that (1) plaintiff’s “motion for trial . . . in response
8 and [with] respect to the opposition,” (ECF No. 46) is construed as an opposition to defendant’s
9 motion to dismiss and so construed, is deemed timely filed; (2) plaintiff’s requests for extensions
10 of time (ECF Nos. 41, 45) are denied as moot; and (3) the Clerk shall terminate docket number 46
11 and amend the docket text to reflect that the filing is plaintiff’s opposition to the motion to
12 dismiss.

13 DATED: April 13, 2015.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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