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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEON E. MORRIS,
Plaintiff,
v.
NANGALAMA, et al.,
Defendants.

No. 2:12-cv-1202 MCE KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel. On August 2, 2016, plaintiff's motion for stay was partially granted, and plaintiff was ordered to file a status report addressing the status of his current housing. On August 24, 2016, plaintiff filed a status report stating that he was still awaiting transfer to the Department of Mental Health for a higher level of mental health care. (ECF No. 96.) Plaintiff stated that he would not be told where he was on the list or the date of the transfer, but that he did not have any of his property, legal or otherwise, and would not receive his property until he is returned from the higher level of mental care facility. (Id. at 2.)

On September 2, 2016, defendants filed a motion for summary judgment. Plaintiff did not file an opposition, or an objection. On October 18, 2016, the court ordered plaintiff to file an opposition, if any, to the motion. On October 28, 2016, plaintiff filed a response to the court's order. Plaintiff states that on August 25, 2016, he was temporarily transferred to a higher level of care at the Salinas Valley Psychiatric Program. (ECF No. 99 at 1.) Plaintiff states that he is

1 taking so much medication he forgot to file another status report with the court. Plaintiff claims
2 that he intends to oppose the motion for summary judgment when he is returned to the California
3 State Prison, Sacramento, and his property is returned to him. (Id.)


4 While the court appreciates defendants' desire to resolve this action, the court cannot
5 grant a dispositive motion where the pro se litigant does not have access to his legal materials.
6 On the other hand, plaintiff cannot dictate how this case proceeds. Plaintiff is required to
7 diligently prosecute this action, which was filed on May 3, 2012. If plaintiff believes his mental
8 health precludes him from prosecuting this action, he must submit medical records substantiating
9 a serious mental impairment, and, provided he receives his legal materials, explain how such
10 impairment would affect his ability to oppose the motion, if it would.

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. Within thirty days from the date of this order, defendants shall file a status report
13 addressing whether plaintiff has access to his legal materials and if he does not, how long such
14 deprivation will occur, and whether defendants can facilitate plaintiff's receipt of such legal
15 materials; and

16 2. Within thirty days from the date of this order, plaintiff shall file a status report
17 addressing his mental impairment, as set forth above.

18 Dated: November 16, 2016

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21 KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

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