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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHERMAN D. MANNING,  
  
Plaintiff,  
  
v.  
  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.,  
  
Defendants.

No. 2:12-cv-2440 MCE AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court are plaintiff's motion for a sixty-day extension of time (ECF No. 270); motion for access to his legal property (ECF No. 273); motion for additional time to provide supporting documentation (ECF No. 282); and various notices regarding the alleged treatment of and threats against plaintiff by correctional staff and other miscellaneous issues and requests (ECF Nos. 275, 278, 279, 280, 281).

The court will do its best to address the matters before it; however, this task is made difficult by plaintiff's continued insistence on filing duplicative, piecemeal documents that lack a caption designating the nature of the document or the relief sought. Plaintiff has been advised on numerous occasions that his piecemeal and duplicative filings constitute a burden on this court and make it impossible to respond to every issue contained in the filings. See ECF Nos. 127, 131,

1 146, 222. Plaintiff has also been warned that continuing to submit such filings would result in the  
2 filings being disregarded. Id. The court will therefore address only plaintiff's most obvious  
3 issues.

4 I. Requests for Extension of Time

5 Plaintiff's motion for a sixty-day extension of time (ECF No. 270), motion for access to  
6 his legal property (ECF No. 273), and motion for additional time to provide supporting  
7 documentation (ECF No. 282) all essentially seek additional time to respond to defendants'  
8 motions for summary judgment.

9 In his motion for a sixty-day extension of time, plaintiff seeks a general extension of time  
10 to respond to anything filed after May 15, 2015.<sup>1</sup> ECF No. 270. He also specifically requests an  
11 additional sixty days to respond to the re-served motions for summary judgment. Id. Five days  
12 after the Clerk of the Court filed the motion for extension, plaintiff's first response to defendants'  
13 motions for summary judgment was filed. ECF No. 271. Plaintiff has since proceeded to file two  
14 additional responses to the motions for summary judgment (ECF Nos. 274, 281) and one of his  
15 miscellaneous filings also appears to contain a partial response to the motions for summary  
16 judgment (ECF No. 275).

17 In his motion for access to his legal property, plaintiff seeks an order directing that he be  
18 given access to his legal property so that he can respond to the motions for summary judgment.  
19 ECF No. 273. The court construes this motion as a request for additional time to provide  
20 supporting documentation for his responses to the motions for summary judgment. Plaintiff has  
21 also filed a motion specifically requesting a deadline by which he must provide supporting  
22 documentation. ECF No. 282. Typically, supporting documentation must be submitted with the  
23 response to the motion for summary judgment. However, in light of plaintiff's claims that he has  
24 not had access to his documents, the court will grant plaintiff's motions and set a date by which  
25 he must submit any documents supporting his response to defendants' motions for summary

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26 <sup>1</sup> He alleges that he needs a general extension because he has not received any orders from the  
27 court since the May 15, 2015 order (ECF No. 252) and requests the court send him copies of any  
28 subsequently issued orders. ECF No. 270. Plaintiff has since notified the court that he has  
received the orders issued by the court after May 15, 2015. ECF No. 275 at 9-10.

1 judgment. Defendants' current deadline to file their replies is vacated and their time to reply will  
2 not begin to run until after plaintiff has filed his supporting documentation or his time to do so  
3 has passed.

4 Plaintiff is advised that any supplemental response included with his supporting  
5 documentation must be limited to explaining how the produced documents support his response  
6 or create a material issue of fact. Plaintiff has already filed three responses and this is not an  
7 opportunity to repeat arguments that have already been made. Plaintiff's supporting documents  
8 must be submitted to the court as a **single filing** and plaintiff shall not pepper the court with  
9 multiple, additional filings of documents, nor shall he continue to inundate the court with  
10 multiple, supplemental responses to the motions for summary judgment. Plaintiff is also advised  
11 that once defendants have filed their replies, he is not to file a sur-reply unless he receives  
12 permission from the court. Failure to receive the court's permission before filing a sur-reply will  
13 result in it being stricken from the record.

14 In light of plaintiff's continued allegations that he has confronted difficulties accessing his  
15 legal property and the delays these allegations have caused to the progression of this case, the  
16 Attorney General's Office and Deputy Attorney General Elise Thorn shall work with the  
17 California Department of Corrections and Rehabilitation ("CDCR") to take whatever steps are  
18 necessary to ensure that plaintiff is given access to all of his legal property and an opportunity to  
19 obtain copies of any documents therein that he believes are necessary to defend against the  
20 defendants' motions for summary judgment. Plaintiff is reminded that he must submit all the  
21 evidence he believes creates a genuine issue of material fact for trial. He cannot simply state that  
22 he will produce the evidence at trial.

## 23 II. Allegations of Harassment by Correctional Staff

24 Plaintiff continues to file numerous "notices" and "motions" related to his allegations that  
25 CDCR employees are tampering with his legal mail and property and subjecting him to various  
26 forms of harassment. ECF Nos. 275, 278, 279, 280, 281. The court has already addressed nearly  
27 identical allegations by plaintiff on several occasions (ECF Nos. 116, 146, 252, 262) and based on  
28 its previous findings, the court finds that plaintiff's claims are not credible and continue to be

1 unsupported. Plaintiff has been advised that his allegations will not be considered unless they are  
2 supported by evidence, and hearsay statements are not evidence. Id. Despite this, plaintiff  
3 continues to rely on hearsay and speculation to support his allegations rather than providing  
4 evidence, such as declarations or affidavits from the alleged witnesses.<sup>2</sup> Simply claiming these  
5 individuals will testify at trial is insufficient to constitute competent evidence to support a motion.  
6 If plaintiff wants the court to consider witnesses' testimony, he must provide signed declarations  
7 or affidavits from them. For these reasons, plaintiff's various filings regarding the actions of  
8 CDCR employees (ECF Nos. 275, 278, 279, 280, 281) will be disregarded.

9 III. Settlement Conference

10 In some of his most recent filings, plaintiff indicates a desire to settle this case. ECF Nos.  
11 280, 281. Defendants will be directed to advise the court whether they believe a settlement  
12 conference would be beneficial at this time.

13 Accordingly, IT IS HEREBY ORDERED that:

14 1. Plaintiff's requests for an extension of time (ECF Nos. 270, 273, 282) are granted in  
15 part. Plaintiff shall have until August 27, 2015, to submit documents in support of his response to  
16 defendants' motions for summary judgment. Any documents plaintiff seeks to submit must be  
17 filed as a single filing.

18 2. The Attorney General's Office and Deputy Attorney General Elise Thorn shall work  
19 with the CDCR to take whatever steps are necessary to ensure that plaintiff is given access to all  
20 of his legal property and an opportunity to obtain copies of any documents therein that he  
21 believes are necessary to defend against the defendants' motions for summary judgment.

22 3. Defendants' current deadline to file their replies in support of their motions for  
23 summary judgment is vacated. Defendants' time to file their replies will not begin to run until  
24 plaintiff either files his supplemental documentation or his time for doing so expires, whichever  
25 occurs first. Defendants shall have fourteen days to file their replies.

26 \_\_\_\_\_  
27 <sup>2</sup> In one document plaintiff identifies a correctional officer who is allegedly willing to testify on  
28 his behalf and asks that the court redact out his name prior to filing. ECF No. 281. The court  
does not provide redaction services. Documents mailed to the Clerk of the Court for filing are  
filed as they are received.

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4. Plaintiff's various filings regarding the actions of CDCR employees (ECF Nos. 275, 278, 279, 280, 281) will be disregarded.

5. Within ten days of the filing of this order, defendants shall advise the court whether they believe a settlement conference in this case would be beneficial at this stage.

DATED: July 28, 2015.

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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE