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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HENRY A. JONES,
Plaintiff,
v.
G. WHITTED, et al.,
Defendants.

No. 2:12-cv-2695 MCE KJN P

ORDER

Plaintiff is a state prisoner proceeding through counsel.¹ By stipulation and order, this action was terminated on June 30, 2014. (ECF No. 37.) On October 10, 2014, plaintiff filed a pro se request for court order, seeking to contest an issue allegedly resolved by the settlement in this action. (ECF No. 38.) On November 14, 2014, plaintiff’s pro se motion was denied, and plaintiff was instructed that if he was seeking to enforce or modify the settlement, he must file such motion before the settlement judge, and it must be filed through counsel.

On December 10, 2014, plaintiff filed a pro se document entitled, “Modify the settlement,” in which he claims that he feels that the settlement agreement was breached because

¹ By order filed April 30, 2014, counsel was appointed for a limited purpose, and was accorded the option of withdrawing his representation of plaintiff or, at his discretion, proceeding as plaintiff’s appointed counsel for purposes of discovery, settlement and/or trial. (ECF No. 31 at 2.) Counsel continued his representation through the settlement conference, and has not moved to withdraw.

1 during the settlement conference he requested from the court, “could he have this 115 removed
2 from his C-files,” and after he returned to prison, he filed a 602 appeal seeking to have the 115
3 removed, but his 602 appeals were denied. (ECF No. 40 at 1-2.) Plaintiff claims that he has
4 attempted to contact counsel “with no luck.” (ECF No. 40 at 2.) Plaintiff asks the court to
5 contact plaintiff’s attorney to either modify the settlement and file a writ or prepare for trial.
6 (ECF No. 40 at 2.)

7 Typically such motions are referred to the settlement judge. However, the undersigned
8 has reviewed the settlement placed on the record by Judge Thurston on June 19, 2014. When the
9 settlement was placed on the record, plaintiff specifically asked whether the 115 would be “pulled
10 from” plaintiff’s files, and the settlement judge explained that it would not, because plaintiff’s
11 case concerned plaintiff 602 appeal, and did not directly challenge the 115. Plaintiff responded
12 by stating, “Okay.” (Id.) Because the record makes clear that the settlement in this action did not
13 include the removal of the 115 from plaintiff’s prison files, plaintiff’s motion is denied.
14 Moreover, because counsel was only appointed to represent plaintiff in connection with his 602
15 challenge, no further action by counsel is required.²

16 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion (ECF No. 40) is denied.

17 Dated: December 29, 2014

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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27 ² In plaintiff’s earlier request, plaintiff claims that the settlement court ordered plaintiff’s attorney
28 to file a writ of habeas corpus. (ECF No. 38 at 2.) The record does not reflect such an order, and
the limited appointment of counsel in this action did not include a requirement that counsel
pursue a writ of habeas corpus on behalf of plaintiff in a new action. However, plaintiff is not
precluded from filing a pro se writ of habeas corpus.