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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH LAVERY,

 Plaintiff,

 v.

B. DHILLON, et al.,

 Defendants.

No. 2:13-cv-2083 MCE AC P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. Plaintiff is currently incarcerated at California Medical Facility (“CMF”) in Vacaville, California, where the alleged violations of plaintiff’s rights took place. This order addresses defendants’ motions to dismiss the complaint, as well as various motions filed by plaintiff regarding writing-related accommodations.

I. Background

This action proceeds against defendants Dhillon,¹ Clark, Ditomas, and Rading on the first amended complaint, filed February 11, 2014. ECF No. 30. The complaint alleges that defendant Dhillon violated plaintiff’s constitutional rights under the Eighth Amendment when he failed to provide plaintiff with adequate medical treatment after a nurse hit plaintiff’s sciatic nerve while

¹ Defendant Dhillon is represented by private counsel.

1 giving him an injection. Id. at 2, 3. The complaint further alleges that defendants Clark,
2 Ditomas, and Rading denied plaintiff's emergency appeals and other requests for treatment and
3 medical care. See id.

4 On March 30, 2015, defendants Clark, Ditomas, and Rading filed a motion to dismiss
5 plaintiff's first amended complaint. ECF No. 47. On April 23, 2015, plaintiff filed a document
6 stating that he opposed defendants' motion, and requesting access to a typewriter. ECF No. 50.
7 Between April 18, 2015 and May 11, 2015, plaintiff filed three additional requests for a
8 typewriter or assistance with writing. See ECF Nos. 51, 54, 55. Plaintiff explained in his
9 motions that his degenerative arthritis makes it difficult for him to handwrite documents. See id.

10 On May 11, 2015, defendant Dhillon filed a motion to dismiss.² ECF No. 53.

11 On June 16, 2015, the court issued an order directing the Deputy Attorney General to file
12 a statement explaining what accommodations are available to accommodate plaintiff's disability.
13 ECF No. 59. Prior to receiving the court's June 16, 2015 order, plaintiff filed several additional
14 requests for accommodations. See ECF Nos. 57, 58, 62.

15 On June 25, 2015, plaintiff filed a motion for reconsideration of the court's June 16, 2015
16 order, ECF No. 63, followed by another motion for assistance, ECF No. 65.

17 On July 1, 2015, the district judge denied plaintiff's motion for reconsideration. ECF No.
18 66. On July 10, 2015, plaintiff filed a "status report." ECF No. 68.

19 On July 17, 2015, the Deputy Attorney General filed a Statement of Available
20 Accommodations indicating that plaintiff has access to writing-related accommodations but has
21 not taken advantage of them in that he has not asked for assistance. ECF No. 67 at 3.

22 On July 20, 2015, plaintiff filed a response to the order denying plaintiff's motion for
23 reconsideration. ECF No. 69. On August 20, 2015, plaintiff filed a motion for an extension of
24 time to file another response to the order denying his motion for reconsideration. ECF No. 70.
25 Plaintiff thereafter continued to file notices, letters, supplements, and requests concerning his

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28 ² Plaintiff has not filed a separate opposition to defendant Dhillon's motion to dismiss.

1 desire for law library accommodations and medical treatment. See ECF Nos. 71, 73, 74, 75, 76,
2 77, 78, 79, 80, 82, 83, 87, 88, 89, 90, 91, 92, 93, 94.

3 II. Excessive Filings by Plaintiff

4 At the outset, plaintiff is warned that if he continues to inundate the court with repetitive
5 and piecemeal filings, they will be disregarded due to the excessive burden they place upon the
6 court. Given this court's caseload and the volume of documents filed by plaintiff, it is almost
7 impossible to respond to all of plaintiff's filings. However, the court will attempt to address the
8 most serious and clearly stated issues.³

9 III. Request for Accommodations

10 A. Defendants' Statement of Available Accommodations

11 In response to the court's June 16, 2015 order, the Deputy Attorney General filed a
12 Statement of Available Accommodations indicating that the following accommodations are
13 available at the CMF Law Library for inmates with writing-related disabilities:

14 [1.] The Library at CMF provides four typewriters to prisoners on a
15 first-come-first serve basis. Prisoners may request additional time
16 from the librarian on an as-needed basis. If a librarian cannot
17 immediately accommodate a prisoner asking to use a typewriter, or
18 for additional typewriter time, they will issue a pass for the prisoner
19 to return at a time when the Library is not at capacity. Prisoners
20 may also bring their own personal typewriters into the Library,
subject to restrictions based upon maintaining the security of staff
and other prisoners. Librarians on staff would not deny a prisoner
immediate access to a typewriter for any reason other than the four
typewriters provided in the Library are already in use. The Library
also provides prisoners with five to ten sheets of paper upon
request. (Cheng, Delcr. ¶¶ 3, 5-6).

21 [2.] Prisoners with pending court deadlines may apply for Priority
22 Library User (PLU) status by filling out an Inmate Law Library
23 Access Request Form and providing a copy of a court order, or
other proof, of a court deadline within thirty-days of the PLU
request. (Id., at ¶¶ 4-5, Exhibit 1).

24 [3.] Prisoners may request that a staff librarian assign a Library
25 clerk to assist prisoners with legal research questions, technical
26 problems and with handwriting legal documents, dictated by the

27 ³ To the extent plaintiff seeks injunctive relief related to an incident that occurred during
28 plaintiff's physical therapy session on November 23, 2015, this will be addressed in a separate
order. See ECF Nos. 81, 85.

1 prisoner, without providing any documentation of a disability. (Id.,
2 at ¶¶ 2, 6).

3 ECF No. 67 at 2-3.

4 In support of the Statement of Available Accommodations, the Deputy Attorney General
5 submitted the declaration of Y. Cheng, Senior Prison Law Librarian at California Medical
6 Facility. ECF No. 67-1. In his declaration, Cheng explains that the library is open seven days a
7 week to accommodate prisoners who work full time; that prisoners who need additional time with
8 library typewriters or other accommodations due to a writing-related disability can request the
9 librarian's assistance without providing any documentation of disability; and that when a prisoner
10 requests additional library time, the librarian will either allow the prisoner to remain in the library
11 or will provide the prisoner with a library pass to return on a different day or time when the
12 library can accommodate him. Id. at 2-3.

13 The Deputy Attorney General explained that although plaintiff has access to writing-
14 related accommodations, plaintiff has "not taken advantage of these accommodations because he
15 has not asked for assistance." ECF No. 67 at 3. According to Cheng's declaration, between
16 August 17, 2012 and June 25, 2015, plaintiff did not request any assistance from library clerks or
17 any writing-related accommodations, and did not request PLU status. ECF No. 67-1 at 3. Cheng
18 further indicated that in June 2015, plaintiff received additional library time after requesting it
19 from a librarian on staff. Id.

20 B. Plaintiff's Explanation of Needed Accommodations

21 Plaintiff has filed a litany of motions, notices, and requests essentially arguing that the
22 accommodations described in Cheng's declaration are not truly available to plaintiff or do not
23 sufficiently accommodate plaintiff's disability. See ECF Nos. 70, 71, 73, 74, 76, 77, 78, 80; see
24 also ECF Nos. 54, 55, 57, 58, 62, 63, 65, 68, 69. Due to the volume and repetitive nature of
25 plaintiff's filings, the court will summarize plaintiff's issues below rather than address each filing
26 individually.

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- 28 • **Plaintiff has limited use of his hands.** Plaintiff is in a wheelchair and has degenerative arthritis in both hands. Because writing by hand is very painful,

1 plaintiff needs assistance with writing and access to a functional typewriter in the
2 law library.

- 3 • **Plaintiff does not have adequate access to a functional typewriter in the law**
4 **library.** The typewriters in the law library are available on a first come first serve
5 basis only. There are four or fewer typewriters, which is not enough for the 28
6 inmates allowed in the library at any given time. Because of his disability,
7 plaintiff requires more time than a “normal” person when using the typewriter.
8 Plaintiff has requested additional typewriter time, but his requests were denied by
9 librarian Sanchez. The typewriters in the law library are sometimes out of
10 typewriter ribbon and are therefore nonfunctional.
- 11 • **Plaintiff does not have adequate assistance conducting legal research.**
12 Research in the law library is done on the E-law library. Because of plaintiff’s
13 arthritis, it takes him four to five times longer than a normal person to use the E-
14 law library. Furthermore, the location of the E-law library in relation to the
15 typewriters prevents plaintiff from being able to conduct effective legal research.
16 Because of his arthritis, plaintiff cannot take notes by hand when using the E-law
17 library and needs to use a typewriter. However, the typewriters are located on the
18 other side of the room from the E-law library and inmates are not permitted to use
19 the typewriter and E-law library at the same time. As a result, plaintiff cannot take
20 notes or write down case names when using the E-law library.
- 21 • **Plaintiff does not have adequate time in the law library.** Because of his
22 disability, it takes plaintiff many days to do what a “normal” person could do in
23 one or two hours in the library. Plaintiff has asked for more library time in the
24 past and was told he could not receive more than four hours of library time, even
25 with his disability and need for a typewriter.
- 26 • **Plaintiff’s work schedule interferes with his ability to receive assistance in the**
27 **law library.** In August 2014, plaintiff was given a full time work assignment.
28 Plaintiff alleges that he was given the full time assignment in order to prevent him
from litigating this case. Because plaintiff works from 8:30 a.m. to 3:30 p.m.
Monday through Friday, plaintiff can only go to the law library on Saturday and
Sunday. LTA MacAtee, who assisted plaintiff in the past,⁴ works in the library
Monday through Friday only. The other inmates who could assist plaintiff also
work only Monday through Friday. As a result, there is no one to help plaintiff in
the law library on Saturday and Sunday.
- **Plaintiff’s requests for assistance have been denied.** When plaintiff asked
Senior Librarian Cheng for assistance, Cheng said to come back in four days.⁵
Cheng also informed plaintiff that if he wants more help, he needs a court order.
As a result, plaintiff has had to beg other inmates for assistance. However, these

⁴ Plaintiff’s request for counsel received by the court on March 2, 2015 appears to have been prepared by LTA McAtee. See ECF No. 40. The form indicates that McAtee is a Library Technical Assistant employed by CDCR. See id. at 3.

⁵ It is unclear if plaintiff returned to the library four days later to receive assistance.

1 inmates are getting tired of helping plaintiff and will not continue to provide
2 assistance in the future. Because of “prison politics,” inmates choose to provide
3 assistance to some inmates but not to others, hindering plaintiff’s efforts to obtain
4 assistance. Plaintiff also appears to allege that he is unable to get assistance in the
5 library because he is required to sit in the wheelchair area, and has not been
6 offered the same opportunities for assistance that other inmates in wheelchairs
7 receive.

- 8 • **Plaintiff’s requests for PLU status have been denied.** Plaintiff alleges that he
9 “has been having problems getting priority ducat passes.” Even with a court
10 deadline, plaintiff still cannot get a priority ducat until three weeks later. This
11 affects plaintiff because when the prison is on lockdown, only those with priority
12 ducats are allowed to go to the law library.
- 13 • **Relief Sought:** Plaintiff seeks a phone call with the court to discuss plaintiff’s
14 accommodation issues and a court order granting plaintiff access to a functional
15 typewriter, assistance with writing, and additional time in the law library.

16 C. Discussion of Available Accommodations

17 At the outset, the court notes that the sheer volume of plaintiff’s filings undermines
18 plaintiff’s assertion that he has not been able to obtain writing-related assistance in the law
19 library, as the majority of plaintiff’s recent filings have been typed (apparently with the assistance
20 of other inmates). In the last two months alone, plaintiff has filed seven letters or notices to the
21 court, all of which have been typed. Given the recent volume of typed filings submitted by
22 plaintiff, it appears that plaintiff’s issues with general typewriter access have been resolved.
23 Accordingly, to the extent plaintiff requests a court order granting him general access to a
24 typewriter, the request is denied as moot.

25 However, plaintiff’s allegations suggest that in addition to typewriter access, plaintiff
26 requires assistance conducting research on the E-law library. Specifically, it appears that plaintiff
27 is not able to take notes while conducting research using the E-law library because the typewriters
28 are not located near the E-law library, and plaintiff cannot take notes by hand. Plaintiff’s issue
with the E-law library appears to be further complicated by the fact that plaintiff is in a
wheelchair, which apparently affects which part of the library plaintiff is allowed to sit in.

The Statement of Accommodations filed by defendants suggests that the law library at
CMF is equipped to accommodate plaintiff’s disability. Specifically, it appears that plaintiff can

1 request that the librarian assign a clerk to assist plaintiff with “legal research questions” and
2 “technical problems.” ECF No. 67 at 3. Presumably, this clerk would be able to assist plaintiff
3 with using the E-law library and with taking notes. Defendants’ Statement also indicates that a
4 library clerk could handwrite documents dictated by plaintiff, id., thereby minimizing the concern
5 regarding typewriter availability.

6 It is not clear to the court whether plaintiff has specifically requested that the librarian
7 assign a clerk to assist plaintiff in the law library. Librarian Cheng states in his declaration that
8 his search of the Library Assistance Log indicated that plaintiff did not request assistance from
9 library clerks or other writing-related accommodations between August 17, 2012 and June 25,
10 2015. However, the court’s own record suggests that plaintiff requested assistance on at least one
11 occasion (though perhaps not through formal channels), as plaintiff’s motion for appointment of
12 counsel was prepared by CDCR employee LTA McAtee in January 2015, apparently to
13 accommodate plaintiff’s disability. See ECF No. 40. Thus, it appears that the Library Assistance
14 Log does not necessarily reflect all inmate requests for assistance.

15 Plaintiff also states he asked librarian Cheng for assistance and was told to come back in
16 four days. ECF No. 76 at 2. However, it is unclear whether plaintiff returned four days later to
17 receive assistance. In another document filed in October 2015, plaintiff states that he asked the
18 Senior Law Librarian “for assistance (per Declaration by Y. Cheng 8th July 2015),” but did not
19 receive assistance. ECF No. 79 at 2. Plaintiff goes on to state that no accommodations are being
20 provided while using the E-Law Library. Id.

21 It is not entirely clear whether plaintiff has followed the proper channels for requesting
22 assistance in the law library, or that plaintiff returned to receive assistance when instructed to do
23 so by the law librarian. However, in an abundance of caution, the court will require defendants to
24 address plaintiff’s specific assertion that he is not being provided with assistance using the E-law
25 library and taking notes on his research. Accordingly, the Deputy Attorney General is directed to
26 file a statement with the court within ten (10) days indicating whether a library clerk would be
27 able to assist an inmate such as plaintiff, who is in a wheelchair, with physically using the E-law
28 library, taking notes, and handwriting a document dictated by the inmate. The statement should

1 clearly spell out the procedures for requesting this type of assistance. If the procedure is to fill
2 out a form requesting assistance, the statement should indicate how an inmate who has trouble
3 using his hands should request assistance if he is unable to fill out the form.

4 **Plaintiff shall not file any additional motions or responses until the court has**
5 **received the Deputy Attorney General's updated statement.** Once the Deputy Attorney
6 General's statement has been filed, plaintiff may, but is not required to, file one document
7 responding to the statement. Any additional responses relating to the statement will be
8 disregarded.

9 IV. Request for Extension of Time (ECF No. 70)

10 On August 20, 2015, plaintiff requested an extension of time to respond to the July 2,
11 2015 order denying plaintiff's motion for reconsideration.⁶ ECF Nos. 70, 71. It is clear from
12 plaintiff's motion that his request is based entirely on his desire to continue explaining why he
13 requires a typewriter and other writing-related accommodations, as he has done in numerous
14 other motions.⁷ See ECF No. 71 at 2-3. Plaintiff's motion is denied.

15 V. Motions to Dismiss (ECF Nos. 47 & 53)

16 Defendant Clark, Ditomas, and Rading's motion to dismiss and defendant Dhillon's
17 separate motion to dismiss are currently pending before the court. ECF Nos. 47, 53. In their
18 motions, defendants move to dismiss the first amended complaint for failure to state a claim upon
19 which relief can be granted.

20 In the first amended complaint, plaintiff alleges that defendants were deliberately
21 indifferent to his serious medical needs, and indicates that he has administrative grievances, sick
22 call requests, and "other medical paperwork" relevant to his allegations that are not attached to
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24 ⁶ Plaintiff had filed a motion for reconsideration of this court's June 16, 2015 order denying his
25 request for appointment of counsel and requiring further briefing on the writing-related
26 accommodations available to plaintiff. ECF No. 63. On July 2, 2015, the district judge denied
27 plaintiff's motion for reconsideration and noted that plaintiff's writing-related accommodations
28 would be addressed by the magistrate judge after defendants filed their Statement of
Accommodations. ECF No. 66.

⁷ The court also notes that, prior to requesting an extension of time, plaintiff had already filed a
brief response to the order denying plaintiff's motion for reconsideration. See ECF No. 69.

1 the complaint. See ECF No. 30 at 6. Upon review of the motions to dismiss, the court has
2 determined that neither motion can properly be resolved on the merits without consideration of
3 the documents referenced in plaintiff’s first amended complaint. While plaintiff has submitted a
4 number of piecemeal filings containing various administrative grievances and other requests, it is
5 not clear that any of these are the same documents referenced in the complaint.

6 Accordingly, the court will direct plaintiff to compile the documents referenced in his first
7 amended complaint that he believes support his allegations against defendants Clark, Ditomas,
8 Rading, and Dhillon. Plaintiff shall submit these documents to the court as a single filing.
9 Plaintiff should label the filing “Exhibits to the First Amended Complaint.” Plaintiff shall submit
10 these documents only once.

11 Defendants’ motions to dismiss are vacated without prejudice to their renewal once
12 plaintiff files the above exhibits. Once defendants re-file their motions to dismiss, plaintiff shall
13 file a revised opposition to each motion. **Plaintiff is advised that he must separately oppose**
14 **each motion.** In other words, plaintiff must file one opposition to defendant Clark, Ditomas, and
15 Rading’s motion to dismiss, and a separate opposition to defendant Dhillon’s motion to dismiss.
16 Once plaintiff files his oppositions, defendants may file revised replies.

17 VI. Summary of Directions to Plaintiff

18 **Plaintiff must stop filing miscellaneous letters, notices, and updates with the court.**

19 Plaintiff should not file any other documents unless directed to do so by the court.

20 **At this time, plaintiff may file only the “Exhibits to the First Amended Complaint.”**

21 This should consist of the documents (such as health care appeals or medical records) that
22 plaintiff referred to in his First Amended Complaint that support his claims against defendants.

23 These documents should be submitted as one single filing. Once plaintiff submits these
24 documents, he should not submit them again. **These are the only documents plaintiff may file**
25 **at this time.**

26 After the Deputy Attorney General files an updated statement of accommodations,
27 plaintiff may file one response. If plaintiff asserts that he is still not receiving assistance with the
28 E-Law Library, he must clearly explain how he requested assistance, what type of assistance he

1 requested, and what he was told in response to his request. Plaintiff is advised that in requesting
2 assistance, he must follow the procedures outlined in the Deputy Attorney General's updated
3 statement of accommodations. For example, if plaintiff is told to return on another day to receive
4 assistance, plaintiff must do so.

5 After defendant Clark, Ditomas, and Rading re-file their motion to dismiss, plaintiff must
6 file an opposition to defendant Clark, Ditomas, and Rading's motion to dismiss. If plaintiff needs
7 an extension of time to file his opposition, plaintiff may file a request for additional time. The
8 request for additional time should be no more than one page.

9 After defendant Dhillon re-files his motion to dismiss, plaintiff must file an opposition to
10 defendant Dhillon's motion to dismiss. If plaintiff needs an extension of time to file his
11 opposition, plaintiff may file a request for additional time. The request for additional time should
12 be no more than one page.

13 At this time, plaintiff may not file any additional documents other than those listed above.

14 Finally, plaintiff is advised that the court has received plaintiff's motion for injunctive
15 relief regarding the incident that allegedly occurred during plaintiff's physical therapy session on
16 November 23, 2015. The court will address this issue in a separate order. Plaintiff must not file
17 any additional updates, letters, or other documents regarding this incident unless directed to do so
18 by the court. Any additional filings not authorized by the court will be disregarded.

19 VII. Conclusion

20 In accordance with the above, IT IS HEREBY ORDERED that:


- 21 1. Plaintiff's requests for accommodations (57, 58, 65, 71, 76, 77, 80) are granted in part
22 and denied in part. Plaintiff's request for a court order granting access to a typewriter is denied
23 without prejudice. Plaintiff's request for assistance using the E-law library is granted to the
24 extent that the Deputy Attorney General is directed to file within ten (10) days from the filing
25 date of this order an updated statement of accommodations, as set forth above;
- 26 2. Plaintiff's request to speak with the court by phone (ECF No. 62) is denied;
- 27 3. Plaintiff's motion for an extension of time (ECF No. 70) is denied;
- 28 4. Within thirty days from the filing date of this order, plaintiff shall file the documents

1 referenced in his first amended complaint that support his allegations against defendants Dhillon,
2 Clark, Ditomas, and Rading. Plaintiff shall file these documents as a single exhibit labeled
3 “Exhibits to the First Amended Complaint.” Plaintiff shall submit these documents only once.

4 5. Defendant Clark, Rading, and Ditomas’ motion to dismiss (ECF No. 47) and defendant
5 Dhillon’s motion to dismiss (ECF No. 53) are vacated without prejudice to renewal once plaintiff
6 files the above exhibits;

7 6. Upon re-notice of the motions to dismiss, plaintiff shall have 30 days to oppose each
8 motion. Plaintiff must file a separate opposition to each motion, meaning that he should file one
9 opposition to defendant Rading, Clark, and Ditomas’ motion to dismiss, and another opposition to
10 defendant Dhillon’s motion to dismiss. Following the filing of plaintiff’s respective oppositions,
11 defendants shall have seven days to file a revised reply.

12 DATED: March 7, 2016

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14 ALLISON CLAIRE
15 UNITED STATES MAGISTRATE JUDGE
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