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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THURMAN LEROY SPENCER,
Plaintiff,
v.
S. PAINTER, et al.,
Defendants.

No. 2:13-cv-02108 KJM DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. The gravamen of plaintiff’s complaint is that prison officials were deliberately indifferent to his medical needs when he informed them that he was in pain and required a wheelchair to return to his cell; he subsequently collapsed on the floor of the law library and was taken for medical treatment, consisting of the administering of 500 mg of Naproxen. Plaintiff seeks \$500,000 in damages. (Complaint, ECF No. 1.)

On April 10, 2014, the court dismissed the complaint due to plaintiff’s failure to allege facts sufficient to state a cognizable claim against the named defendants. (ECF No. 18.) Plaintiff was given thirty days to file an amended complaint. (Id.) On May 15, 2014, the court granted plaintiff an additional thirty days to file an amended complaint. (ECF No. 22.) Nonetheless, plaintiff failed to file an amended complaint within the allotted time.

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1 Consequently, on June 26, 2014, the undersigned issued findings and recommendations
2 recommending that this action be dismissed without prejudice due to plaintiff's failure to file an
3 amended complaint within the time provided to do so. (ECF No. 24.) Plaintiff was therein given
4 fourteen days to file objections to the findings and recommendations.

5 On July 22, 2014, the June 26, 2014 findings and recommendations were returned to the
6 court as "Undeliverable, refused." By minute order, plaintiff was given until September 29, 2014
7 to provide the court with notice of his new address. Plaintiff failed to do so. However, on
8 September 8, 2014, plaintiff submitted a request for a copy of the docket sheet in this action. His
9 address reflected on that request is the same as the address of record that plaintiff had provided in
10 a notice of change of address that he filed with the court on February 3, 2014 (Dkt. No. 12): a
11 P.O. Box for mail sent to inmates at Kern Valley State Prison. Moreover, the on-line State of
12 California Inmate Locator also shows that plaintiff continues to be incarcerated at Kern Valley
13 State Prison. It is therefore unclear whether the June 26, 2014 findings & recommendations were
14 undeliverable for any reason other than plaintiff's refusal to accept them.

15 On January 20, 2015, plaintiff filed a document with the court entitled "Motion Plaintiff
16 Denied Ruling From Court." (ECF No. 26.) In that document, plaintiff claims that he also did
17 not receive a copy of the court's May 15, 2014 order (ECF No. 21) (i) granting him an additional
18 thirty days to file an amended complaint, and (ii) denying his motion for access to his ten boxes
19 of legal property and/or unlimited access to the prison law library.

20 Because it appears possible that plaintiff may not have received notice of the extension of
21 time provided for in the May 15, 2014 order, out of an abundance of caution, the court will vacate
22 the June 26, 2014 findings and recommendations and grant plaintiff an additional 30 days within
23 which to file an amended complaint if he wishes to continue to pursue this civil rights action.
24 However, plaintiff's failure to timely file an amended complaint will result in a recommendation
25 that this action be dismissed without prejudice. Moreover, plaintiff is forewarned that no further
26 extensions of time will be granted for this purpose.

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1 One other matter requires the court's attention. On June 23, 2014, plaintiff filed a
2 renewed motion for access to his ten boxes of legal property. (ECF No. 23). Plaintiff does not
3 set forth any reason therein for the return of his property beyond those already set forth in his
4 prior motion, with one exception: plaintiff now claims that he is "in need of documents (CDCR-
5 602's) and medical reports regarding this case in his legal property to be able to present his proper
6 complaint to court regarding this case[.]" (Id. at 1-2.) If plaintiff wishes to further review these
7 records, he does not require access to the ten boxes of his legal property. Instead, he may obtain
8 these records from his central file, which must be made available for him to inspect and copy
9 pursuant to prison policies and procedures. "Inmates or parolees may review their own case
10 records file and unit health records" Cal. Code Regs., tit. 15, § 3370(c). Accordingly, the
11 court will deny plaintiff's motion for access to his legal property, as he has failed to demonstrate,
12 first, that he attempted to obtain the records he requires through the appropriate channels referred
13 to above, and second, that his attempts to do so were unsuccessful despite no fault of his.
14 Plaintiff is directed to use prison procedures to access his central file and obtain access to the
15 documents he believes requires in order to file a first amended complaint.

16 In light of the foregoing, IT IS HEREBY ORDERED that:

- 17 1. The court's June 26, 2014 findings and recommendations (ECF No. 24) are vacated.
- 18 2. Plaintiff is granted leave to file an amended complaint, if he desires to pursue this
19 action, within thirty days from the date of this order. Any amended complaint plaintiff
20 elects to file must conform to the requirements set forth in the court's April 10, 2014
21 order. (ECF No. 18.)
- 22 3. Plaintiff's motion for a court order directing access to his legal property (ECF No. 23)
23 is denied.
- 24 4. Together with a copy of this order, the Clerk of the Court is directed to serve plaintiff
25 with another copy of the court's April 10, 2014 order (ECF No. 18) and the May 15, 2014
26 order (ECF No. 22) for his reference.

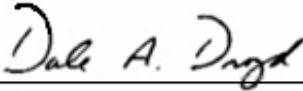
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5. Plaintiff's failure to comply with this order will result in a recommendation that the action be dismissed.

Dated: January 27, 2015



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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