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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY GIRALDES,
Plaintiff,
v.
OANIA, et al.,
Defendants.

No. 2:14-cv-726-JAM-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with this 42 U.S.C. § 1983 civil rights action. Defendants have filed a “Renewed Motion for Terminating Sanctions or Involuntary Dismissal.” ECF No. 112. Thereafter, on November 3, 2017, plaintiff filed a “Motion for Extension of Time and/or Stay.” ECF No. 113. Defendants oppose a stay or extension.¹ ECF Nos. 114, 117. As explained below, the court recommends that plaintiff’s motion be denied and that he be ordered to file a response to defendants’ motion.

Plaintiff states that on October 26, 2017, he was placed in administrative segregation for sixteen hours and that unspecified “property” was confiscated. ECF No. 113 at 2. He requests an “extension of time, or stay until [he] can determine when, or if, his property will be returned . . . so he can then resume this cases litigation.” *Id.* at 3. A party seeking a stay must make out a

¹ In his reply brief as to the stay/extension request, plaintiff asks the court to schedule a settlement conference. ECF No. 117. That request is denied without prejudice. Plaintiff may renew his request in the event the court denies defendants’ “Renewed Motion for Terminating Sanctions or Involuntary Dismissal.”

1 clear case of hardship or inequity in being required to go forward. *Lockyer v. Mirant Corp.*, 398
2 F.3d 1098, 1109 (9th Cir. 2005). This is not a clear case of hardship. Plaintiff has not shown
3 how any loss of property prevents him from opposing defendants' motion or otherwise moving
4 forward with this case. He also does not dispute defendants' representation that none of his legal
5 materials were taken. *See* ECF Nos. 114, 117. His reply brief, filed in spite of the sixteen hours
6 of administrative segregation, includes arguments responsive to defendants' motion and further
7 undermines his claimed inability to proceed in this case. Thus, there is no inequity in requiring
8 plaintiff to go forward and a stay is unwarranted.

9 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for the court to schedule
10 a settlement conference (ECF No. 117) is denied without prejudice.

11 Further, IT IS HEREBY RECOMMENDED that plaintiff's "Motion for Extension of
12 Time and/or Stay," (ECF No. 113) be denied and that plaintiff be ordered to file a response to
13 defendants' "Renewed Motion for Terminating Sanctions or Involuntary Dismissal" (ECF No.
14 112) within seven days of any order adopting these findings and recommendations.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
20 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
21 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

22 DATED: December 12, 2017.

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24 EDMUND F. BRENNAN

25 UNITED STATES MAGISTRATE JUDGE
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