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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONALD LEE CANADA,

Plaintiff,

v.

HAMKAR,

Defendant.

No. 2:14-cv-2990 WBS KJN P

ORDER

This action proceeds on plaintiff's original complaint, in which he claims defendant Dr. Hamkar was deliberately indifferent to plaintiff's serious medical needs in violation of the Eighth Amendment. Despite the prior order that no further extensions of time would be granted (ECF No. 33), on March 6, 2017, plaintiff filed another request for an extension of time to file and serve an opposition to defendant's September 20, 2016 motion for summary judgment. As discussed below, plaintiff's motion is partially granted.

Background

Plaintiff's complaint was signed on December 6, 2014, and defendant filed an answer. On April 28, 2016, discovery was continued to July 1, 2016, and the pretrial motions deadline was continued to September 23, 2016. Plaintiff was deposed on May 24, 2016. On September 20, 2016, defendant filed a motion for summary judgment, which included the requirements for

1 opposing a motion for summary judgment.

2 On November 14, 2016, plaintiff's failure to file an opposition was noted, and plaintiff  
3 was ordered to file an opposition within thirty days, and that his failure to do so would be deemed  
4 as consent to have the (a) action dismissed for lack of prosecution; and (b) action dismissed based  
5 on plaintiff's failure to comply with these rules and a court order. Such failure shall result in a  
6 recommendation that this action be dismissed pursuant to Federal Rule of Civil Procedure 41(b).  
7 (ECF No. 26.)

8 On December 2, 2016, plaintiff filed a motion for extension of time noting his difficulties  
9 in obtaining his legal materials due to his transfer from the California Medical Facility to  
10 California State Prison, Sacramento ("CSP-SAC"). On December 7, 2016, plaintiff was granted  
11 an extension of 45 days in which to file the opposition, but defendant was directed to file a status  
12 report concerning plaintiff's access to his legal materials. On January 5, 2017, plaintiff notified  
13 the court that he would be attending his classification committee on January 1, 2017, and put up  
14 for another transfer. Plaintiff claimed he had been informed that his legal materials had arrived,  
15 but he did not yet have possession of them. (ECF No. 32 at 1.) On January 6, 2017, counsel for  
16 defendant filed a declaration stating that on January 5, 2017, a property officer attempted to  
17 deliver three boxes of mail, letters, miscellaneous papers and books to plaintiff, but after plaintiff  
18 reviewed the boxes, he told the officer he was missing a black folder, and that Salinas Valley  
19 State Prison was "playing games." (ECF No. 30 at 2.) Plaintiff refused receipt of the property.  
20 (ECF No. 30 at 2.)

21 On January 10, 2017, the court recounted the nature of plaintiff's claim, noted that  
22 plaintiff may review and obtain copies of his medical records by following prison procedures, and  
23 reminded plaintiff that because the instant action only pertains to his medical care, plaintiff was  
24 personally involved and aware of the care he alleges he received and did not receive. (ECF No.  
25 33.) In an abundance of caution, because the operative pleading recited plaintiff's claims against  
26 Dr. Hamkar, the court provided plaintiff with a copy of his complaint, and granted him sixty days  
27 in which to file his opposition. Plaintiff was warned that failure to file an opposition would result  
28 in the dismissal of this action, as set forth in the November 14, 2016 order, and admonished that

1 no further extensions of time would be granted. (ECF No. 33 at 2-3.)

2 On February 15, 2017, plaintiff filed a request for in forma pauperis affidavits and  
3 medical and mental health Olsen<sup>1</sup> review, listing three other cases in addition to the instant case.  
4 (ECF No. 36 at 1.) Plaintiff provided copies of health care services request forms requesting an  
5 Olsen review, dated January 2 and 17, 2017, February 6 and 10, 2017. (ECF No. 36 at 5-9, 11.)

6 On February 21, 2017, plaintiff filed a motion for Olsen review. (ECF No. 37.) Plaintiff  
7 claims that on February 15, 2017, medical staff provided plaintiff with a CDCR 7385  
8 authorization for release of protected health information to fill out for an Olsen review. Later that  
9 day, plaintiff was given a copy of the request. However, during medication pass out, plaintiff was  
10 not given any Olsen review paperwork. Plaintiff claims that staff falsely documented the form  
11 stating he was given the Olsen review paperwork cell side, but that “never happened.” (ECF No.  
12 37 at 3.) Plaintiff states that prison policy entitles inmates to sign and date the copy after  
13 obtaining the Olsen review to prove receipt, but plaintiff never signed for such review. Plaintiff  
14 claims that prison staff do not want him to have access to his Olsen review. (Id.)

15 Plaintiff provided a copy of the authorization for release of protected health information  
16 which was signed by plaintiff on February 15, 2017. (ECF No. 37 at 7-8.) Plaintiff requested  
17 records from June to August of 2015, electromyography and nerve conduction test results, and  
18 psychotherapy notes 2014-16 from clinician M. Hunter. (ECF No. 37 at 7.) The release form  
19 bears no mark confirming delivery of the requested medical records to plaintiff. (ECF No. 37 at  
20 7-8.) However, the form warns the inmate that requests for psychotherapy notes require a  
21 separate CDCR 7385 form and “may not be combined with any other request for health care  
22 records.” (ECF No. 37 at 6.)

23 Plaintiff’s Health Care Services Request form dated February 12, 2017, was completed by  
24 a registered nurse who noted plaintiff was given a copy of the Olsen review on February 15, 2017  
25 at 9:15, cell side. (ECF No. 37 at 8.)

26 On February 24, 2017, plaintiff filed a notice stating that he was told to pack because he

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28 <sup>1</sup> An Olsen review is an administrative procedure which allows an inmate to review his central  
file. Johnson v. Echano, 2016 WL 4239414, at \*4 (N.D. Cal. Aug. 11, 2016).

1 will be transferring to a different prison, and confirming that he continues to submit requests for  
2 medical and mental health Olsen review. (ECF No. 38.) In his March 2, 2017 letter to the clerk,  
3 plaintiff notified the court that he refused to get on the bus for transfer because prison officials  
4 refused to pack his property. (ECF No. 39.)

5 On March 2, 2017, plaintiff renewed his motion for Olsen review, providing a copy of his  
6 February 27, 2017 request for 602 appeal concerning the requested Olsen review. (ECF No. 40 at  
7 3.) Plaintiff claims he needs copies of the results from an electromyography and nerve  
8 conduction (EMG/NCS) dated June 12, 2015, and August 14, 2015, completed by Dr. Friend, and  
9 progress notes from previous assigned clinician, CSW M. Hunter, 2014-16 documents, because  
10 they are relevant to plaintiff's opposition. (ECF No. 40 at 4.)

11 On March 6, 2017, plaintiff filed a request for extension of time; because of his recent  
12 transfer to Kern Valley State Prison, plaintiff allegedly has none of his legal materials.

### 13 Discussion

#### 14 Requests/Motions for Olsen Review

15 Plaintiff is advised that discovery is closed. On January 10, 2017, the court suggested  
16 plaintiff review his medical records as an alternative to enable plaintiff to prepare his opposition  
17 before he received his legal materials. Indeed, in his pending request for extension of time,  
18 plaintiff complains that he was separated from his legal materials during his recent transfer,  
19 implying that plaintiff was in possession of his legal materials immediately before his recent  
20 transfer.

21 Moreover, plaintiff has not filed a motion to defer consideration of the motion for  
22 summary judgment under Rule 56(d) of the Federal Rules of Civil Procedure, and plaintiff alleges  
23 no facts demonstrating he would be entitled to such deferral. In his complaint, plaintiff alleges  
24 that Dr. Hamkar was deliberately indifferent to plaintiff's serious medical needs on April 23,  
25 2014, when he told the doctor that plaintiff was having chronic neck and lower back pain and the  
26 Tylenol was not working, and the doctor allegedly responded that he did not care, that he would  
27 not put plaintiff back on the medication that works, and that because plaintiff is considered a  
28 mental health inmate, plaintiff would need to get out of the mental health program before the

1 doctor could adequately treat plaintiff. (ECF No. 1 at 6.)

2 In the motion for summary judgment, Dr. Hamkar declares that medical records reflect  
3 that he saw plaintiff three times: November 25, 2013, December 3, 2013, and April 23, 2014  
4 (ECF No. 25 at 22-23), and plaintiff was provided copies of the reports from these examinations  
5 (ECF No. 25 at 26-28). In all of plaintiff's filings, he fails to explain how electromyography and  
6 nerve conduction studies performed on June 12, 2015, and August 14, 2015, over a year after Dr.  
7 Hamkar's treatment of plaintiff would rebut Dr. Hamkar's motion. Similarly, plaintiff does not  
8 address how psychotherapy notes from clinician M. Hunter from 2014 to 16 would be relevant or  
9 rebut Dr. Hamkar's motion.

10 For all these reasons, plaintiff's pending motions and requests for Olsen reviews are  
11 denied.

12 Request for Further Extension of Time

13 It is unfortunate that prison officials again transferred plaintiff, for we are now back where  
14 we were in December: plaintiff, recently transferred, is again allegedly separated from his legal  
15 materials. Plaintiff is unable to oppose the pending motion without possession of his legal  
16 materials. Thus, counsel for defendant is directed to file a status report addressing the status of  
17 plaintiff's legal materials, including whether plaintiff now has possession of his legal materials  
18 and, if not, when he will obtain such possession. Any efforts defense counsel could make to  
19 ensure plaintiff has possession of his legal materials, would be appreciated.

20 The court has no alternative but to grant plaintiff a further extension to oppose the motion.  
21 However, absent substantial cause, no further extensions of time will be granted. Plaintiff is  
22 cautioned that, as set forth in the court's November 14, 2016 order, failure to file a timely  
23 opposition will result in an order granting the motion for summary judgment.

24 IT IS HEREBY ORDERED that:

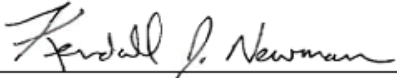
- 25 1. Plaintiff's motions and requests for an Olsen review (ECF Nos. 36, 37, 40) are denied.
- 26 2. Plaintiff's motion for an extension of time (ECF No. 41) is granted.
- 27 3. Plaintiff is granted forty-five days from the date of this order in which to file and serve  
28 his opposition. No further extensions of time will be granted absent substantial cause.

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4. Within fourteen days from the date of this order, counsel for defendant shall file a status report as set forth above.

Dated: March 10, 2017

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE