

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MATTHEW DENNIS,  
Plaintiff,  
v.  
SCOTT KERNAN, et al.,  
Defendants.

No. 2:16-cv-0542 JAM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court are plaintiff’s various motions and objections regarding the amended declaration filed in support of defendants’ motion for summary judgment (ECF Nos. 190-97), his motion to vacate the March 8, 2022 order to correct clerical mistakes, a motion for an extension of time (ECF No. 199), and a motion for clarification (ECF No. 200).

I. Procedural Background

By order filed March 8, 2022, the undersigned denied defendants’ motions to seal plaintiff’s medical records, granted plaintiff’s motion for an extension of time to file an opposition to defendants Mays and Allison’s motion for summary judgment, and construed plaintiff’s cross-motion for summary judgment and opposition to the motion for summary judgment as an opposition only. ECF No. 177. In denying defendants’ motions to seal, the court gave defendants the opportunity to resubmit the documents by “publicly re-fil[ing] any

1 documents for which plaintiff has waived his right to privacy through his own filing” and, if  
2 necessary, filing either (1) a renewed motion to seal that complied with Local Rule 141 and the  
3 March 8, 2022 order, and addressed only documents not previously filed in the public record; or  
4 (2) a stipulation from plaintiff that such documents could be publicly filed. Id. at 8-9.

5 II. Defense Counsel’s Amended Declaration

6 In response to the court’s order, defendants’ counsel filed an amended declaration in  
7 which he stated that he had asked plaintiff to stipulate to a request to file the records under seal,  
8 but that plaintiff had refused and the records were being filed publicly because plaintiff was  
9 deemed to have waived his right to privacy in the records by pursuing this lawsuit. ECF No. 186  
10 at 2, ¶¶ 3-4. The declaration further stated that the attached records “relate to the treatment and  
11 care provide by Nurse Mays in 2015, as well as relevant prior medical records” and that the  
12 medical records from the Substance Abuse Treatment Facility were not being resubmitted  
13 because they related to the claims against defendant Phui, who has been dismissed. Id., ¶¶ 6-7.  
14 Counsel also added a paragraph addressing specific pages of the record and plaintiff’s alleged  
15 statements to his medical providers. Id. at 3, ¶ 9.

16 Shortly before the amended declaration was filed, the Clerk of the Court docketed  
17 plaintiff’s notice that he was waiving his right to privacy in order to block any motion to seal by  
18 defendants Mays and Allison; this appears to have been prompted by counsel’s request that  
19 plaintiff stipulate to a request to seal his medical records. ECF No. 185.<sup>1</sup> However, plaintiff has  
20 since filed multiple motions and objections to the amended declaration, asserting that counsel’s  
21 declaration misrepresents the documents attached and includes medical records irrelevant to the  
22 issues before the court. Plaintiff specifically objects to Paragraph 9 of the declaration and the  
23 records it references and requests that the court sanction defense counsel, strike the declaration,  
24 and seal any records from after August 2018. ECF Nos. 190-97.

25 With respect to the resubmitted medical records, the March 8, 2022 order clearly specified  
26 defendants’ options for refiling. It is therefore baffling why, instead of requesting a stipulation to

---

27 <sup>1</sup> The court’s records indicate that the notice was docketed about two and a half hours before the  
28 amended declaration was filed.

1 file the records *publicly*, which it appears plaintiff would have agreed to with reasonable  
2 limitations, counsel instead attempted to obtain a stipulated request to file the records *under seal*.  
3 The original motion to seal was denied because a significant portion of the records defendants  
4 were seeking to seal had already been publicly filed, making filing under seal inappropriate. See  
5 ECF No. 177 at 6-7. Plaintiff's stipulation to filing under seal would not have changed that fact  
6 or made sealing appropriate. It appears that counsel's inexplicable decision to seek a stipulated  
7 request to seal, and subsequent public filing of plaintiff's medical records, led to plaintiff's recent  
8 flurry of filings.

9         Despite defendants' failure to follow the court's instructions for re-submitting plaintiff's  
10 medical records, the amended declaration and exhibits will be permitted in light of plaintiff's  
11 representation that he would like "[a]ll records from the year 2004 through August 30th, 2018" to  
12 remain publicly filed. However, the court will disregard Paragraph 9 of the declaration, which  
13 was not included in counsel's original declaration and appears to be a backdoor attempt to bring  
14 additional facts to the court's attention outside the briefing on the motion for summary judgment.  
15 If defendants wanted the contents of Paragraph 9 and the documents it references considered by  
16 the court in deciding the motion for summary judgment, they should have been specifically cited  
17 in the moving papers so that plaintiff had a proper opportunity to respond.<sup>2</sup> Furthermore, the  
18 undersigned will grant plaintiff's request that any records after August 30, 2018, be sealed.  
19 Based on plaintiff's description of the records he would like sealed and the court's brief review,  
20 the records to be sealed appear to be located at pages 10-26 of ECF No. 186-2 (Bates stamp  
21 CCHCS-U000140-56).<sup>3</sup> If plaintiff believes that there are additional records that should be  
22 sealed, he may notify the court and should identify the documents by either their ECF number and  
23 page number or Bates stamp number.<sup>4</sup>

24 ///

25 \_\_\_\_\_  
26 <sup>2</sup> It does not appear that the records referenced in Paragraph 9 were cited in either defendants'  
27 statement of facts or the motion for summary judgment. See ECF Nos. 151, 152.

28 <sup>3</sup> These records include the records referenced in Paragraph 9 of the amended declaration.

<sup>4</sup> Plaintiff is advised that sealing the documents does not mean that they have been removed from  
the record. Sealing the documents merely removes them from public view.

1           Although the court finds counsel’s conduct in resubmitting plaintiff’s medical records  
2 questionable, sanctions do not appear warranted at this time and plaintiff’s request for sanctions  
3 will be denied. However, counsel is cautioned that further failure to follow this court’s orders  
4 may result in sanctions.<sup>5</sup>

5           III.     Motions to Vacate, for Extension of Time, and For Clarification

6           Plaintiff has filed a motion to vacate the March 8, 2022 order due to a clerical error,  
7 oversight, or omission. ECF No. 198. This motion, along with a separately filed motion for  
8 clarification, also seeks clarification regarding plaintiff’s cross-motion for summary judgment and  
9 whether plaintiff is expected to file a separate motion for summary judgment. *Id.*; ECF No. 200.  
10 In the event he needs to file another motion for summary judgment, plaintiff requests thirty days  
11 to do so. ECF No. 199.

12           Plaintiff’s motion to vacate the March 8, 2022 order argues that the court misunderstood  
13 the circumstances as a result of the delay in ruling on various motions. It is construed as a request  
14 for reconsideration. Local Rule 230(j) requires that a motion for reconsideration state “what new  
15 or different facts or circumstances are claimed to exist which did not exist or were not shown  
16 upon such prior motion, or what other grounds exist for the motion; and . . . why the facts or  
17 circumstances were not shown at the time of the prior motion.” L.R. 230(j)(3)-(4). The motion  
18 does not present any new or different facts or circumstances and will therefore be denied, except  
19 to the extent that clarification will be provided as requested.

20           Plaintiff’s motion for summary judgment was not stricken simply because it exceeded the  
21 page limit and was not accompanied by a motion for leave to exceed the page limit. The motion  
22 was *excessively* long, addressed a number of issues beyond summary judgment, and did not  
23 comply with Federal Rule Civil Procedure 56(c) or Local Rule 260(a). *See* ECF No. 141 at 7-9  
24 (addressing grounds for striking plaintiff’s motion). With respect to plaintiff’s cross-motion for

---

25           <sup>5</sup> The court notes that in support of his motion in limine plaintiff has provided a copy of a letter  
26 he received from defense counsel in which counsel states that he is representing plaintiff and  
27 requests that plaintiff sign a medical records release. ECF No. 190 at 24. Though it appears that  
28 this was merely a typographical error not warranting sanctions, and that plaintiff clearly  
recognized that defense counsel was not representing him, the error is troubling as other, less  
sophisticated prisoner-plaintiffs may not have had the same level of awareness as plaintiff.


1 summary judgment and opposition to defendants' motion for summary judgment, it is being  
2 considered as an opposition to defendants' motion only. The arguments plaintiff made in support  
3 of his cross-motion for summary judgment will be considered as part of the opposition to  
4 defendants' motion, but they will not be considered as a separate motion for summary judgment.  
5 Furthermore, the court did not grant plaintiff an extension of time to file a motion for summary  
6 judgment, as the motion he filed sought only an extension of time to file a response to defendants'  
7 motion for summary judgment. ECF No. 167 (motion for extension); ECF No. 177 at 5, 8 (order  
8 granting extension). Plaintiff has not been granted leave to file an untimely motion for summary  
9 judgment and should not file one absent leave of the court. To the extent the motion for an  
10 extension of time is intended as a motion for leave to file an untimely motion for summary  
11 judgment, plaintiff has not established excusable neglect and the motion will be denied. See Fed.  
12 R. Civ. P. 6(b)(1)(B) (deadline may be excused on motion filed after expiration of deadline up on  
13 showing of excusable neglect).

#### 14 CONCLUSION

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff's motions in limine and to strike (ECF No. 190, 191, 194) are GRANTED to  
17 the extent the court will disregard Paragraph 9 of defense counsel's amended declaration. The  
18 motions are OTHERWISE DENIED.
- 19 2. Plaintiff's motions to seal (ECF Nos. 191, 196) are GRANTED. The Clerk of the  
20 Court is directed to seal pages 10-26 of ECF No. 186-2.
- 21 3. Plaintiff's motions for sanctions (ECF No. 191, 193) are DENIED.
- 22 4. Plaintiff's motion to vacate (ECF No. 198) is DENIED.
- 23 5. Plaintiff's requests for clarification (ECF Nos. 198, 200) are GRANTED to the extent  
24 that clarification has been provided above.
- 25 6. Plaintiff's motion for an extension of time (ECF No. 199) is DENIED.

26 DATED: April 14, 2022

27   
28 ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE