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7 UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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10 DAVID WESLEY BIRRELL, et al.,

11 Plaintiffs,

12 v.

13 ROBERT W. FOX,

14 Defendant.  
15

No. 2:16-cv-1818 JAM CKD P

ORDER

16 On February 7, 2019, the court granted Paul R. Martin's June 22, 2018 motion to  
17 withdraw as counsel for plaintiffs based mostly upon Mr. Martin's representation that his  
18 advanced age of 82, deteriorating health, and memory loss prevent him from providing adequate  
19 advocacy. On December 7, 2018, and presumably in accord with this court's directive to Mr.  
20 Martin that he turn over all case materials to plaintiff Birrell, plaintiff Birrell received, at the  
21 California Medical facility, a large box containing "legal mail" from Mr. Martin.

22 Plaintiff Birrell opened the box and identified legal files as well as physical evidence  
23 containing asbestos. ECF No. 34 at 2. Mr. Birrell then closed the box, notified a correctional  
24 officer the box contained asbestos and demanded that the box be returned to Mr. Martin. Id. &  
25 ECF No. 34-1 at 4. At that point, the correctional officer returned the box to the mail room (ECF  
26 No. 34 at 2), and the box was eventually returned to Mr. Martin (ECF No. 47 at 2).

27 Plaintiff Birrell now asks that, in light of the foregoing, he and the other plaintiffs be  
28 "relieved" of the court's order permitting Mr. Martin to withdraw "until such time as Attorney

1 Martin is made to surrender all of the relevant case files and documents that he has in his  
2 possession.”<sup>1</sup> Id. at 10. Even assuming the court has the power to do so, Mr. Martin will not be  
3 reinstated as counsel for plaintiffs in this case. The fact that plaintiff no longer has Mr. Martin’s  
4 files and evidence concerning this case is of plaintiff Birrell’s own doing. Nothing suggests the  
5 minimal exposure to asbestos which would have accompanied a review of the items in the box  
6 sent to plaintiff Birrell would have been harmful in any meaningful respect.

7 Accordingly, IT IS HEREBY ORDERED that plaintiff Birrell’s February 27, 2019  
8 “motion for relief from court’s order of February 7, 2019 . . .” (ECF No 47) is denied.

9 Dated: May 10, 2019

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11 CAROLYN K. DELANEY  
12 UNITED STATES MAGISTRATE JUDGE  
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26 <sup>1</sup> In the motion filed February 27, 2019, plaintiff suggests Mr. Martin is not being truthful about  
27 his mental health. In support, he claims Mr. Martin is still attorney of record in several cases  
28 before this court. This is not true. Mr. Martin appears to be attorney of record in one other case,  
2:16-cv-2641 MCE DMC, and has taken no action in that case since the case was filed in 2016.