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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARMANDO HERRERA,
Plaintiff,
v.
BLANDION,
Defendant.

No. 2:17-cv-1278 MCE KJN P

ORDER

On August 14, 2017, plaintiff filed a motion for a ninety-day extension of time to file a “request for reassignment of judge.” (ECF No. 5 at 1.) Appended to the request was plaintiff’s declaration in which he states that on August 7, 2017, he met with his E.N.T. doctor, who told plaintiff he was going to be sent to an outside hospital for testing because plaintiff is bleeding off and on from his nose, and may again require surgery. Plaintiff claims it is difficult to get another prisoner to help on legal documents.

Plaintiff does not explain why or on what basis he plans to request reassignment of judges.

The record reflects that the court has not yet screened plaintiff’s complaint because he has not paid the court’s filing fee or filed an application to proceed in forma pauperis. Plaintiff was provided the application form by order filed June 29, 2017. Plaintiff may avoid an order dismissing his case by completing and filing the application to proceed in forma pauperis. Because plaintiff is a state prisoner, he is not required to obtain prison officials’ certification on

1 the form; rather, the court will obtain plaintiff's certified trust account statement directly from the
2 prison. Therefore, no legal research is required for plaintiff to complete, sign, and file the
3 application to proceed in forma pauperis.

4 Moreover, although plaintiff claims that he is going to be sent for testing and may have to
5 have surgery, he does not know when he will be hospitalized, if he will have to have surgery, and
6 if so, when the surgery might take place.

7 Plaintiff is required to diligently prosecute his case.¹ The court cannot screen the
8 complaint until plaintiff pays the court's filing fee or is granted leave to proceed in forma
9 pauperis. The Clerk is directed to send plaintiff another application to proceed in forma pauperis.
10 In an abundance of caution, the August 10, 2017 findings and recommendations are vacated, and
11 plaintiff is granted sixty days in which to file the completed application or pay the court's filing
12 fee. In the meantime, if plaintiff's medical situation changes, he may seek a further extension at
13 that time.

14 On the other hand, plaintiff's underlying pleading addresses defendant's actions taken on
15 June 19, 2017. Plaintiff may wish to voluntarily dismiss this action and re-file it once his medical
16 issues have been resolved.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The findings and recommendations (ECF No. 4) are vacated;
- 19 2. Plaintiff's motion for a ninety day extension of time (ECF No. 5) is denied;
- 20 3. Plaintiff is granted sixty days from the date of this order in which to file a completed
21 application to proceed in forma pauperis or pay the court's filing fee; and

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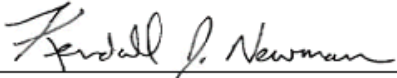
26 ¹ Rule 4(m) of the Federal Rules of Civil Procedure states that if a defendant is not served within
27 90 days after the complaint is filed, "the court -- on motion or on its own after notice to the
28 plaintiff -- must dismiss the action without prejudice or order service be made within a specified
time." Fed. R. Civ. P. 4(m).

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4. The Clerk of the Court shall send plaintiff an application to proceed in forma pauperis by a prisoner.

Dated: August 18, 2017

/herr1278.36


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE