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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MIGUEL ENRIQUE DIAZ,

Plaintiff,

v.

ASSOCIATE WARDEN HURLEY, et al.,

Defendants.

No. 2:19-cv-1241 KJM KJN P

ORDER AND FINDINGS &
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se and in forma pauperis. By order filed May 21, 2021, plaintiff’s first amended complaint was dismissed with leave to file a second amended complaint. On October 25, 2021, the undersigned recounted the myriad extensions of time plaintiff has been granted in this action, and granted plaintiff one final sixty-day extension of time to file a second amended complaint. (ECF No. 74 at 1-2, 4 n.3.) Plaintiff was advised that no further extensions of time would be granted for any reason. (ECF No. 74 at 4.) Sixty days have now passed, and plaintiff has not filed a second amended complaint.

Instead, plaintiff filed a motion seeking an order requiring physical access to the law library and to his insulin treatments. (ECF No. 75.) Plaintiff seeks law library access starting between 8:30 a.m. and 9:30 a.m. until 11:00 a.m. so that plaintiff could access both the law library and his insulin treatments, which appear to be scheduled at 11:30 a.m. (ECF No. 72 at 1 “my insulin is at 11:30 a.m. 7 days a week.”) Plaintiff objects that despite the court’s last order

1 asking the litigation coordinator to avoid scheduling plaintiff's law library access during
2 plaintiff's insulin treatment, he was only scheduled one 8:30 a.m. law library visit in November
3 (November 28, 2021), and was three times scheduled for 11:00 a.m. (ECF No. 75 at 2.)

4 However, plaintiff's record also shows that plaintiff received a ducat for law library
5 attendance at 1325 (1:25 p.m.) on eight different days in November. Those ducats do not appear
6 to conflict with plaintiff's 11:30 a.m. insulin treatments. In addition, in the prior order, plaintiff
7 was provided detailed instructions on what his amended pleading entailed, and has been provided
8 the form complaint used by prisoners to file § 1983 actions in our court. Therefore, the
9 undersigned declines to grant plaintiff additional time to file a second amended complaint, and
10 declines to recommend that his requested relief be granted because the record shows he has been
11 offered law library access that avoids the time set for his insulin treatments. (ECF No. 75 at 2.)

12 Plaintiff has had almost seven months to draft his second amended complaint, and has
13 been cautioned that no further extensions of time would be granted for any reason. (ECF No. 74
14 at 4.) Plaintiff was also advised of this court's authority to *sua sponte* dismiss actions for failure
15 to comply with court orders. (ECF No. 74 at 4 n.4.) Sixty days from October 25, 2021, have now
16 passed, and plaintiff has not filed a second amended complaint. This action should be dismissed
17 without prejudice.

18 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion (ECF No. 75) is denied;
19 and

20 IT IS RECOMMENDED that this action be dismissed without prejudice. See Local Rule
21 110; Fed. R. Civ. P. 41(b).

22 These findings and recommendations are submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
24 after being served with these findings and recommendations, plaintiff may file written objections
25 with the court and serve a copy on all parties. Such a document should be captioned
26 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that

27 ///

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1 failure to file objections within the specified time may waive the right to appeal the District
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: December 29, 2021

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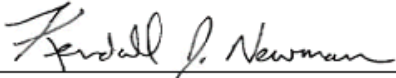
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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE