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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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6
7 ISIAH LUCAS, JR.,

No. C 07-01673 CW (PR)

8 Plaintiff,

ORDER DENYING PLAINTIFF'S
REQUEST FOR STAY AND GRANTING
EXTENSION OF TIME TO FILE
OPPOSITION TO DEFENDANTS'
DISPOSITIVE MOTION; DENYING HIS
REQUEST FOR THE RETURN OF HIS
PERSONAL PROPERTY; AND SETTING
BRIEFING SCHEDULE

9 v.

10 M. MIRANDA, et al.,

11 Defendants.

12 _____/ (Docket no. 40)

13
14 Before the Court is Plaintiff's motion to stay proceedings and
15 his request for the return of his personal property.

16 In an Order dated July 12, 2010, the Court granted Plaintiff's
17 request for an extension of time to file his opposition to
18 Defendants' dispositive motion and directed him to file his
19 opposition no later than August 30, 2010.

20 In his request for a stay, Plaintiff alleges that on July 1,
21 2010 he was transferred from the Correctional Training Facility
22 (CTF) in Soledad to California State Prison-Solano (CSP-Solano) in
23 Vacaville. He claims that none of his personal property, which
24 includes his legal materials, was transported with him during the
25 transfer to CSP-Solano. (Mot. to Stay at 2.) Plaintiff has
26 submitted multiple administrative forms requesting assistance in
27 obtaining his property from CTF. (Id. at 2-4.) As of July 21,
28 2010, the date of the present motion, he claims his efforts have
not been successful. He contends that he needs his legal materials

1 to prepare his opposition. Therefore, he asks the Court to "stay
2 all matters in litigation" and "to resume once Plaintiff receive[s]
3 all of his property." (Id. at 5.) He also asks "this Court to
4 order CTF-Soledad to send Plaintiff's property and/or CSP-Solano to
5 locate and relinquish to Plaintiff his property." (Id.)
6 Defendants oppose Plaintiff's requests and argue that "Plaintiff's
7 legal materials would not enable him to sucessfully [sic] oppose
8 the pennding [sic] motion to dismiss." (Opp'n to Mot. to Stay at
9 1.) The Court finds Defendants' argument unavailing. Plaintiff
10 should be afforded a fair opportunity to prepare his opposition,
11 independent of Defendants' assessment of his likelihood of success
12 in contesting the motion to dismiss. Furthermore, if Defendants
13 are convinced that "dismissal is inevitable," extending the time
14 for Plaintiff to file his opposition should cause them no undue
15 burden. Defendants' counsel may be in a position to encourage
16 prison officials to return Plaintiff's legal materials so that he
17 can prepare his opposition. Accordingly, Plaintiff's request for a
18 stay is denied but he is granted a second extension of time to file
19 his opposition. The parties shall abide by the briefing schedule
20 outlined below.

21 Plaintiff's request for the return of his personal property,
22 including his legal materials, is DENIED. The Court does not have
23 the power to order a non-party -- such as the warden or other
24 prison officials -- to provide an inmate with access to any of his
25 personal legal materials. In addition, such an order would be
26 inappropriate because the United States Supreme Court has cautioned
27 lower courts to avoid entanglement in the day-to-day matters of
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1 prison administration. See Turner v. Safley, 482 U.S. 78, 84-85
2 (1987) ("Running a prison is an inordinately difficult undertaking
3 that requires expertise, planning, and the commitment of resources,
4 all of which are peculiarly within the province of the legislative
5 and executive branches of government. Prison administration is,
6 moreover, a task that has been committed to the responsibility of
7 those branches, and separation of powers concerns counsel a policy
8 of judicial restraint. Where a state penal system is involved,
9 federal courts have . . . additional reason to accord deference to
10 the appropriate prison authorities.") Ordering that personal
11 property or legal materials be returned to Plaintiff would
12 interfere with state prison officials' management of the prison.
13 The deprivation of legal materials might in some instances rise to
14 the level of violating an inmate's constitutional right of access
15 to the courts, see Lewis v. Casey, 518 U.S. 343 (1996), but such a
16 claim would not accrue until the plaintiff-inmate had suffered an
17 actual injury and would have to be pursued in a new civil rights
18 action.

19 CONCLUSION

20 Having read and considered Plaintiff's requests and
21 Defendants' Opposition, and good cause appearing,

22 IT IS HEREBY ORDERED that

23 1. Plaintiff's request for a stay is denied, but he is
24 granted a second extension of time to file his opposition. The
25 deadline for Plaintiff's opposition to Defendants' dispositive
26 motion will be extended up to and including September 30, 2010. If
27 Defendants wish to file a reply brief, they shall do so no later
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1 than fifteen (15) days after the date Plaintiff's opposition is
2 filed.

3 2. Plaintiff's request for the return of his personal
4 property, including his legal materials, is DENIED.

5 3. If Plaintiff's personal property is not recovered by
6 September 15, 2010, he may request another extension of time to
7 file his opposition.

8 4. This Order terminates Docket no. 40.

9 IT IS SO ORDERED.

10 Dated: 8/4/2010



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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4 ISIAH LUCAS JR.,

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8 Defendant.

Case Number: CV07-01673 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on August 4, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
14 receptacle located in the Clerk's office.

15 Isiah Lucas E-91878
16 California State Prison-Solano
17 2100 Peabody Road
18 Vacaville, CA 95696

19 Nancy Hudgins
20 Law Offices of Nancy E. Hudgins
21 565 Commercial Street, 4th Floor
22 San Francisco, CA 94111

23 Dated: August 4, 2010

24 Richard W. Wieking, Clerk
25 By: Nikki Riley, Deputy Clerk
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