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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRYL L. GOLDSTEIN,  
Plaintiff,  
v.  
ROBERT SILLEN, ET AL.,  
Defendants.

) No. C 07-5958 SBA (pr)  
)  
) **ORDER GRANTING PLAINTIFF**  
) **ANOTHER BRIEF EXTENSION OF**  
) **TIME TO FILE OPPOSITIONS;**  
) **DENYING HIS MOTION TO STRIKE;**  
) **AND DENYING AS MOOT HIS**  
) **MOTION TO COMMUNICATE**  
) **CONFIDENTIALLY WITH THE**  
) **COURT**  
)  
) (Docket nos. 219, 220, 224)

On February 3, 2011, Plaintiff filed another request for an extension of time in which to file his opposition to Defendants David's and Wilson's Motion for Summary Judgment (docket no. 220). Plaintiff claims that "the CDCR defendants have been extremely uncooperative and have refused to provide any requested discovery to Plaintiff." (Mot. for EOT at 2.) Plaintiff's opposition was originally due on December 23, 2010, thirty days after their motion was filed. (Sept. 23, 2010 Order at 1-2.) After the December 23, 2010 deadline had passed, the Court extended the deadline up to and including February 14, 2011, giving Plaintiff fifty-three additional days to file his opposition. (Feb. 2, 2011 Order at 7.)

In the present motion, Plaintiff only requests an extension of time to file his opposition to Defendants David's and Wilson's Motion for Summary Judgment. However, Defendants Sillen and Russell have also filed a Motion for Summary Judgment, and Plaintiff has not filed his opposition to that motion. Plaintiff has already been granted two extensions of time to file his opposition to that motion. His opposition was originally due on October 8, 2010. (Mar. 8, 2010 Order at 7.) After that date had passed, his deadline was extended to December 30, 2010, giving Plaintiff eighty-three more days to file his opposition. (Nov. 24, 2010 Order at 7.) Again, after his deadline had passed, it was extended to February 14, 2011, giving Plaintiff forty-six additional days to file his opposition. (Feb. 2, 2011 Order at 7.) Even if Plaintiff has not requested an extension of time to file his opposition to Defendants Sillen's and Russell's Motion for Summary Judgment, the Court will construe Plaintiff's February 3, 2011 motion as a request for an extension of time to file both oppositions.

1 Plaintiff has already received multiple extensions of time to file his oppositions. He has  
2 received previous extensions of time totaling 129 (83 plus 46) days to file his opposition to  
3 Defendants Sillen's and Russell's Motion for Summary Judgment. He has also received fifty-three  
4 additional days to file his opposition to Defendants David's and Wilson's Motion for Summary  
5 Judgment. In the present motion for extension of time, Plaintiff claims he is "seeking to demonstrate  
6 the fact that further discovery would preclude summary judgment by creating a genuine issue of  
7 material fact," (Mot. for EOT at 3.) However, in its February 2, 2011 Order, the Court has  
8 previously denied Plaintiff's request for a continuance for discovery pursuant to Federal Rule of Civil  
9 Procedure 56(d), stating:

10 Despite Plaintiff's request for further discovery, Plaintiff fails to  
11 demonstrate how "additional discovery would have revealed specific facts  
12 precluding summary judgment." See Tatum v. City and County of San Francisco,  
13 441 F.3d 1090, 1101 (9th Cir. 2006). The assertions in Plaintiff's affidavit appear  
14 to be based on nothing more than speculation. Margolis, 140 F.3d at 854. Thus,  
15 Plaintiff has not met his burden under Rule 56(d).

16 Because Plaintiff has not shown that relevant facts remain to be discovered,  
17 the denial of a continuance is appropriate under the standards contained in Rule  
18 56(d) and is not a violation of Plaintiff's due process rights.

19 (Feb. 2, 2011 Order at 3.) Accordingly, the Court finds no merit in Plaintiff's claim that an extension  
20 is warranted due to his request for further discovery. Nevertheless, because the deadlines to file these  
21 oppositions have passed, the Court GRANTS Plaintiff's request for another extension of time (docket  
22 no. 220) upon finding that one final brief extension of time is appropriate. The parties are directed to  
23 abide by the briefing schedule outlined below.

24 On February 11, 2011, Plaintiff filed a motion to strike (docket no. 224) the declaration of  
25 Defendants' attorney, Matthew M. Grigg, in support of Defendants David's and Wilson's Motion for  
26 Summary Judgment. Plaintiff alleges Attorney Grigg's declaration "includes unsubstantiated and  
27 inflammatory statements concerning [his] medical problems and the basis of past litigation." (Mot. to  
28 Strike at 2.) He requests this Court strike the declaration in its entirety. (Id. at 3.) Based on  
Plaintiff's allegations, the Court would have to find that Attorney Grigg is being untruthful about  
Plaintiff's medical problems and past litigation. In order to strike the declaration, the Court would  
then have to accept Plaintiff's version of events while rejecting Attorney Grigg's. However, the Court

1 cannot make credibility determinations in connection with a summary judgment motion. Therefore,  
2 the Court DENIES Plaintiff's motion to strike (docket no. 224).

3 Finally, also before the Court is Plaintiff's "Motion for Administrative Relief: Request to  
4 Communicate Confidentially With the Court" (docket no. 219). Plaintiff states, "The subject matter  
5 of the propped [sic] communication is the reason that the medical expert that Defendants Wilson and  
6 David have suggested can not serve as an independent medical expert." (Mot. at 2.) In its February  
7 2, 2011 Order, the Court has already denied Plaintiff's motion for appointment of a medical expert.  
8 (Feb. 2, 2011 Order at 6.) Therefore, the Court DENIES Plaintiff's motion (docket no. 219) as  
9 MOOT.

10 CONCLUSION

11 For the reasons outlined above,

12 1. Plaintiff's request for another extension of time to file his oppositions to Defendants  
13 Sillen's and Russell's as well as Defendants David's and Wilson's motions for summary judgment  
14 (docket no. 220) is GRANTED. The time in which Plaintiff may file his oppositions will be extended  
15 up to and including **March 4, 2011**. If Defendants Sillen and Russell as well as Defendants David  
16 and Wilson wish to file reply briefs, they shall do so no later than **March 21, 2011**. **No further**  
17 **extensions of time will be granted in this case absent exigent circumstances.**

18 2. Plaintiff's "Motion to Strike the Declaration of Matthew M. Grigg in Support of  
19 Summary Judgment Motion" (docket no. 224) is DENIED.

20 3. Plaintiff's "Motion for Administrative Relief: Request to Communicate Confidentially  
21 With the Court" (docket no. 219) is DENIED as MOOT.

22 4. This Order terminates Docket nos. 219, 220 and 224.

23 IT IS SO ORDERED.

24 DATED: 2/28/11

25   
26 SAUNDRA BROWN ARMSTRONG  
27 United States District Judge  
28

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5  
6 DARRYL L. GOLDSTEIN,  
7 Plaintiff,

Case Number: CV07-05958 SBA  
**CERTIFICATE OF SERVICE**

8 v.

9 ROBERT SILLEN, ET AL. et al,  
10 Defendant.  
11 \_\_\_\_\_/

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

14 That on February 28, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said  
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
17 in the Clerk's office.

18 Darryl Lee Goldstein P-79097  
19 California State Prison - Solano  
20 2100 Peabody Rd.  
21 P.O. Box 4000  
22 Vacaville, CA 95696

23 Dated: February 28, 2011

Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk