

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SCOTT F. FIALHO,

Plaintiff,

v.

G.HERRERRA; KISSOL;
ANDERSON;

Defendants.

Case No.: 14cv1378-GPC-MDD

**ORDER DIRECTING CLERK
TO SEND IFP PACKAGE TO
PLAINTIFF (THIRD
ATTEMPT)**

Before the Court is a letter from Plaintiff, which this Court
construes as a Notice of Change of Address and a Motion for In Forma
Pauperis (“IFP”) Package. (ECF No. 11). For the reasons set forth
below, the Court **GRANTS** Plaintiff’s request that the Court re-send
the documents mailed to him on October 7, 2014 (the IFP package).

1 Scott Fialho (“Plaintiff”), a prisoner currently incarcerated at
2 Calipatria State Prison, and proceeding pro se and in forma pauperis,
3 has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. (ECF
4 Nos. 1, 3). On June 17, 2014, this Court issued an Order directing the
5 Clerk, inter alia, to forward the summons to Plaintiff along with a
6 blank U.S. Marshal Form 285 for each defendant, a certified copy of the
7 June 17, 2014 Order, a certified copy of the complaint (ECF No. 1), and
8 the summons “so that he may serve each named Defendant.” (ECF No.
9 3 at ¶ 4). The Order also stated that “[u]pon receipt of this “IFP
10 Package,’ Plaintiff is directed to complete the Form 285s as completely
11 and accurately as possible, and to return them to the United States
12 Marshal according to the instructions provided by the Clerk in the
13 letter accompanying his IFP Package.” (*Id.*). On June 18, 2014, the
14 Clerk issued the summons and mailed the IFP Package to Plaintiff.
15 (ECF No. 4).

16 The IFP Package never reached Plaintiff; the correctional facility
17 he was housed in at the time rejected it for unknown reasons. (ECF
18 Nos. 5, 8). Consequently, this Court ordered the Clerk to re-issue the
19 IFP package a second time. (ECF No. 8). The order was entered on

1 October 7, 2014, and the IFP package was re-issued the same day.
2 (ECF Nos. 8, 9).

3 On November 29, 2014, Plaintiff filed a letter that notifies that
4 Court that Plaintiff was transferred from Calipatria State Prison to R.
5 J. Donovan Correctional Facility during the week of October 5 through
6 October 13. (ECF No. 11). Plaintiff further explains that he did not
7 receive “all” of his property after the transfer until November 24, 2014.
8 (*Id.*). When he received his property, Plaintiff learned that this Court
9 had sent him a “10-7-2014 box full of legal mail.” (*Id.*). Plaintiff did not
10 receive the “10-7-2014 box full of legal mail,” and requests that this
11 Court re-send it to him.

12 Plaintiff cannot fulfill his duties to provide the Marshal Service
13 with the documents necessary to serve Defendants until he has first
14 received the IFP Package. After reviewing the record, the Plaintiff
15 never received the IFP Package even though the Clerk properly mailed
16 it to him twice. Accordingly, the Court hereby **ORDERS** the Clerk to
17 send the IFP Package to Plaintiff again (this time to his new address at
18 R. J. Donovan, listed on his letter), along with certified copies of this
19 order and the Court’s October 6, 2014 order.

1 In addition, this Court finds good cause to extend Plaintiff's time
2 limit for service under Rule 4(m) by 176 days—the amount of time
3 equal to the period between the date this Court first issued the IFP
4 package (June 18, 2014) and today. In other words, this Court hereby
5 **ORDERS** that Plaintiff's time for service is extended until **March 28,**
6 **2015.**

7
8 **IT IS SO ORDERED.**

9
10 Dated: **December 11, 2014**

11 
12 Hon. Mitchell D. Dembin
13 U.S. Magistrate Judge
14
15
16
17
18
19