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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 Kyle Robert James,

12 Plaintiff,

13 v.

14 Barbara Lee et al.,

15 Defendant.
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Case No.: 16-cv-01592-AJB-JLB

**ORDER DENYING AS
PREMATURE PLAINTIFF'S
MOTION TO OBTAIN LEGAL
PROPERTY**

[ECF No. 23]

18 Presently before the Court is Plaintiff's Motion to Obtain Plaintiff's Legal Property.
19 (ECF No. 23.) Plaintiff argues that Lancaster State Prison officials confiscated his legal
20 materials, hindering his ability to litigate this and other cases Plaintiff has filed. (*Id.*)
21 Plaintiff requests that the Court reconsider "the magistrate's denial on grounds of
22 'mootness'" of his prior motions to obtain legal property and order the CDCR to provide
23 Plaintiff with his legal property. (*Id.* at 2-3.)

24 On June 21, 2016, Plaintiff, Kyle James, currently incarcerated at the California
25 State Prison - Los Angeles County located in Lancaster, California, filed a civil rights
26 Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1) and a Motion to Proceed In Forma
27 Pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a) (ECF No. 2). The Court granted
28 Plaintiff's IFP motion, but dismissed Plaintiff's complaint for failure to state a claim. (ECF

1 No. 3.) Plaintiff filed a First Amended Complaint on November 16, 2016, naming only
2 Barbara Lee, John Doe Doctor, Jane Doe Doctor and “S.D.C.J. Med. Supervisor” as
3 Defendants. (ECF No. 6.) The Court denied Plaintiff’s First Amended Complaint as
4 frivolous and for failure to state a claim (ECF No. 8). On March 30, 2017, Plaintiff filed
5 his Second Amended Complaint, adding Defendants I.A. Lt. Christine Harvel, Sheriff Bill
6 Gore and Lt. Mark Kania. (ECF No. 9.) The Court again dismissed the complaint as
7 frivolous and for failure to state a claim. (ECF No. 10.) On September 13, 2017, Plaintiff
8 filed a Third Amended Complaint, adding Defendants Doctor Blake, Doctor Joshua, San
9 Diego Sheriff Administrator, Lt. Snyder and UCSD Doctors Nos. 1-3. (ECF No. 27.) The
10 pre-answer screening pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b) has not been
11 completed as to Plaintiff’s Third Amended Complaint and no defendant has yet been
12 ordered to respond.

13 In another case filed by Plaintiff, *James v. Emmens, et al.*, No. 3:16-cv-02823-WQH
14 (NLS), Plaintiff filed three motions to obtain his legal property. (ECF Nos. 35, 39 & 50.)
15 Magistrate Judge Nita L. Stormes denied the first two motions (ECF Nos. 35 & 39) as
16 moot. (ECF No. 42.) With respect to the third motion (ECF No. 50.), which Plaintiff filed
17 the same day as the motion before this Court, Judge Stormes granted it in part and denied
18 it in part. Judge Stormes’ order directed the Deputy County Counsel to contact the
19 litigation coordinator at Lancaster State Prison to inquire about the location of Plaintiff’s
20 legal property. (ECF No. 52.) On August 31, 2017, County Counsel filed a Status Report
21 before Judge Stormes stating that Plaintiff received three boxes of his property at California
22 Men’s Colony on July 25, 2017, but it was unclear if one box of Plaintiff’s property was
23 missing or whether the original four boxes had been consolidated into three. (ECF No.
24 54.)

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1 Because the pre-answer screening has not been completed and no Defendants have
2 yet answered or otherwise appeared in this case, Plaintiff's motion is **DENIED** as
3 premature.

4 Dated: September 18, 2017


Hon. Jill L. Burkhardt
United States Magistrate Judge

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