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

IRWIN DOUGLAS,

Plaintiff,

No. CIV S-09-1039 FCD DAD PS

v.

SACRAMENTO COUNTY, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

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This case came before the court on August 28, 2009, for hearing of defendants' properly noticed motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 9). Jennifer Plescia, Esq. appeared for defendants Sacramento County, Sacramento County Department of Child Support Services (sued as Sacramento County DCSS), Stacy McGill (sued as Staci McGill), and James Greaves. Plaintiff, who is proceeding pro se in this action, made no appearance at the hearing.

Upon consideration of all written materials filed in connection with defendants' motion, the arguments at the hearing, and the entire file, the undersigned recommends that defendants' motion to dismiss be granted and this action be dismissed with prejudice.

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1 BACKGROUND

2 Plaintiff filed his complaint in this court on April 17, 2009. He paid the required
3 filing fee, and the Clerk issued summons. In May 2009, plaintiff filed returns of service showing
4 that his complaint and summons were served on the defendants by mail. (Doc. Nos. 4 & 5.) The
5 returns of service do not indicate that the documents were sent by certified mail, do not show the
6 actual addresses to which the documents were sent, and do not reflect that each set of documents
7 was accompanied by either a notice of acknowledgment in accordance with state law or a request
8 for waiver of service in accordance with federal law. See Fed. R. Civ. P. 4(d) & (e). Plaintiff did
9 not file any other evidence related to service of process. When plaintiff requested entry of
10 default against the defendants in June 2009, the Clerk declined the request because she was
11 unable to determine whether the defendants were properly served. (Doc. Nos. 6 & 8.)

12 On July 23, 2009, all four defendants appeared by filing their motion to dismiss
13 plaintiff's complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff
14 did not file written opposition to defendants' motion and, as noted above, did not appear at the
15 hearing on the motion on August 28, 2009. A plaintiff's failure to appear at the hearing on a
16 defendant's motion may, in the discretion of the court, be deemed a statement of no opposition to
17 the granting of the motion. See Local Rule 230 (i). An inference of non-opposition in the
18 present case is supported by plaintiff's failure to file written opposition to the motion. See Local
19 Rule 230(c) ("No party will be entitled to be heard in opposition to a motion at oral arguments if
20 opposition to the motion has not been timely filed by that party."). At the conclusion of the
21 hearing on August 28, 2009, defendants' unopposed motion to dismiss was taken under
22 submission for written findings and recommendations.

23 On September 3, 2009, plaintiff filed an improper motion for entry of default
24 judgment. The motion is unsigned, does not include a memorandum of points and authorities,
25 was not noticed for hearing, and does not include a proof of service reflecting that the filing was
26 served on defendants. Moreover, the court cannot enter a default judgment against a party whose

1 default has not been entered, and the Clerk cannot enter default unless the plaintiff has shown
2 that the party “has failed to plead or otherwise defend.” Fed. R. Civ. P. 55(a) & (b). Here, the
3 Clerk declined to enter default at plaintiff’s request in June 2009 because plaintiff failed to
4 demonstrate proper service of process. Entry of default was precluded once the defendants filed
5 their motion to dismiss, because filing such a motion is a proper means of defending against a
6 plaintiff’s complaint. Plaintiff’s motion for default judgment is therefore denied.

7 PLAINTIFF’S CLAIMS

8 Plaintiff alleges that the Sacramento County DCSS has been collecting child
9 support from him pursuant to a judgment obtained in 2003 without having established paternity
10 or presented any evidence to support the claim against him. Plaintiff describes his unsuccessful
11 efforts to set aside the judgment in 2003 and to petition the family relations court for relief in
12 2008. Plaintiff alleges that the Sacramento County DCSS has continued to harass him and his
13 family and has garnished his wages as well as tax refunds that belonged to him and his wife.
14 Plaintiff’s complaint alleges no specific facts against defendants Sacramento County, Stacy
15 McGill, and James Graves, but the caption of the pleading identifies defendant McGill as
16 “attorney” and defendant Graves as “Chief attorney for Sacramento County DCSS.”

17 By way of relief, plaintiff asks the court to declare that the Sacramento County
18 DCSS judgment against him is a violation of his civil rights. He also seeks an order “[t]o bar
19 agencies, private or government, from ever being able to sue an individual for child support in an
20 American Court of Law.” (Compl. at 3.) Plaintiff contends that parents should “fight their own
21 legal paternity and child support litigation with their own private attorney(s) if needed.” *Id.* In
22 addition, plaintiff seeks orders requiring the Sacramento County DCSS to refund all monies
23 taken from plaintiff and his wife, including all tax refunds, and to pay plaintiff and his family
24 \$250,000.00 in compensatory damages for six years of harassment, defamation of character, and
25 violation of civil rights. Plaintiff further requests an order awarding punitive damages in an
26 amount to be determined by the court.

1 Defendants seek dismissal of the complaint without leave to amend.

2 The undersigned finds that plaintiff’s failure to file written opposition and failure
3 to appear at the hearing on defendants’ motion should be deemed a statement of no opposition to
4 the granting of defendants’ motion. Nevertheless, in light of plaintiff’s pro se status and his
5 filing of a motion for default judgment, the undersigned has carefully considered the legal
6 sufficiency of plaintiff’s complaint.

7 As noted above, plaintiff seeks (1) a declaration that Sacramento County’s
8 judgment against him violated his rights; (2) an order barring state and local agencies from suing
9 individuals for child support; (3) an order requiring Sacramento County to refund all monies
10 taken from plaintiff and his wife, including tax refunds; (4) an order requiring Sacramento
11 County to pay plaintiff and his family \$250,000.00 in compensatory damages; and (5) an order
12 requiring Sacramento County to pay punitive damages for having collected child support from
13 him. As defendants put it, “[t]he gravamen of the complaint appears that Plaintiff seeks to
14 overturn the child support judgment against him.” (Def’ts’ Mot. to Dismiss (Doc. No. 10) at 3.)

15 Under the Rooker-Feldman doctrine, federal district courts lack jurisdiction to
16 review alleged errors in state court decisions. Dist. of Columbia Court of Appeals v. Feldman,
17 460 U.S. 462, 476 (1983) (holding that review of state court determinations can be obtained only
18 in the United States Supreme Court). The doctrine applies to “cases of the kind from which the
19 doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by
20 state-court judgments rendered before the district court proceedings commenced and inviting
21 district court review and rejection of those judgments.” Exxon Mobil Corp. v. Saudi Basic
22 Indus. Corp., 544 U.S. 280, 284 (2005). “The purpose of the doctrine is to protect state
23 judgments from collateral federal attack.” Doe & Assocs. Law Offices v. Napolitano, 252 F.3d
24 1026, 1030 (9th Cir. 2001).

25 Put another way, a federal district court is prohibited from exercising subject
26 matter jurisdiction over a suit that is “a de facto appeal” from a state court judgment. Kougasian

1 seven days after being served with these findings and recommendations, any party may file and
2 serve written objections with the court. A document containing objections should be titled
3 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to objections
4 shall be filed and served within seven days after the objections are served. The parties are
5 advised that failure to file objections within the specified time may, under certain circumstances,
6 waive the right to appeal the District Court’s order. See Martinez v. Ylst, 951 F.2d 1153 (9th
7 Cir. 1991).

8 DATED: March 3, 2010.

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11 _____
12 DALE A. DROZD
13 UNITED STATES MAGISTRATE JUDGE

12 DAD:kw
13 Ddad1/orders.pro se/douglas1039.oah082809.mtdgr