

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:16-cv-05782-PSG-KS Date: December 19, 2016

Title Carlos Cervera v. M.E. Spearman

Present: The Honorable: Karen L. Stevenson, United States Magistrate Judge

Roxanne Horan-Walker

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE RE: DISMISSAL

On August 3, 2016, Petitioner, a state prisoner proceeding *pro se*, filed a Petition For Writ Of Habeas Corpus (“Petition”). (Dkt. No. 1.) On November 4, 2016, Respondent moved to dismiss the Petition as mixed. (Dkt. No. 18.) The Court’s Order of August 9, 2016 directed Petitioner to file an opposition, if any, to a motion to dismiss within 30 days of the date of service thereof. (Dkt. No. 5.) Accordingly, Petitioner’s opposition was due on December 4, 2016.

Fifteen days have now passed since the date on which Petitioner’s opposition was due, and Petitioner has neither filed a response to the Motion To Dismiss nor communicated with the Court about his case.

Local Rule 7-12 states that a party’s failure to file a required document such as an opposition to a motion “may be deemed consent to the granting [] of the motion.” Further, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, an action may be subject to involuntary dismissal if a petitioner “fails to prosecute or to comply with these rules or a court order.” Thus, the Court could properly recommend dismissal of the action for Petitioner’s failure to oppose the Motion To Dismiss and to timely comply with the Court’s Order of August 9, 2016.

However, in the interests of justice, Petitioner is **ORDERED TO SHOW CAUSE on or before January 9, 2017** why the action should not be dismissed under Local Rule 7-12 and Rule 41(b) of the Federal Rules of Civil Procedure. Petitioner’s response to this

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OSC must include either: (1) a request for an extension to file the Opposition accompanied by a sworn declaration (not to exceed 3 pages) explaining the reasons why Petitioner failed to timely respond to the Motion To Dismiss; *or* (2) a complete and detailed opposition (in a manner fully complying with the Local Rules) to the Motion To Dismiss.

Alternatively, Petitioner may discharge this Order and dismiss this case by filing a signed document entitled a “Notice of Voluntary Dismissal” requesting the voluntary dismissal of the action without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Petitioner is expressly cautioned that his failure to respond to this order will lead the Court to recommend dismissal based on Local Rules 7-12 and Rule 41 of the Federal Rules of Civil Procedure.

Initials of Preparer

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rhw