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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN E. FIELDS,

1:06-cv-00407-AWI-GSA-PC

Plaintiff,

ORDER REQUIRING PLAINTIFF TO SHOW
CAUSE WHY DEFENDANT NEUBARTH
SHOULD NOT BE DISMISSED FROM THIS
ACTION FOR PLAINTIFF'S FAILURE TO
PROSECUTE AGAINST HIM

v.

P. ROBERTS, et al.,

Defendants.

THIRTY DAY DEADLINE

I. RELEVANT PROCEDURAL HISTORY

Kevin E. Fields ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on April 10, 2006. (Doc. 1.) This action now proceeds with the Fifth Amended Complaint filed by Plaintiff on June 24, 2010, against defendant P. Roberts for retaliation against Plaintiff from February 28, 2006 to March 15, 2006, and against defendant Jeff Neubarth for deliberate indifference.¹ (Doc. 51.)

On May 28, 2011, the Court issued an order directing the Marshal to serve process upon Defendants Roberts and Neubarth. (Doc. 59.) On October 3, 2011, the Court received a USM-285 form from the Marshal indicating that personal service was effected upon Defendant Neubarth on September 23, 2011, giving Defendant Neubarth twenty-one days in which to file an

¹The remaining claims against defendant Roberts were dismissed from this action by the Court on March 17, 2011, based on Plaintiff's failure to state a claim upon which relief could be granted. (Doc. 56.)

1 answer or motion under Rule 12 in response to Plaintiff's complaint. More than three months
2 have passed, and Defendant Neubarth has not filed an answer, a motion under Rule 12, or any
3 other response to Plaintiff's complaint. (See Court Docket.) Plaintiff has not filed a motion
4 under Rule 55. Id.

5 **II. ORDER TO SHOW CAUSE**

6 Within thirty days from the date of service of this order, Plaintiff shall show cause why
7 Defendant Neubarth should not be dismissed from this action for Plaintiff's failure to prosecute
8 against him.

9 In accordance with the above, IT IS HEREBY ORDERED that:

- 10 1. Within thirty days from the date of service of this order, Plaintiff shall file a
11 written response to the Court, showing cause why Defendant Dr. Jeff Neubarth
12 should not be dismissed from this action for Plaintiff's failure to prosecute against
13 him; and
- 14 2. Plaintiff's failure to comply with this order shall result a recommendation that this
15 action be dismissed.

16
17 IT IS SO ORDERED.

18 **Dated: January 5, 2012**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE