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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SCOTT K. RICKS,)	1:15-cv-01150-AWI-BAM (PC)
)	
Plaintiff,)	ORDER REGARDING SERVICE OF
)	DEFENDANT LEVINE’S MOTION FOR
v.)	SUMMARY JUDGMENT
)	
G. LEVINE, et al.,)	(ECF No. 49, 52, 53)
)	
Defendants.)	
)	
)	
)	

Plaintiff Scott K. Ricks (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is related to Ricks v. Austria, et al., 1:15-cv-01147-AWI-BAM, and Ricks v. Onyeye, et al., 1:15-cv-1148-AWI-BAM. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 7, 2017, Defendant G. Levine, M.D. filed a motion for summary judgment. (ECF No. 49.) The motion and supporting documents were filed with a certificate of service by mail, declaring that the documents were served by mail on Plaintiff at his address of record on the same day the document was filed with the Clerk of the Court.

On July 12, 2017, pursuant to Woods v. Carey, 684 F.3d 934 (9th Cir. 2012), Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998), and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988), the Court issued an order notifying Plaintiff of his rights and the requirements for opposing the motion. (ECF No. 50.)

1 On July 28, 2017, Plaintiff filed a motion in opposition to granting Defendant Levine's
2 motion for summary judgment. (ECF No. 52.) Plaintiff contends that he received the Court's
3 order issued July 12, 2017, but never received any copy of Defendant's motion and has no idea
4 what it states. (Id.) Plaintiff further contends that checking the mail log books would substantiate
5 his representations. Plaintiff also states that he generally opposes any granting of summary
6 judgment in Defendants' favor in this case.

7 On August 4, 2017, Defendant Levine filed a reply to Plaintiff's opposition to the motion
8 for summary judgment, with a declaration of counsel in support. (ECF No. 53.) Defense counsel
9 declares that Plaintiff had not advised counsel that he had never received the motion for
10 summary judgment, but if Plaintiff had, he would have re-served Plaintiff with another copy of
11 the motion. However, Plaintiff has not provided any different address or procedure to ensure that
12 he receives the motion, if there was some reason that he did not receive it. Defendant Levine
13 asks that the Court require Plaintiff to inform them of any such updated address or procedure so
14 that he can be properly re-served. The Court finds Defendant Levine's request reasonable, and
15 that in the interests of justice the motion should be re-served.

16 Accordingly, the Court hereby orders that:

17 1. Within **ten (10) days** of service of this order, Plaintiff shall notify Defendant
18 Levine's counsel, Mr. Aaron T. Schultz, of Galloway, Lucchese, Everson & Picchi, 1676 N.
19 California Boulevard, Suite 500, Walnut Creek, CA 94596 (telephone: 925-930-9090 ext. 534),
20 of Plaintiff's mailing address and any procedures necessary for him to receive service of
21 Defendant Levine's motion for summary judgment;

22 2. Within **five (5) days** of receipt of Plaintiff's information, Defendant Levine shall
23 re-serve his motion for summary judgement on Plaintiff;

24 3. Within **twenty-one (21) days** of the service of Defendant Levine's motion for
25 summary judgment, Plaintiff shall file and serve an opposition or statement of non-opposition to
26 that motion. Defendant Levine shall be permitted the usual opportunity to file and serve a reply
27 under Local Rule 230(l) to any opposition that Plaintiff makes;

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