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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SCOTT K. RICKS,)	1:15-cv-01150-AWI-BAM (PC)
)	
Plaintiff,)	AMENDED ORDER REGARDING
)	SERVICE OF DEFENDANT LEVINE’S
v.)	MOTION FOR SUMMARY JUDGMENT ¹
)	
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.

¹ The original order issued on August 7, 2017 gave an incorrect address for defense counsel. This amended order has the correct address.

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

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

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

20 Accordingly, the Court hereby orders that:

21 1. Within **ten (10) days** of service of this order, Plaintiff shall notify Defendant
22 Levine's counsel, Mr. Aaron T. Schultz, of Galloway, Lucchese, Everson & Picchi, 2300 Contra
23 Costa Boulevard, Suite 350, Pleasant Hill, CA 94523 (telephone: 925-930-9090 ext. 534), of
24 Plaintiff's mailing address and any procedures necessary for him to receive service of Defendant
25 Levine's motion for summary judgment;

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

28 3. Within **twenty-one (21) days** of the service of Defendant Levine's motion for

1 summary judgment, Plaintiff shall file and serve an opposition or statement of non-opposition to
2 that motion. Defendant Levine shall be permitted the usual opportunity to file and serve a reply
3 under Local Rule 230(1) to any opposition that Plaintiff makes;

4 4. No extensions of time of these deadlines will be granted without a request
5 supported by a showing of good cause; and

6 5. The parties are warned that the failure to comply with this order may result in the
7 imposition of sanctions.

8
9 IT IS SO ORDERED.

10 Dated: August 7, 2017

/s/ Barbara A. McAuliffe
11 UNITED STATES MAGISTRATE JUDGE