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

RICHARD RISHER,

Plaintiff,

v.

DR. EBINOSA, et al.,

Defendants.

Case No. 1:17-cv-00087-EPG (PC)

ORDER VACATING HEARING AND
REQUIRING PLAINTIFF TO FILE
OPPOSITION OR STATEMENT OF NON-
OPPOSITION TO MOTION TO DISMISS
WITHIN TWENTY-ONE DAYS

Richard Risher ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983, which includes state law claims.

On October 4, 2017, defendant Contreras filed a memorandum of points and authorities in support of motion to dismiss complaint pursuant to FRCP 12(b)(6) (ECF No. 29) and a request for judicial notice (ECF No. 30). On October 5, 2017, defendant Contreras filed a notice of errata "because the Motion to Dismiss pursuant to FRCP 12(b)(6) and supporting documents failed to include the date and time for the hearing of the motion." (ECF No. 31).

Because Plaintiff is a prisoner proceeding *pro se*, Local Rule 230(1) applies. "All motions, except motions to dismiss for lack of prosecution, filed in actions wherein one party is incarcerated and proceeding in propria persona, shall be submitted upon the record without oral argument unless otherwise ordered by the Court. Such motions need not be noticed on the motion calendar. Opposition, if any, to the granting of the motion shall be served and filed by the responding party not more than twenty-one (21) days after the date of service of the motion. A

1 responding party who has no opposition to the granting of the motion shall serve and file a
2 statement to that effect, specifically designating the motion in question. Failure of the responding
3 party to file an opposition or to file a statement of no opposition may be deemed a waiver of any
4 opposition to the granting of the motion and may result in the imposition of sanctions. The
5 moving party may, not more than seven (7) days after the opposition has been filed in CM/ECF,
6 serve and file a reply to the opposition. All such motions will be deemed submitted when the
7 time to reply has expired.” Local Rule 230(l).

8 Accordingly, the Court will vacate the hearing on defendant Contreras’ motion to dismiss
9 and require Plaintiff to file his opposition (or statement of non-opposition) to defendant
10 Contreras’ motion to dismiss within twenty-one days of the date of service of this order. The
11 Court may set a hearing on the motion if it deems one is necessary after reviewing all of the
12 briefing.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The hearing on defendant Contreras’ motion to dismiss, which is currently set for
15 November 17, 2017, is VACATED; and
- 16 2. Within twenty-one days from the date of service of this order, Plaintiff shall file an
17 opposition or statement of non-opposition to defendant Contreras’ motion to
18 dismiss.

19
20 IT IS SO ORDERED.

21 Dated: October 5, 2017

22 /s/ Eric P. Gray
23 UNITED STATES MAGISTRATE JUDGE