

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN ELMER,
Plaintiff,
v.
HINKLEY, et al.,
Defendants.

Case No. 1: 24-cv-00871-SAB
ORDER REQUIRING PLAINTIFF TO PAY \$50.00 SANCTIONS AND DISCHARGING NOVEMBER 21, 2024 ORDER TO SHOW CAUSE
(ECF Nos. 7, 8)
DECEMBER 4, 2024 DEADLINE

Plaintiff commenced this action on July 30, 2024. (ECF No. 1.) A scheduling conference is currently set for December 5, 2024. (ECF No. 5.) Because Plaintiff had not returned service documents and Defendants had not filed a responsive pleading, the Court issued an order requiring Plaintiff to file by November 20, 2024, a notice of status of service. (ECF No. 6.) Plaintiff failed to file a status report. On November 21, 2024, the Court issued an order to show cause, ordering Plaintiff to show cause in writing why this matter should not be dismissed for failure to prosecute and “why sanctions should not be imposed for failure to respond to the Court’s November 13, 2024 order. (ECF No. 7.)

On November 22, 2024, Plaintiff timely filed a response to the order to show cause stating that while he had been successful in serving the California Department of Corrections and Rehabilitation, he has not yet been successful in serving the individual defendants in this action. Plaintiff states that he last contacted CDCR on November 14, 2024, and that Plaintiff is “not

1 neglecting due diligence . . . [and] humbly request[s] that sanctions not be imposed.” (ECF
2 No. 8.) Plaintiff failed to address why he did not respond to the Court’s November 13, 2024
3 order and why sanctions should not be imposed for that failure.

4 Two significant matters require attention. First, Plaintiff is still out of compliance with
5 Federal Rule of Civil Procedure 4(m). Service was required to be effectuated by October 28,
6 2024, and therefore, Plaintiff should have moved the Court for additional time in which to
7 effectuate service before that deadline lapsed. Indeed, the Court previously outlined the
8 requirements of Rule 4(m), indicating that Plaintiff might have been out of compliance.¹ (ECF
9 No. 6.) Now that Plaintiff has confirmed that service has not been effectuated on any of the
10 named defendants in this action, the Court will direct Plaintiff to move for an extension of time
11 to complete service. Should Plaintiff fail to move, the Court will issue a findings and
12 recommendation with a recommendation to dismiss this action. Fed. R. Civ. P. 4(m).

13 Second, the Court’s order to show cause specifically stated that Plaintiff was to address
14 “why sanctions should not be imposed for failure to respond to the Court’s November 13, 2024
15 order.” (ECF No. 7, p. 2.) Plaintiff’s failure to comply with that portion of the Court’s order is
16 unacceptable and not well-taken. Going forward, the Court admonishes Plaintiff that he must
17 comply with all future court orders. Because of this failure, the Court finds it appropriate to
18 impose a sanction of \$50.00. Should Plaintiff fail to pay that sanction by the Court’s deadline, a
19 daily sanction will be imposed.

20 Accordingly, it is HEREBY ORDERED that:

- 21 1. The Court’s November 21, 2024 order to show cause (ECF No. 7) is DISCHARGED;
- 22 2. Plaintiff shall have through **December 2, 2024**, to move for an extension of time in
23 which to effectuate service;
- 24 3. Plaintiff shall pay **\$50.00 in sanctions via cashier’s check to the Clerk of the Court**
25 **no later than December 2, 2024**, for his failure to fully respond to the order to show

26
27 ¹ Rule 4(m) provides that “If a defendant is not served within 90 days after the complaint is filed, the court—on
28 motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant
or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). “But if the plaintiff shows good cause
for the failure, the court must extend the time for service for an appropriate period.” Id.; (see ECF No. 6.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

cause;

4. Plaintiff shall file a notice **no later than December 2, 2024**, confirming that he has paid the sanction;
5. If Plaintiff fails to comply with this order, Plaintiff and Plaintiff's counsel shall jointly and severally be obligated to pay the Clerk of the Court \$50.00 per day, **beginning on December 3, 2024**, until Plaintiff pays the sanction and files a notice of payment to the Court. Failure to comply may also result in a recommendation of dismissal of this action; and
6. In light of the foregoing, the mandatory scheduling conference set for December 5, 2024, is CONTINUED to March 11, 2025, at 10:00 a.m.

IT IS SO ORDERED.

Dated: November 25, 2024



STANLEY A. BOONE
United States Magistrate Judge