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JAMES, ROCHE and HUNSAKER

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

DANIEL H. GOVIND,

Plaintiff,

vs.

MR. FELKER, MR. D.L. RUNNELS, MR.  
M. McDONALD,

Defendants.

CASE NO: 2:08-CV-01183-ODW

Consolidated with Case No:  
2:06-CV-02467

**ORDER GRANTING DEFENDANTS  
JAMES, ROCHE AND HUNSAKER'S  
MOTION TO DISMISS**

Defendants JAMES, ROCHE and HUNSAKER filed a motion to dismiss pursuant to Rule 41(b), Rule 37(d)(1)(A) and Rule 37(b)(2)(A)(v) of the Federal Rules of Civil Procedure and Eastern District Local Rule 110. The Court, having considered all the papers submitted, hereby rules as follows:

(1) Plaintiff failed to comply with Court Orders and Federal Rules of Civil Procedure by refusing to participate at his deposition after being warned that his refusal to comply would result in dismissal of the case; therefore, the case is dismissed pursuant to FRCP 41(b), FRCP 37(b)(2)(A)(v), and Local Rule 110;

(2) The Court and defense counsel warned plaintiff of the consequences of failure to submit to defendants' discovery requests. However, after being properly served with interrogatories under Rule 33, requests for production under Rule 34, and request for admission under Rule 36, plaintiff failed to serve his answers, objections, or written responses. Based on

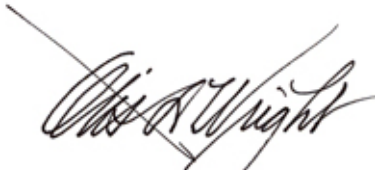
1 plaintiff's failure to participate in discovery, defendants are prejudiced in attempting to defend  
2 against plaintiff's claims because they are unable to ascertain precisely what evidence plaintiff  
3 intends to offer at trial and what conduct on their part will be called upon to defend at trial.

4 Because of plaintiff's refusal to comply with the Court's Orders requiring him to participate in  
5 discovery, dismissal is also appropriate pursuant to FRCP 37(d)(1)(A), FRCP 37(b)(2)(A)(v),  
6 and FRCP 41(b). In addition, plaintiff's failure to provide a timely response to the requests for  
7 admission has resulted in the admission of those requests which admissions dispense with any  
8 potential claim by plaintiff against defendants JAMES, ROCHE and HUNSAKER.

9 IT IS HEREBY ORDERED that defendants JAMES, ROCHE and HUNSAKER Motion  
10 to Dismiss is granted. JAMES, ROCHE and HUNSAKER are dismissed from this lawsuit with  
11 prejudice and judgment on their behalf is hereby entered.

12 **IT IS SO ORDERED.**

13  
14 Dated: June 24, 2011

  
\_\_\_\_\_  
Hon. Judge Otis D. Wright

1 **PROOF OF SERVICE**

2 Case : *Govind v Felker, et al.*  
3 Court: USDC, Eastern District of California  
4 Case No: 2:08-cv-01183-ODW

5 I am a citizen of the United States, employed in the City and County of Sacramento. My  
6 business address is 1250 Sutterville Road, Suite 290, Sacramento, California 95822. I am over  
7 the age of 18 years and not a party to the above-entitled action.

8 I am familiar with WILLIAMS & ASSOCIATES' practice whereby the mail is sealed, given the  
9 appropriate postage and placed in a designated mail collection area. Each day's mail is collected  
10 and deposited in a U.S. mailbox after the close of each day's business.

11 I certify that on June 23, 2011, pursuant to F.R.C.P. 5(b), I deposited in the United States mail,  
12 postage prepaid, a true copy of the document entitled:

13 **PROPOSED ORDER GRANTING DEFENDANTS JAMES, ROCHE AND  
14 HUNSAKER'S MOTION TO DISMISS**

15 and addressed as follows:

16 **LEGAL DOCUMENTS ENCLOSED**

17 Daniel H. Govind, CDC# K17945  
18 Unit #2 Dorm-2-48L  
19 California Correctional Institution  
20 P.O. Box 608  
21 Tehachapi, CA 93581

22 I declare that I am employed in the office of a member of the bar of this Court at whose direction  
23 this service was made.

24 DATED: June 23, 2011

25 */s/ Susan J. Olsson*  
26 SUSAN J. OLSSON